United States Department of Labor
Employees' Compensation Appeals Board

M.P., Appellant	)	
and	)	**Docket No. 23-0759**
	)	**Issued: January 23, 2024**
DEPARTMENT OF VETERANS AFFAIRS, JAMAICA PLAIN VA MEDICAL CENTER, Jamaica Plain, MA, Employer	)	

Appearances:
Marc J. Levy, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On May 2, 2023 appellant, through counsel, filed a timely appeal from an April 26, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 his burden of proof to establish disability from work for the period March 16 through August 6, 2022 causally related to his accepted January 30, 2022 employment injury.

FACTUAL HISTORY

On January 31, 2022 appellant, then a 29-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on January 30, 2022 he felt a sharp pain in the lower back when he slipped and fell when exiting his police vehicle while in the performance of duty. He stopped work on the date of the claimed injury.

In a March 9, 2022 note, Dr. Steven C. Rosa, a chiropractor, opined that appellant was totally disabled from March 11 through 25, 2022.

By decision dated May 12, 2022, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the January 30, 2022 employment incident occurred as alleged.

Appellant submitted unsigned chiropractic treatment notes dated February 22 through April 12, 2022, which noted that he was disabled until April 14, 2022.

On April 14, 2022 Dr. Charles E. Raftery, a Board-certified orthopedic surgeon, described appellant's January 30, 2022 slip and fall incident at work, and recounted appellant's complaints of persistent low back and neck pain. On physical examination, he observed restricted cervical and lumbar range of motion. Dr. Raftery diagnosed low back and neck pain. He recommended that appellant remain out of work until diagnostic studies were completed and reviewed.

In a report dated May 12, 2022, Dr. Raftery indicated that he evaluated appellant for complaints of low back pain and neck symptoms, and provided examination findings. He reported that lumbar spine x-rays revealed slight decreased disc space at L5-S1 and cervical spine x-rays demonstrated preserved disc spaces. Dr. Raftery recommended that appellant remain out of work due to his restricted cervical range of motion. In a separate report dated May 12, 2022, he opined that, based on the mechanism of injury, he believed that appellant sustained cervical and lumbar sprains as a result of his fall at work on January 30, 2022.

On May 27, 2022 appellant, through counsel, requested reconsideration.

In an August 2, 2022 note, Dr. Raftery indicated that appellant was under his care and was to remain out of work pending additional testing.

By decision dated August 24, 2022, OWCP vacated the May 12, 2022 decision, finding that the factual evidence of record was sufficient to establish that the January 30, 2022 employment incident occurred as alleged. It also found that the evidence of record established that appellant's diagnosed cervical and lumbar conditions were causally related to the January 30, 2022 employment incident. By separate decision dated August 24, 2022, OWCP accepted appellant's claim for cervical spine sprain and lumbar spine sprain.

On August 25, 2022 appellant returned to full-duty work.

On September 12, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period March 16 through August 6, 2022. On the reverse side of the claim form, an employee benefits specialist for the employing establishment indicated that appellant was on leave without pay (LWOP) status from March 16 through August 6, 2022.

In a September 16, 2022 development letter, OWCP informed appellant of the deficiencies of his claim for disability from work for the period March 16 through August 6, 2022. It advised him of the type of additional evidence needed and afforded him 30 days to provide the necessary evidence.

In a report dated October 28, 2022, Dr. Raftery noted diagnoses of lower back pain and cervicogenic pain. He reported that appellant was disabled from work due to his work-related cervical and lumbar sprains from January 30, 2022 to the present and continuing "due to ongoing pain and limited range of motion." Dr. Raftery explained that appellant did not make sufficient progress in his recovery to allow him to return to work sooner. He further reported that the "combination of ongoing pain and limited range of motion resulted in my opinion that [appellant] remain out of work." Dr. Raftery noted that the end date of disability was currently unknown, and would be dependent on continuing progress in his recovery.

OWCP received additional reports from Dr. Raftery. In a July 5, 2022 report, Dr. Raftery reported physical examination findings and diagnosed lower back and cervicogenic pain. In an August 2, 2022 report, he reported physical examination findings, diagnosed resolving lower back pain, cervicogenic pain with cervical radiculitis, and noted that appellant should remain out of work. Appellant also submitted November 2 and December 15, 2022 reports wherein Dr. David C. Levi, Board-certified in pain medicine and anesthesiology, discussed his cervical and lumbar conditions and opined that he remained totally disabled.

By decision dated January 9, 2023, OWCP denied appellant's claim for disability compensation for the period March 16 through August 6, 2022. It found that the medical evidence of record was insufficient to establish that he was disabled from work during the claimed period due to his accepted January 30, 2022 employment injury.

On January 30, 2023 appellant, through counsel, requested reconsideration.

In a report dated January 23, 2023, Dr. Byron V. Hartunian, a Board-certified orthopedic surgeon, reviewed appellant's medical records and noted examination findings of no palpable muscular spasm over cervical and lumbar muscles during motion. He diagnosed resolved cervical and lumbar muscle strains and facet syndrome of the cervical spine. Dr. Hartunian opined that appellant was totally disabled from work from January 30, 2022 through mid-November 2022, when he became capable of sedentary work. He also opined that appellant was totally disabled from his job as a police officer from January 30, 2022 until January 1, 2023. Dr. Hartunian explained that the trauma from appellant's slip and fall traumatic injury resulted in cervical and paraspinal muscle fibers tearing, causing an inflammatory reaction, irritating the surrounding nerves. He noted that the symptoms associated with the diagnosed conditions of cervical sprains were pain and limited range of motion. Dr. Hartunian reported that prolonged sitting, as would be

required in appellant driving four hours to and from work, would aggravate these symptoms. He also explained that inflammation in the cervical and lumbar areas would make tasks such as driving, sitting, standing, walking, bending, lifting, and carrying extremely difficult, and would impair appellant's focus and concentration. Dr. Hartunian opined that appellant was totally disabled from work during the periods of time mentioned.

