

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period August 18 through 28, 2021 causally related to her accepted February 18, 2017 employment injury.

FACTUAL HISTORY

On March 7, 2017 appellant then a 47-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 18, 2017 she sustained a right knee injury when she stepped between a curb and grassy area while in the performance of duty.⁴ Following a brief period of limited duty, she returned to full-duty work from March 14, 2017 until she stopped work on September 6, 2017. OWCP accepted the claim for right knee sprain. It paid appellant wage-loss compensation on the supplemental rolls, effective September 16, 2017. OWCP subsequently expanded the acceptance of appellant's claim to include a right medial meniscus tear.

On February 23, 2018 appellant underwent OWCP-authorized arthroscopic partial right medial meniscectomy, performed by Dr. Vehniah Tjong, a Board-certified orthopedic surgeon. She remained off work.

In a May 10, 2018 report, Dr. Chadwick V. Milstead, a Board-certified internist, noted that appellant's right knee was recovering well but that she had developed vasculitis of the lower extremities. A magnetic resonance imaging (MRI) scan was consistent with cellulitis. Dr. Milstead diagnosed primary vasculitis.

In a May 17, 2018 report, Dr. Joaquin C. Brieva, a Board-certified dermatologist, observed "[m]ultiple tender erythematous nodules and papules confluent to plaques on the right lateral calf." Dr. Brieva diagnosed lymphocytic thrombophilic arteritis (LTA) of the right lower extremity.

In a July 18, 2018 report, Dr. Mariam A. Siddiqui, a Board-certified internist and rheumatologist, diagnosed LTA of the right lower extremity based on a May 4, 2018 biopsy. She noted that the condition had developed following the February 23, 2018 right knee arthroscopy. Dr. Siddiqui explained in an August 28, 2018 report that LTA tended "to be a benign condition that runs an indolent course without any reported systemic involvement." She returned appellant to sedentary limited-duty work for three hours a day, three days a week, effective November 1, 2018. Dr. Siddiqui submitted periodic treatment notes through January 18, 2019 noting ongoing soft tissue swelling and significant paresthesias in the right lower extremity.

On February 4, 2019 OWCP referred appellant, the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. Allan M. Brecher, a Board-certified orthopedic surgeon, for a second opinion on the nature and extent of the accepted conditions and appellant's work capacity.

OWCP placed appellant on the periodic rolls effective March 3, 2019.

⁴ Prior to the present claim OWCP, under OWCP File No. xxxxxx465, accepted that on January 2, 2001 appellant sustained bilateral knee and lower extremity contusions.

In a March 12, 2019 report, Dr. Brecher reviewed the medical record and SOAF and noted findings on examination. He diagnosed right medial meniscal tear, resolved right foot contusions and improved vasculitis. Dr. Brecher opined that the accepted injuries had resolved without residuals as of May 1, 2018 and that appellant could return to full-duty work with no restrictions. However, appellant's nonoccupational vascular arteritis limited her to sedentary or light-duty work.

In a June 13, 2019 report, Dr. Siddiqui noted that a January 2018 electromyogram and nerve conduction velocity study of the right lower extremity was unremarkable. On examination she observed ongoing soft tissue swelling in the right lower extremity. Dr. Siddiqui diagnosed LTA with neuropathic pain and prescribed medication.

In a July 29, 2019 attending physician's report (Form CA-20), Dr. Siddiqui diagnosed cutaneous vasculitis and neuropathic pain. She explained that there was no known association between cutaneous vasculitis and prior injury. Dr. Siddiqui opined that appellant could perform light-duty work with restrictions.

On September 6, 2019 OWCP found a conflict of medical opinion between Dr. Brecher, for the government, and Dr. Siddiqui, for appellant, regarding appellant's work capacity and whether she had continuing residuals of the accepted conditions. In a referral memorandum of even date, it indicated that it would select an orthopedic surgeon to resolve the conflict of medical opinion evidence.

In a September 25, 2019 report, Dr. Siddiqui noted that appellant's main issue appeared to be neuropathic pain in the right lower extremity, and that an August 2019 biopsy had indicated a diagnosis of leukocytoclastic vasculitis (LCV).

In a December 11, 2019 e-mail, OWCP noted that it had not yet scheduled an impartial medical examination but that the referral remained necessary.

On January 6, 2020 appellant returned to part-time limited-duty work for three hours a day, three days a week. OWCP paid her wage-loss compensation on the supplemental rolls for the remaining hours.⁵

In reports dated July 20 and October 6, 2020, Dr. Siddiqui indicated that appellant could not carry mail or operate a foot pedal while driving due to continuing right lower extremity dysfunction.

In a report dated January 8, 2021, Dr. Dost M. Khan, Board-certified in anesthesiology, pain medicine, and internal medicine, opined that it was unsafe for appellant to drive due to "weakness and purported dysfunction of her right foot."

On August 30, 2021 appellant filed a claim for compensation (Form CA-7) for total disability from work for the period August 14 through 27, 2021.

⁵ On May 27, 2020 appellant accepted a full-time limited-duty position as a modified carrier. Assigned duties required answering customer calls for four hours a day, administrative duties for two hours a day, and collecting mail for two hours a day.

In a recurrence development letter dated September 3, 2021, OWCP provided a definition of recurrence of disability and informed appellant of the deficiencies of her claim. It notified her of the additional evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

In subsequent development letters dated September 28, 2021, OWCP noted that it had not received evidence to support appellant's claim for, among other things, eight hours of compensation on August 28, 2021.

