

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

_____)	
J.M., Appellant)	
)	
and)	Docket No. 23-0809
)	Issued: February 5, 2024
U.S. POSTAL SERVICE, BEDFORD PARK)	
POST OFFICE, Bedford Park, IL, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 18, 2023 appellant, through counsel, filed a timely appeal from an April 28, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability from work for the period June 21 through September 1, 2022, causally related to her accepted November 3, 2021 employment injury.

FACTUAL HISTORY

On November 12, 2021 appellant, then a 45-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on November 3, 2021 she injured her left knee when the delivery truck in which she was a passenger stopped abruptly while in the performance of duty.³ OWCP accepted her claim for contusion of the left knee. Appellant stopped work on November 4, 2021 and returned to modified-duty work, effective December 18, 2021.⁴

In a June 22, 2022 report, Taelor A. Stuedemann, a nurse practitioner, noted that appellant related complaints of left knee pain and swelling. She indicated that appellant had undergone a cortisone injection to the left knee one month prior, which did not help her symptoms. On physical examination of the left knee, Ms. Stuedemann documented mild swelling, decreased range of motion due to pain, and an antalgic gait, but no instability. She noted that a January 11, 2022 magnetic resonance imaging scan of the left knee revealed osteoarthritis. Ms. Stuedemann diagnosed arthritis of the left knee, pain in the left calf, and left leg swelling and recommended a left knee x-ray and a left leg venous duplex doppler ultrasound.

On September 1, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work during the period June 21 through September 1, 2022.

In support of her claim, appellant submitted a July 28, 2022 note by Dr. Muhammad O. Ansari, a Board-certified family medicine specialist, who recommended that she remain out of work from June 19 through September 30, 2022 due to “[appellant’s] chronic knee pain condition.”

In a development letter dated September 7, 2022, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of additional evidence required and afforded her 30 days to respond.

Thereafter, OWCP received an October 5, 2022 note by Dr. Brandon Pardi, an orthopedic surgeon, who released appellant to return to sedentary-duty work. In a separate note, bearing an illegible date, Dr. Pardi recommended physical therapy.

³ OWCP assigned the present claim OWCP File No. xxxxxx635. On July 5, 2022 appellant filed an occupational disease claim (Form CA-2) for the November 3, 2021 left knee injury, which OWCP assigned OWCP File No. xxxxxx675. OWCP administratively combined OWCP File No. xxxxxx675 with OWCP File No. xxxxxx635, with the latter serving as the master file.

⁴ In a July 21, 2022 report of work status (Form CA-3) under OWCP File No. xxxxxx675, the employing establishment related that appellant stopped work on November 4, 2021 and returned full time with no restrictions on December 18, 2021.

By decision dated October 26, 2022, OWCP denied appellant's claim for wage-loss compensation, finding that the medical evidence of record was insufficient to establish disability from work for the period June 21 through September 1, 2022 causally related to her accepted November 3, 2021 employment injury.

On November 1, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which took place on March 14, 2023. The hearing representative afforded appellant 30 days to submit additional evidence. No additional evidence was received.

By decision dated April 28, 2023, OWCP's hearing representative affirmed the October 26, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.⁶ 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.⁷ 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.⁸ 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.⁹

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 him or her, 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.¹⁰

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

⁵ *Supra* note 2.

⁶ *See S.F.*, Docket No. 20-0347 (issued March 31, 2023); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

⁸ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁹ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ *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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability from work for the period June 21 through September 1, 2022, causally related to the accepted November 3, 2021 employment injury.

In support of her claim for compensation, appellant submitted a July 28, 2022 note by Dr. Ansari, who recommended that she remain out of work from June 19 through September 30, 2022 due to her chronic left knee pain condition. Dr. Ansari did not, however, provide objective medical findings explaining why she was totally disabled due to the accepted medical condition of left knee contusion and did not explain why she could not perform her federal employment duties during the claimed period.¹² For these reasons, Dr. Ansari's July 28, 2022 note is insufficient to establish appellant's disability claim.

Appellant also submitted an October 5, 2022 work restriction note and physical therapy prescription by Dr. Pardi. However, Dr. Pardi did not provide an opinion regarding whether she was disabled from work during the claimed period due to the accepted employment injury. As the Board has held, medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value.¹³ Therefore, these notes are also insufficient to meet appellant's burden of proof.

The remaining medical evidence of record includes a June 22, 2022 progress note from Ms. Stuedemann, a nurse practitioner. The Board has long held that certain healthcare providers such as nurse practitioners are not considered "physician[s]" as defined under FECA and thus their findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for

¹¹ See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 9.

¹² See *N.L.*, Docket No. 22-1011 (issued July 5, 2023); *E.M.*, Docket No. 20-0738 (issued June 22, 2022); *E.M.*, Docket No. 18-0454 (issued February 20, 2020); *see also J.J.*, Docket No. 15-1329 (issued December 18, 2015).

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

purposes of establishing entitlement to FECA benefits.¹⁴ Accordingly, this note is insufficient to satisfy appellant's burden of proof.¹⁵

As appellant has not submitted medical evidence sufficient to establish disability during the claimed period due to her accepted November 3, 2021 employment injury, the Board finds that she 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 total disability from work for the period June 21 through September 1, 2022, causally related to her accepted November 3, 2021 employment injury.

¹⁴ Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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); *M.M.*, Docket No. 23-0475 (issued July 27, 2023) (nurses are not considered physicians as defined under FECA); *C.G.*, Docket No. 22-0536 (issued January 11, 2023) (nurse practitioners 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 *R.H.*, Docket No. 21-1382 (issued March 7, 2022); *S.E.*, Docket No. 21-0666 (issued December 28, 2021).

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

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 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