United States Department of Labor
Employees' Compensation Appeals Board

N.A., Appellant	)	
and	)	**Docket No. 23-0532**
	)	**Issued: January 24, 2024**
U.S. POSTAL SERVICE, NORTH TEXAS PROCESSING & DISTRIBUTION CENTER, Coppell, TX, Employer	)	

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 March 6, 2023 appellant filed a timely appeal from November 4, 2022 and March 1, 2023 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award; and

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the March 1, 2023 decision, appellant submitted additional evidence to OWCP. 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) whether appellant has met her burden of proof to establish the remaining claimed intermittent disability from work for the period September 20, 2018 through July 5, 2022, causally related to her accepted September 20, 2018 employment injury.

FACTUAL HISTORY

On September 26, 2018 appellant, then a 23-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on September 20, 2018 she injured her right knee when she was pinned between two long life vehicles while in the performance of duty. On November 2, 2018 OWCP accepted the claim for sprain of other specified parts of right knee, and contusion of right knee. Appellant received continuation of pay (COP) for the period September 21 through November 5, 2018. OWCP paid appellant wage-loss compensation on the supplemental rolls during the period November 6 through December 8, 2018, on the periodic rolls for the period December 9, 2018 through January 5, 2019, and on the supplemental rolls for the period January 6 through 8, 2019.[3]

OWCP received reports by Dr. Rory L. Allen, an osteopath specializing in family medicine, dated October 10 through December 5, 2018. He recounted a history of injury and treatment. On examination of the right knee, Dr. Allen observed diffuse tenderness to palpation, tenderness to palpation in the medial aspect around the medial collateral ligament and medial meniscus, a positive McMurray's test, pain in the medial aspect of the knee with full flexion, and an altered gait. He diagnosed a right knee sprain and right knee contusion. Dr. Allen prescribed a knee brace and physical therapy. He held appellant off work.

OWCP also received form reports with illegible signatures.

In duty status reports (Form CA-17) dated January 2 and 7, 2019, Dr. Allen returned appellant to light duty for six hours a day commencing January 7, 2019.

In a January 8, 2019 work capacity evaluation (Form OWCP-5c) and a separate letter of even date, Dr. Allen returned appellant to light-duty work for six hours a day with constant lifting up to 10 pounds, intermittent lifting up to 20 pounds, pulling up to 33.3 pounds, pushing up to 45.3 pounds, walking less than five minutes continuously, and no climbing, squatting or kneeling.

Appellant returned to modified-duty work for six hours a day on January 8, 2019.

In a February 26, 2019 Form CA-17, Dr. Allen continued appellant on light-duty work for six hours a day under the prior work restrictions. In a March 5, 2019 Form CA-17, he increased

[3] In a development letter dated November 20, 2018, OWCP advised appellant that it could not determine her pay rate for compensation purposes as she had not worked for the Federal Government for a full year prior to the accepted employment injury. It requested information regarding her earnings, and documentation of wages received. In a separate development letter of even date, OWCP requested that the employing establishment submit information regarding the pay rate of a similarly situated employee. It afforded the employing establishment 30 days to respond. On December 4, 2018 the employing establishment advised OWCP that appellant worked an average of 6.43 hours per day at an hourly rate of $17.28.

appellant's work hours to eight hours a day and raised her lifting limitation to 30 pounds. OWCP also received a January 30, 2019 report by Dr. Allen maintaining appellant on light-duty work.

Appellant began working eight hours per day, effective March 9, 2019.

In a March 13, 2019 narrative report and a Form OWCP-5c of even date, Dr. Allen recounted that appellant had performed modified-duty work for six hours a day commencing January 7, 2019. A March 5, 2019 physical performance evaluation demonstrated that appellant's lifting and carrying capabilities had increased to 30 pounds, but that her "biomechanical abilities, such as balance and treadmill walking were still rated at poor levels." Dr. Allen returned appellant to modified-duty work for eight hours per day with restrictions. He prescribed additional physical therapy.

In an April 3, 2019 Form CA-17, Dr. Allen continued appellant on full-time modified-duty work within the prior work limitations. He submitted additional Forms CA-17 dated through August 29, 2019 renewing prior work restrictions.

