

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

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W. V., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS, VA)
NEW JERSEY HEALTH CARE SYSTEM,)
AMBULATORY CARE SERVICE, Lyons, NJ,)
Employer)
-----)

Docket No. 24-0185
Issued: April 11, 2024

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On December 18, 2023 appellant filed a timely appeal from a November 22, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work commencing September 19, 2023, causally related to her accepted August 4, 2023 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 22, 2023 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

On August 11, 2023 appellant, then a 55-year-old technical information service clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 4, 2023 she injured her left foot when a tablet device fell from a desk onto her left foot, impacting a postsurgical area while in the performance of duty. She stopped work on August 5, 2023. OWCP accepted this claim for contusion of the left foot.

On August 9, 2023 Dr. Ishak Soliman, a Board-certified family practitioner, completed an attending physician's report (Form CA-20) diagnosing left foot pain due to a traumatic injury. He noted that appellant had previously undergone left foot bunion surgery. Dr. Soliman checked a box marked "Yes" indicating that he believed that the condition found was caused or aggravated by an employment activity. He reported that appellant's period of total disability was "pending."

Dr. Rachel Gerber, a podiatrist, on August 17, 2023, opined that appellant was disabled through September 1, 2023 or following review of a magnetic resonance imaging (MRI) scan. Appellant underwent a left foot MRI scan on September 9, 2023 which demonstrated a small amount of tendinitis at the deep aspect of the extensor digitorum longus tendon, moderate osteoarthritis at the navicular to middle cuneiform joint, and effusion with orthopedic hardware at the medial cuneiform to first metatarsal articulation.

In a September 21, 2023 Form CA-20, Dr. Hyunji Boo, a podiatrist, reported that appellant experienced trauma at work on August 4, 2023 and diagnosed fracture of the left first metatarsal base, early avascular necrosis of the third cuneiform, and peroneal tendinitis. He checked a box marked "Yes" indicating that the condition found was diagnosed caused or aggravated by an employment activity. Dr. Boo further explained that the injury was sustained at work and was exacerbated by continued work. He determined that appellant was totally disabled from work during the period August 14 through November 14, 2023. Dr. Boo also completed an employing establishment form indicating that she was temporarily totally disabled from work. He recommended bed rest.

Dr. Michael Subik, a podiatrist, completed a September 28, 2023 report, and recounted that appellant's symptoms began following a work-related injury. He diagnosed left foot osteonecrosis due to previous trauma. Dr. Subik prescribed physical therapy. On October 5, 2023 he diagnosed left avascular necrosis.

On October 6, 2023 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation from September 19 through 22, 2023.

OWCP continued to receive medical evidence, including physical therapy notes.

In an October 20, 2023 development letter, OWCP informed appellant of the deficiencies of her disability claim. It advised her of the type of medical evidence necessary to establish her claim and afforded her 30 days to respond.

OWCP continued to receive physical therapy notes.

Appellant filed additional Form CA-7 claims requesting wage-loss compensation for the period October 19 through November 3, 2023. She provided form reports from Dr. Boo dated November 6, 2023 indicating that she was temporarily totally disabled from work.

In an October 23, 2023 note, Dr. Subik completed appellant's request for accommodation due to her left foot contusion. He diagnosed contusion of the nerve and bone of the left foot and chronic reflex pain syndrome of the left foot. Dr. Subik provided work restrictions.

Dr. Boo completed an additional Form CA-20 on November 6, 2023 and repeated his previous findings and diagnoses. He opined that appellant was totally disabled from August 14, 2023 through February 14, 2023.

OWCP continued to receive physical therapy notes.

By decision dated November 22, 2023, OWCP denied appellant's claim for disability from work commencing September 19, 2023, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period causally related to her accepted August 4, 2023 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim.⁴ Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁶ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.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 appellant, 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

³ *Supra* note 1.

⁴ *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

⁵ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁶ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁷ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *See D.W.*, Docket No. 20-1363 (issued September 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

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 her burden of proof to establish disability from work commencing September 19, 2023, causally related to her accepted August 4, 2023 employment injury.

