

**United States Department of Labor
Employees' Compensation Appeals Board**

C.T., Appellant)	
)	
and)	Docket No. 22-0979
)	Issued: October 20, 2023
DEPARTMENT OF THE AIR FORCE,)	
LOS ANGELES AIR FORCE BASE,)	
El Segundo, CA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 11, 2022 appellant filed a timely appeal from a January 12, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ The Board notes that, following the January 12, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue whether appellant has met his burden of proof to establish disability from work for the period September 26 through October 9, 2021, causally related to his accepted July 26, 2021 employment injury.

FACTUAL HISTORY

On July 26, 2021 appellant, then a 52-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that he injured his right ankle walking on patrol while in the performance duty. He stopped work on the date of injury. OWCP accepted the claim for sprain of ligament of the right ankle and peroneal tendinitis of the right leg.

Appellant underwent physical therapy on September 29, 2021 and submitted progress reports of the treatment.

On October 7, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period September 26 through October 9, 2021.

In a report dated October 18, 2021, Dr. Gregory D. Bouyer, an occupational medicine specialist, noted that appellant reported improvement in his symptoms with physical therapy. He performed a physical examination and maintained the same work restrictions as outlined in his September 20, 2021 report.

On November 29, 2021 Dr. Bouyer released appellant to return to work full duty, without restrictions.

Appellant was discharged from physical therapy, effective December 1, 2021.

In a development letter dated December 2, 2021, OWCP informed appellant that the evidence submitted was insufficient to establish his claim for disability from work during the period September 26 through October 9, 2021. It advised him of the type of medical evidence necessary to establish his claim and afforded him 30 days to respond.

In a report dated December 23, 2021, Dr. Bouyer noted that appellant related that he had very minimal pain and excellent range of motion. He indicated that appellant could return to work without restrictions, but also noted that he was not presently working due to a pending retirement adjudication.

By decision dated January 12, 2022, OWCP denied appellant's claim for compensation for disability from work for the period September 26 through October 9, 2021 due to his accepted July 26, 2021 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which

compensation is claimed is causally related to the employment injury.³ Under FECA, the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁴ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁵ An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.⁶ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.⁷

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.⁸

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work during the period September 26 through October 9, 2021, causally related to his accepted July 26, 2021 employment injury.

In support of his claim for compensation for the period September 26 through October 9, 2021, appellant submitted reports of Dr. Bouyer dated October 18, November 29, and December 23, 2021, wherein he described the July 26, 2021 employment injury, recommended various restrictions through November 28, 2021, and documented objectively normal physical examination findings. Although he indicated that appellant was under restrictions during the claimed period of disability, he did not provide a medical opinion addressing the causal

³ *M.H.*, Docket No. 22-1178 (issued April 25, 2023); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ 20 C.F.R. § 10.5(f).

⁵ *See H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁶ *See H.B.*, *id.*; *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

⁷ *See H.J.*, Docket No. 21-0665 (issued March 6, 2023); *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

⁸ *N.O.*, Docket No. 22-0644 (issued March 8, 2023); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

⁹ *T.W.*, Docket No. 22-0790 (issued March 9, 2023); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

relationship between the claimed disability and the accepted employment injury.¹⁰ Therefore, Dr. Bouyer's reports are insufficient to establish the disability claim.

Appellant submitted physical therapy progress reports. The Board has held that, however, that physical therapists are not considered physicians as defined under FECA.¹¹ Therefore, this additional evidence has no probative value and is insufficient to establish the claim.

As the medical evidence of record is insufficient to establish disability from work for the period September 26 through October 9, 2021 due to the accepted July 26, 2021 employment injury, the Board finds that appellant has not met his burden of proof.¹²

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability from work for the period September 26 through October 9, 2021, causally related to his accepted July 26, 2021 employment injury.

¹⁰ See *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *T.S.*, Docket No. 20-1229 (issued August 6, 2021) (physical therapists are not considered physicians as defined under FECA).

¹² Upon return of the case record, OWCP should consider payment of up to four hours of compensation to appellant for lost time from work due to medical appointments to assess or treat symptoms related to the employment injury. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013). See also *J.E.*, Docket No. 19-1758 (issued March 16, 2021); *A.V.*, Docket No. 19-1575 (issued June 11, 2020); *William A. Archer*, 55 ECAB 674 (2004).

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board