On July 21, 2022 appellant filed a Form CA-7 for disability from work for the period September 20, 2018 through July 5, 2022. On the same form, she also claimed compensation for a schedule award.[4]

In a development letter dated August 1, 2022, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of medical evidence required and afforded her 30 days to submit the necessary evidence. In a separate development letter of even date, OWCP requested that appellant provide a report from her physician with regard to whether her condition had reached a fixed and stable point known as maximum medical improvement (MMI), and an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). It afforded her 30 days to submit additional medical evidence in support of her schedule award claim. No response was received to either development letter.

By decision dated November 4, 2022, OWCP denied appellant's schedule award claim.

By decision dated March 1, 2023, OWCP denied appellant's claim for wage-loss compensation for the remaining claimed intermittent disability from work for the period September 20, 2018 through July 5, 2022. It found that OWCP paid her wage-loss compensation for the period September 20, 2018 through January 8, 2019, but the medical evidence of record was insufficient to establish disability from work during the claimed period due to her September 20, 2018 employment injury.

[4] Thereafter, OWCP received a January 27, 2020 notification of personnel action (PS Form 50) indicating that appellant had been absent without leave (AWOL) commencing September 29, 2019 and had been separated from the employing establishment effective January 18, 2020.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA[5] and its implementing regulations[6] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[7] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[8] The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[9]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's *International Classification of Functioning Disability and Health (ICF): A Contemporary Model of Disablement.*[10]

In evaluating lower extremity impairment, the sixth edition requires identifying the impairment class of diagnosis (CDX), which is then adjusted by a grade modifier for functional history (GMFH), a grade modifier for physical examination (GMPE), and/or a grade modifier for clinical studies (GMCS).[11] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12] Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[13]

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Id*. *See also Ronald R. Kraynak*, 53 ECAB 130 (2001).

[8] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *id*. at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (March 2017).

[9] *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[10] A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3.

[11] *Id*. at 494-531.

[12] *Id*. at 411.

[13] *S.C.*, Docket No. 22-0564 (issued March 27, 2023); *see M.P.*, Docket No. 18-1298 (issued April 12, 2019); *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

It is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of an employment injury.[14] OWCP's procedures provide that, to support a schedule award, the file must contain competent medical evidence, which shows that the impairment has reached a permanent and fixed state and indicates that the date on which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.[15] Its procedures further provide that, if a claimant has not submitted a permanent impairment evaluation, it should request a detailed report that includes a discussion of how the impairment rating was calculated.[16] If the claimant does not provide an impairment evaluation and there is no indication of permanent impairment in the medical evidence of file, the claims examiner may proceed with a formal denial of the award.[17]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish permanent impairment of her right lower extremity, warranting a schedule award.

OWCP accepted the claim for a right knee sprain and right knee contusion. On July 26, 2022 appellant filed a Form CA-7 for a schedule award. On August 1, 2022 OWCP requested that appellant submit a permanent impairment evaluation from her physician addressing the date of MMI and extent of any employment-related permanent impairment using the A.M.A., *Guides.* Appellant, however, did not submit such medical evidence.

As noted above, appellant must submit an evaluation from a physician that supports a finding that she has reached MMI, and which includes a description of impairment in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[18]

As the medical evidence of record is insufficient to establish permanent impairment of a scheduled member or function of the body, the Board finds that appellant has not met her burden of proof.

[14] *C.T.*, Docket No. 22-0128 (issued February 15, 2023); *J.P.*, Docket No. 21-0801 (issued December 22, 2021); *N.S.*, Docket No. 21-0508 (issued September 22, 2021); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

[15] *Supra* note 8 at Chapter 2.808.5 (March 2017).

[16] *Id*. at Chapter 2.808.6a (March 2017).

[17] *Id*. at Chapter 2.808.6c (March 2017).