In an October 5, 2021 report, Dr. Cole W. Cheney, a Board-certified physiatrist, recounted the onset of right lower extremity pain following right knee arthroscopy in February 2018. Appellant experienced significant pain in the right lower extremity into the foot, hypersensitivity to light touch, swelling, and right foot weakness. Dr. Cheney opined that appellant's symptoms were most consistent with complex regional pain syndrome (CRPS). He noted that appellant had been unable to tolerate neuropathic medications, and lumbar plexus sympathetic blocks produced only minimal symptomatic improvement. On September 22, 2021 Dr. Cheney performed surgical implantation of a spinal cord stimulator. He noted that appellant's CRPS had worsened since the right knee arthroscopy. Dr. Cheney opined that appellant was disabled from working as a letter carrier as she could not drive safely or bear weight on her right lower extremity due to motor weakness. He held appellant off work for four weeks.⁶

Appellant submitted an October 26, 2021 report by Dr. Siddiqui, who opined that she developed neuropathic pain as a result of cutaneous vasculitis. She noted that while appellant's cutaneous vasculitis had gone into remission, her neuropathic pain persisted.

On November 2, 2021 OWCP received a September 29, 2021 report by Dr. Khan, holding appellant off work for four weeks to allow her to recover from September 22, 2021 spine surgery.

In November 11, 2021 reports, Dr. Milstead diagnosed a right meniscal tear, LTA, and CRPS. He opined that the right knee surgery triggered vasculitis and was also "the inciting event for her CRPS" as surgery was a known CRPS trigger, and she had no symptoms of CRPS prior to surgery. Dr. Milstead concluded that to a reasonable degree of medical certainty, appellant's CRPS had been "caused by her injury and treatment for her injury."

In a report dated November 29, 2021, Dr. Milstead noted appellant's CRPS symptoms in the distal right lower extremity, and significant pain with prolonged walking and standing. He noted work restrictions.

On November 30, 2021 appellant requested reconsideration of OWCP's November 4, 2021 decision.

Appellant submitted additional evidence. In a November 5, 2021 report, Dr. Khan, noted that the spinal cord stimulator had significantly reduced appellant's right lower extremity pain symptoms but that she continued to have chronic right lower extremity weakness and dysfunction. He returned appellant to sedentary duty with restrictions on December 1, 2021.

⁶ In an October 7, 2021 statement, appellant noted that she had undergone surgery on September 22, 2021 and therefore claimed wage-loss compensation on September 23 and 24, 2021.

By decision dated December 21, 2021, OWCP denied appellant's claims for wage-loss compensation commencing August 18, 2021.

On December 28, 2021 appellant requested reconsideration of OWCP's December 21, 2021 decision.

In a December 30, 2021 report, Dr. Cheney recounted appellant's history of LCV with right lower extremity pain following February 2018 right knee surgery. Appellant also experienced CRPS "manifesting as extreme sensitivity, swelling, and weakness in her foot." Dr. Cheney opined that while lumbar sympathetic nerve blocks and a spinal cord stimulator had reduced appellant's pain symptoms, her motor symptoms remained active and disabling.

In a January 10, 2022 report, Dr. Milstead explained that appellant underwent placement of a spinal cord stimulator on September 22, 2021 to improve CRPS symptoms in her right lower extremity. He noted that appellant did not undergo major back surgery.

On March 9, 2022 OWCP received copies of appellant's February 15, 2022 reconsideration request and copies of medical evidence previously of record.

By decision dated March 28, 2022, OWCP denied modification of the December 21, 2021 decision finding that appellant had not established disability from work for the period August 18 through 28, 2021.

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 for which compensation is claimed is causally related to the employment injury.⁷

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.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 their disability and entitlement to compensation.⁹

⁷ *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); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

⁸ *See B.K.*, Docket No. 18-0386 (issued September 14, 2018).

⁹ *K.G.*, Docket No. 22-1358 (issued June 27, 2023); *B.M.*, Docket No. 19-1075 (issued February 10, 2021); *R.A.*, Docket No. 19-1752 (issued March 25, 2020); *A.W.*, Docket No. 18-0589 (issued May 14, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP accepted that appellant sustained a right knee sprain and right medial meniscus tear causally related to the accepted February 18, 2017 employment injury. Appellant claimed compensation for work absences from August 18, 2021 and continuing, due to disability precipitated by the accepted employment conditions, and vascular conditions affecting the right lower extremity. By decision dated March 28, 2022, OWCP denied her claims for wage-loss compensation for the period August 18 through 28, 2021 as causally related to the accepted employment injury.

On September 6, 2019 OWCP found a conflict of medical opinion between Dr. Brecher, for the government, and Dr. Siddiqui, for appellant, regarding appellant's work capacity and whether she had any continuing work-related residuals or conditions. However, it did not refer appellant for an impartial examination. OWCP noted in a December 11, 2019 e-mail that the impartial referral remained necessary, but did not select an impartial medical specialist or schedule an examination.

OWCP subsequently received additional medical evidence regarding appellant's continued right lower extremity dysfunction. As OWCP had not yet referred appellant for the required impartial medical examination, the conflict of medical opinion between Dr. Siddiqui and Dr. Brecher on the issues of work-related residuals and appellant's work limitations remained unresolved.

OWCP's regulations provide that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination.¹⁰ The Board will, therefore, remand the case to OWCP for referral to an impartial medical specialist regarding whether the accepted right lower extremity injury had resolved, and whether appellant had any work limitations due to the accepted employment injury. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁰ 5 U.S.C. § 8123(a); *V.P.*, Docket No. 21-1111 (issued May 23, 2022); *S.C.*, Docket No. 20-0856 (issued August 26, 2021); *K.C.*, Docket No. 19-0137 (issued May 29, 2020); *M.W.*, Docket No. 19-1347 (issued December 5, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 28, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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