In a letter dated February 16, 2023, a workers' injury program specialist for the employing establishment noted that appellant completed a preemployment physical on August 25, 2022 for another police officer position in a different jurisdiction.

In a March 16, 2023 letter, appellant, through counsel, responded to the employing establishment's February 16, 2023 letter and alleged that its arguments had no merit.

By decision dated April 26, 2023, OWCP denied modification of the January 9, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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.[4] 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.[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]

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence.[7] 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.[8] The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific

[3] *Id*.

[4] *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).

[5] 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[6] *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).

[7] *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).

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

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.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period March 16 through August 6, 2022 causally related to his accepted January 30, 2022 employment injury.

In reports dated April 14, May 12, and October 28, 2022, Dr. Raftery described the January 30, 2022 employment injury, provided examination findings, and recommended that appellant remain out of work. In an August 2, 2022 work status note, he indicated that appellant was under his care and was to remain out of work pending additional testing. In an August 2, 2022 narrative report, Dr. Raftery reported physical examination findings, diagnosed lower back and cervicogenic pain, and noted that appellant should remain out of work. In an October 28, 2022 report, he further explained that appellant was disabled from work due to his cervical and lumbar sprains from January 30, 2022 to the present and continuing "due to ongoing pain and limited range of motion." Although Dr. Raftery opined that appellant was disabled from work during the claimed period, he failed to explain how the period of disability was due to his January 30, 2022 employment injury, or why he was unable to perform the duties of his position during the claimed period. A mere conclusion without medical rationale supporting a period of disability due to the accepted employment condition is insufficient to meet a claimant's burden of proof.[10] Thus, this evidence is insufficient to establish appellant's disability claim.[11]

In a January 23, 2023 report, Dr. Hartunian reviewed appellant's history, and provided examination findings. He diagnosed resolved cervical and lumbar muscle strains and facet syndrome of the cervical spine. Dr. Hartunian opined that appellant was totally disabled from work from January 30, 2022 to mid-November 2022. He indicated that prolonged sitting would aggravate appellant's symptoms. Dr. Hartunian also explained that inflammation in the cervical and lumbar areas, caused by the January 30, 2022 employment injury, would make tasks such as driving, sitting, standing, walking, bending, lifting, and carrying extremely difficult to do and would impair appellant's focus and concentration. He concluded that appellant was totally disabled from work during the periods of time mentioned. Dr. Hartunian, however, did not provide sufficient medical reasoning to support his opinion on disability. Rather, he generally noted that appellant had work-related cervical and lumbar inflammation and alleged that prolonged sitting would aggravate his cervical and lumbar symptoms such that it would be difficult for him to perform specific tasks. The Board has found that when a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not

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

[10] *A.L.*, Docket No. 21-0151 (issued January 21, 2022); *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[11] *See J.K.*, Docket No. 22-1024 (issued January 20, 2023).

presented a medical opinion on the issue of disability.[12] For these reasons, the Board finds that Dr. Hartunian's opinion lacks sufficient medical reasoning to establish that appellant was unable to work during the claimed period.[13]

Appellant submitted additional reports, including May 12, July 5, and August 2, 2022 reports wherein Dr. Raftery addressed appellant's cervical and lumbar conditions. In November 2 and December 15, 2022 reports, Dr. Levi discussed his cervical and lumbar conditions, and indicated that he remained totally disabled. However, none of these reports contains an opinion that appellant sustained disability during the period March 16 through August 6, 2022 due to the accepted January 30, 2022 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's disability is of no probative value on the issue of causal relationship.[14] Therefore, this evidence is insufficient to establish appellant's claim.

In a March 9, 2022 work status note, Dr. Rosa, a chiropractor, indicated that appellant was totally disabled from March 11 through 25, 2022. This report, however, is of no probative medical value because he did not diagnose a spinal subluxation as demonstrated by x-ray to exist, and therefore does not qualify as a physician under FECA.[15] Appellant also submitted unsigned chiropractic treatment notes dated February 22 through April 12, 2022. However, in addition to the fact the notes do not diagnose spinal subluxation as demonstrated by x-ray, unsigned reports cannot be considered probative medical evidence because they do not provide an indication that the person completing the report qualifies as a physician under FECA.[16]

As the medical evidence of record is insufficient to establish disability from work for the period March 16 through August 6, 2022 causally related to the accepted January 30, 2022 employment injury, the Board finds that appellant has not met his burden of proof to establish his claim.

[12] *B.F.*, Docket No. 19-0123 (issued May 13, 2019); *P.D.*, Docket No. 14-744 (issued August 6, 2014); *G.T.*, 59 ECAB 447 (2008).

[13] *L.L.*, Docket No. 21-1194 (issued March 18, 2022).

[14] *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).

[15] Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable 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(3) (May 2023). Chiropractors are considered physicians under FECA only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the secretary. *See* 5 U.S.C. § 8101(2); *P.T.*, Docket No. 21-0110 (issued December 8, 2021); *R.N.*, Docket No. 19-1685 (issued February 26, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[16] *B.S.*, Docket No. 22-0918 (issued August 29, 2022); *see S.D.*, Docket No. 21-0292 (issued June 29, 2021); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability from work for the period March 16 through August 6, 2022 causally related to his accepted January 30, 2022 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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