[18] *C.T.*, *supra* note 14; *see J.P.*, *supra* note 14; *D.J.*, Docket No. 20-0017 (issued August 31, 2021); *B.V.*, Docket No. 17-0656 (issued March 13, 2018); *C.B.*, Docket No. 16-0060 (issued February 2, 2016); *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA[19] 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.[20] For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled for work as a result of the accepted employment injury.[21] 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.[22]

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.[23] Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to eam wages.[24] An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.[25] 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 employment, the employee is entitled to compensation for any loss of wages.[26]

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is

[19] *Supra* note 1.

[20] *See 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).

[21] *See Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[22] 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020); *S.L.*, Docket No. 19-0603 (issued January 28, 2020).

[23] *Id.* § 10.5(f); *see J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[24] *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

[25] *Supra* note 22 at § 10.5(f); *see D.N.*, Docket No. 19-1344 (issued November 6, 2020); *G.R.*, Docket No. 19-0940 (issued December 20, 2019). *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

[26] *J.T., supra* note 23; *S.L., supra* note 22.

claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[27]

ANALYSIS -- ISSUE 2

The Board finds appellant has not met her burden of proof to establish the remaining claimed intermittent disability from work for the period September 20, 2018 through July 5, 2022, causally related to her accepted September 20, 2018 employment injury.

OWCP received reports by Dr. Rory L. Allen, an osteopath specializing in family medicine, dated October 10 through December 5, 2018. Dr. Allen recounted a history of injury and treatment. On examination of the right knee, he observed diffuse tenderness to palpation, tenderness to palpation in the medial aspect around the medial collateral ligament and medial meniscus, a positive McMurray's test, pain in the medial aspect of the knee with full flexion, and an altered gait. Dr. Allen diagnosed a right knee sprain and right knee contusion. He prescribed a knee brace and physical therapy. Dr. Allen held appellant off work; however, he did not provide an opinion on causal relationship between appellant's disability and the accepted employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[28] This evidence is, therefore, insufficient to establish appellant's disability claim.

In reports dated January 2 through 8, 2019, Dr. Allen returned appellant to light duty for only six hours per day with restrictions, effective January 7, 2019. However, he similarly did not provide an opinion on causal relationship between appellant's claimed disability and the accepted employment injury. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[29] This evidence is, therefore, insufficient to establish appellant's disability claim.

In a February 26, 2019 Form CA-17, Dr. Allen continued appellant on light-duty work for six hours a day under the prior work restrictions. In a March 5, 2019 Form CA-17, he increased appellant's work hours to eight hours a day and raised her lifting limitation to 30 pounds. OWCP also received a January 30, 2019 report wherein Dr. Allen maintained appellant on light-duty work. However, as Dr. Allen did not provide an opinion on causal relationship, this evidence is insufficient to establish the disability claim.

In reports dated March 5 through August 29, 2019, Dr. Allen found appellant able to perform full-time work as of March 5, 2019. As this evidence negates disability during the

[27] *Id*.

[28] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[29] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

claimed period, they are of no probative value and are insufficient to establish the disability claim.[30]

OWCP also received medical evidence from providers with illegible signatures. The Board has held that evidence that does not contain a legible signature is of no probative value, as it is not established that the author is a physician.[31]

As the medical evidence of record is insufficient to establish disability from work during the claimed period, causally related to the accepted September 20, 2018 employment injury, the Board finds that appellant has not met her burden of proof.[32]

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 permanent impairment of her right lower extremity, warranting a schedule award. The Board further finds appellant has not met her burden of proof to establish the remaining claimed intermittent disability from work for the period September 20, 2018 through July 5, 2022, causally related to her accepted September 20, 2018 employment injury.

[30] *T.W.*, Docket No. 19-0677 (issued August 16, 2019).

[31] *See D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[32] Upon return of the case record, OWCP should consider payment of up to four hours of compensation to appellant for any unpaid lost time from work due to medical appointments to assess or treat symptoms related to the employment injury. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19(c) (February 2013); *J.E.*, Docket No. 19-1758 (issued March 16, 2021); *A.J.*, Docket No. 21-1211 (issued May 4, 2022); *A.V.*, Docket No. 19-1575 (issued June 11, 2020). *See also K.A.*, Docket No. 19-0679 (issued April 6, 2020); *William A. Archer*, 55 ECAB 674 (2004).

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2022 and March 1, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 24, 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