

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

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| V.M., Appellant |) | |
| |) | |
| and |) | Docket No. 23-1097 |
| |) | Issued: February 6, 2024 |
| U.S. POSTAL SERVICE, TOLEDO |) | |
| PROCESSING & DISTRIBUTION CENTER, |) | |
| Toledo, OH, Employer |) | |
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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 August 16, 2023 appellant filed a timely appeal from a May 4, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees'

¹ While appellant's AB-1 indicates that she is also appealing from a purported June 12, 2023 OWCP decision, there is no final adverse decision of that date found in the case record. The case record contains correspondence dated June 12, 2023 to appellant's physician referencing a right total knee arthroplasty authorization request. This correspondence, however, does not constitute a final adverse OWCP decision from which appellant may properly appeal as it is informational in nature. See *Order Dismissing Appeal, K.S.*, Docket No. 20-1401 (issued March 17, 2021); *Order Dismissing Appeal, S.U.*, Docket No. 20-0636 (issued December 3, 2020) (correspondence that is purely informational in nature does not constitute a final adverse decision of OWCP from which appellant may properly appeal).

Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work commencing January 21, 2023 causally related to her accepted July 8, 2018 employment injury.

FACTUAL HISTORY

On July 25, 2018 appellant, then a 59-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she aggravated her preexisting right knee condition when pushing extremely heavy bulk mail containers (BMCs). She indicated that she had previously undergone right knee surgery in June 2017.⁴ Appellant noted that she first became aware of her condition on July 8, 2018 and realized its relation to her federal employment on July 16, 2018. OWCP accepted the claim for aggravation of right knee unilateral primary osteoarthritis and other specified joint disorders, right knee (articular cartilage disorder of the right knee). It subsequently expanded acceptance of the claim to include medial meniscus tear of the right knee.

In a January 17, 2023 note, Dr. Benjamin S. Assenmacher, a Board-certified orthopedic surgeon, advised that appellant should not work from January 21, 2023 until approximately April 29, 2023 due to being incapacitated while recovering from extensive right knee surgery. An undated surgery information form indicated that appellant was scheduled for right knee surgery on January 26, 2023.

On February 15, 2023 appellant filed a claim for compensation (Form CA-7) for temporary total disability from work for the period January 21 through 27, 2023.

In a letter dated February 16, 2023, OWCP advised appellant that, while the medical evidence of record indicated that she was off work beginning January 21, 2023 for extensive right knee surgery, it had not authorized that surgery. It further advised that if her provider felt that her right knee surgery was medically necessary and causally related to the accepted July 8, 2018 work injury, then a request for authorization with supportive medical documentation should be submitted.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the May 4, 2023 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.*

⁴ Appellant noted a prior right knee injury on July 15, 2016 while at work, for which she underwent a right knee arthroscopy with medial meniscectomy on June 27, 2017. However, she did not file a claim with OWCP for that incident.

In a February 21, 2023 development letter, OWCP advised appellant that the medical documentation of record was insufficient to support her disability claim. It advised her of the type of medical evidence necessary to establish her claim and afforded her 30 days to respond.

Appellant subsequently submitted hospital records dated January 26 through 28, 2023, which related that she had undergone a total replacement of the right knee joint on January 26, 2023, for treatment of primary osteoarthritis of the right knee. OWCP also received physical and occupational therapy notes, as well as a request for medical authorization for physical therapy.

In a January 12, 2023 preadmission record, a nurse practitioner indicated that appellant had been diagnosed with osteoarthritis. She noted that appellant provided a medical history of a 2017 right knee injury followed by a 2018 right knee arthroscopy. Appellant reported reinjuring her knee shortly thereafter.

In a March 22, 2023 development letter, OWCP advised appellant that the evidence requested in its February 21, 2023 letter was necessary to support her claim(s) for continuing compensation due to her January 21, 2023 work stoppage. It afforded her 30 additional days to submit the evidence previously requested.

In an October 26, 2022 report, Dr. Assenmacher related that appellant was a new patient to his practice. He reported that she had complaints of chronic progressive right knee pain and a history of a prior knee arthroscopy, cortisone and gel injections and physical therapy. Dr. Assenmacher provided examination findings and interpreted appellant's x-ray as showing severe tricompartmental arthritis with significant osteophyte formation. He provided an impression of severe right knee degenerative joint disease and recommended a right total knee arthroplasty due to the severe osteoarthritis and failure of conservative treatment.

By decision dated May 4, 2023, OWCP denied appellant's claim for disability from work commencing January 21, 2023. It found that the medical evidence of record was insufficient to establish a need for surgery and related disability due to her accepted work-related conditions.

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 The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁷ For each period of disability claimed, the employee has the

⁵ *Supra* note 1.

⁶ *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); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁸

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence.⁹ The opinion of the physician must be based on a complete factual and medical background, 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 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 disability from work commencing January 21, 2023 causally related to her accepted July 8, 2018 employment injury.

In an October 26, 2022 report, Dr. Assenmacher noted a history of a prior knee arthroscopy and recommended a right total knee arthroplasty due to the severe osteoarthritis and failure of conservative treatment. However, he failed to provide an opinion as to whether appellant's disability commencing January 21, 2023 was causally related to the accepted injury.¹² The Board has held that medical evidence that does not provide an opinion as to whether a period of disability is due to an accepted employment-related condition is of no probative value.¹³ This evidence is, therefore, insufficient to establish the disability claim.

In a January 17, 2023 note, Dr. Assenmacher opined that appellant should be off work from January 21 until April 29, 2023 due to being incapacitated while recovering from "extensive surgery" on the right knee. However, the January 26, 2023 right knee surgical procedure was not authorized by OWCP. Dr. Assenmacher did not provide an opinion on causal relationship between

⁸ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁹ *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁰ *V.A.*, Docket No. 19-1123 (issued October 29, 2019); *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

¹¹ *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹² *See L.M.*, Docket No. 22-0655 (issued October 21, 2022); *P.F.*, Docket No. 18-0973 (issued January 22, 2019); *James Mack*, 43 ECAB 321 (1991).

¹³ *C.M.*, Docket No. 21-0004 (issued May 24, 2021); *R.J.*, Docket No. 19-0179 (issued May 26, 2020); *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

the claimed disability and the accepted employment injury.¹⁴ This evidence is, therefore, insufficient to establish the claim.

Appellant also submitted evidence from a nurse practitioner, and occupational and physical therapists. The Board has held that certain healthcare providers such as physician assistants and nurse practitioners are not considered physicians as defined under FECA.¹⁵ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Thus, this evidence is also insufficient to establish the disability claim.

As the medical evidence of record is insufficient to establish disability from work commencing January 21, 2023 causally related to the accepted employment injury, the Board finds that appellant has not met her burden of proof.

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 January 21, 2023 causally related to her accepted July 8, 2018 employment injury.

¹⁴ *Id.*

¹⁵ Section 8102(2) of FECA provides as follows: (2) 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 Z.G.*, Docket No. 22-0484 (issued March 15, 2023) (physical and occupational therapists are not considered physicians as defined under FECA); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a physician assistant and nurse practitioner are not considered physicians as defined under FECA).

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 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