Appellant submitted reports, wherein Dr. Boo described the August 4, 2023 work injury and diagnosed fracture of the left first metatarsal base, early avascular necrosis of the third cuneiform, and peroneal tendinitis. He checked a box marked “Yes” indicating that the condition found was diagnosed caused or aggravated by an employment activity. Dr. Boo further explained that the injury was sustained at work and was exacerbated by continued work. He determined that appellant was totally disabled from August 14 through February 14, 2023. Dr. Boo did not however provide any medical rationale, explaining why appellant was disabled from work during the claimed period due her accepted employment injury.¹⁰ The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given period of disability has an employment-related cause.¹¹ Therefore, this evidence is insufficient to establish appellant’s disability claim.

On August 9, 2023 Dr. Soliman completed a Form CA-20 and diagnosed left foot pain due to a traumatic injury. He noted that appellant had previously undergone left foot bunion surgery. Dr. Soliman indicated that appellant’s period of total disability was “pending.” In an August 17, 2023 report, Dr. Gerber found that appellant was disabled through September 1, 2023. However, neither physician addressed the claimed period of disability commencing September 19, 2023. 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.¹² Therefore this evidence is insufficient to establish appellant’s disability claim.

On October 23, 2023 Dr. Subik diagnosed contusion of the nerve and bone of the left foot and chronic reflex pain syndrome of the left foot and provided work restrictions. However, he did not address the claimed disability. The Board has held that as this report does not provide an opinion as to whether a period of disability is due to an accepted employment-related condition, it is insufficient to meet a claimant’s burden of proof.¹³ Thus, this evidence is insufficient to establish appellant’s disability claim.

⁹ See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004).

¹⁰ *L.S.*, Docket No. 23-0778 (issued December 27, 2023); *L.S.*, Docket No. 22-0821 (issued March 20, 2023); *T.S.*, Docket Nos. 20-1177 and 20-1296 (issued May 28, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

¹¹ See *S.S.*, Docket No. 21-0763 (issued November 12, 2021); *A.G.*, Docket No. 21-0756 (issued October 18, 2021); *T.S.*, Docket No. 20-1229 (issued August 6, 2021).

¹² See *E.B.*, Docket No. 20-0447 (issued September 9, 2021); *W.C.*, Docket No. 19-1740 (issued June 4, 2020); *Fereidoon Kharabi*, *supra* note 7; *Edward H. Horton*, 41 ECAB 301 (1989).

¹³ *C.C.*, Docket No. 22-1063 (issued December 18, 2023); *F.S.*, Docket No. 23-0112 (issued April 26, 2023); see *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

In support of her claim, appellant submitted physical therapy notes and a September 9, 2023 MRI scan report. However, the Board has held that medical reports signed solely by a nurse, physician assistant, or physical therapist are of no probative value, as such healthcare providers are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion.¹⁴ The Board has also held that diagnostic studies, standing alone, lack probative value, because they do not address whether the employment injury caused any of the diagnosed conditions or associated disability.¹⁵

As the medical evidence of record is insufficient to establish disability from work during the claimed period due to the accepted employment injury, the Board finds that appellant has not met her burden of proof.¹⁶

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 her burden of proof to establish disability from work commencing September 19, 2023, causally related to her accepted August 4, 2023 employment injury.

¹⁴ 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a (January 2013); *D.H.*, Docket No. 22-1050 (issued September 12, 2023) (nurses and nurse practitioners are not considered physicians as defined under FECA); *C.G.*, Docket No. 20-0957 (issued January 27, 2021) (physician assistants are not considered physicians as defined under FECA); *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).

¹⁵ *See T.W.*, Docket No. 20-1669 (issued May 6, 2021); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁶ *K.A.*, Docket No. 17-1718 (issued February 12, 2018).

ORDER

IT IS HEREBY ORDERED THAT the November 22, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board