

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

N.W., Appellant

and

**U.S. POSTAL SERVICE, BRANSON POST
OFFICE, Branson, MO, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 25-0270
Issued: April 7, 2025**

Appearances:

*Alexandra Reasonover, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 24, 2025 appellant, through counsel, filed a timely appeal from a July 29, 2024 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 his burden of proof to establish disability from work, commencing January 17, 2022, causally related to his accepted December 4, 2021 employment injury.

FACTUAL HISTORY

On December 9, 2021 appellant, then a 50-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 4, 2021 he sustained a left lower extremity and lower back injury when he was delivering packages and twisted his left ankle, foot, and lower back while in the performance of duty. He stopped work on December 4, 2021. OWCP accepted the claim for sprain of the left ankle; strain of the muscle and tendon of the long flexor muscle of the left foot; strain of the muscle, fascia, and tendon of the lower back; lumbar radiculopathy; and plantar fascial fibromatosis.

On June 1, 2022 appellant filed claims for compensation (Form CA-7) for disability from work during the period January 17 through February 11, 2022. He continued to file CA-7 forms for additional periods of disability thereafter.

In support of his claim, appellant submitted a report dated January 18, 2022 from Kayla Walker, a physician assistant, who related that appellant could return to modified-duty work, with restrictions lifting up to 10 pounds. In reports dated January 19 through May 23, 2022, Jody Stanton, a physician assistant, advised that appellant could return to light-duty work. OWCP also received physical therapy treatment notes dated February 7 through 21, 2022.

In a development letter dated June 7, 2022, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation for the period January 17, 2022 and continuing. It advised him of the type of medical evidence needed to establish his claim and afforded him 30 days to respond.³ No additional evidence was received.

By decision dated March 31, 2023, OWCP denied appellant's claim for disability for the period January 17, 2022 and continuing. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period, causally related to his accepted December 4, 2021 employment injury.

In an August 10, 2023 report, Dr. Brad W. Jones, a podiatrist, evaluated and recounted appellant's history of injury after he stepped off a curb awkwardly in December 2021 while working for the employing establishment, and his toes were pulled back. He noted that x-rays after the injury revealed no fracture. Dr. Jones further noted that appellant was treated for an ankle sprain with a boot and a speed lacer but one and a half years later he felt the pain had not improved, pointing to the lateral ankle and the central forefoot as the main sources of his pain. He advised that it seemed likely appellant had a lateral ankle sprain and possibly an injury to the flexor tendons

³ On June 9, 2022 appellant accepted an offer for a limited-duty modified assignment with duties that entailed two hours of sorting daily and physical requirements of two hours of seated work. He returned to light-duty work on June 13, 2022.

but noted the main sources of his pain seemed to be left sinus tarsitis and left third neuroma. Dr. Jones opined that it seemed likely that appellant's current source of pain was not the same source of pain that he had initially. He diagnosed lesion of plantar nerve, left lower limb and pain in left ankle and joints of left foot.

On February 20, 2024 appellant, through counsel, requested reconsideration. Counsel submitted a statement from appellant dated February 9, 2024. She also resubmitted Dr. Jones' August 10, 2023 report and Ms. Stanton's January 19, 2022 report.

By decision dated February 21, 2024, OWCP denied modification of the March 31, 2023 decision.

By letter dated March 27, 2024, OWCP requested that the employing establishment indicate whether work was available during appellant's claimed period of disability commencing January 17, 2022.

The employing establishment responded that it did not have work available for appellant from January 2022 through June 12, 2022. Based on his restrictions, appellant worked two hours per day from June 13, 2022 through July 16, 2023. The employing establishment indicated that he was continually asked to provide updated medical evidence for his work injury, but he did not do so. Instead, appellant would provide medical evidence for nonwork-related conditions. From July 17 through August 15, 2023, he worked intermittently and used leave. On August 16, 2023 appellant stopped reporting to work even though the two hours remained available. On September 18, 2023 he notified the employing establishment that he was resigning due to personal reasons. The employing establishment submitted a notice of personnel action (PS Form 50) with an effective date of September 18, 2023, indicating that appellant's last day in pay status was August 12, 2023, and that he was separated for personal reasons.

On May 3, 2024 appellant, through counsel, requested reconsideration of the February 21, 2024 decision. Counsel resubmitted Dr. Jones' August 10, 2023 report, and Ms. Stanton's January 19, 2022 report.

By decision dated July 29, 2024, OWCP denied modification of the February 21, 2024 decision.

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 or specific condition for which compensation is claimed is causally related to the employment injury.⁴

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.⁵ Disability is thus not

⁴ 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).

⁵ 20 C.F.R. § 10.5(f).

synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁶ An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.⁷ 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 in his or her employment, he or she is entitled to compensation for loss of wages.⁸

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 the claimant, 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.⁹

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work causally related to 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 their disability and entitlement to compensation.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work commencing January 17, 2022, causally related to his accepted December 4, 2021 employment injury.

In support of his claim for compensation, appellant submitted an August 10, 2023 medical report from Dr. Jones. While Dr. Jones diagnosed lesion of plantar nerve, he failed to provide an opinion on the cause of appellant's disability from work commencing January 17, 2022, causally related to his accepted December 4, 2021 employment injury.¹² The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability

⁶ See *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁷ See *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

⁸ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

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

¹⁰ See *B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹¹ *Id.*

¹² *A.H.*, Docket No. 22-0001 (issued July 29, 2022); *L.M.*, Docket No. 21-0063 (issued November 8, 2021); *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

is of no probative value on the issue of causal relationship.¹³ Consequently, this evidence is insufficient to establish appellant's disability claim.¹⁴

The remaining medical evidence fails to address the claimed period of disability commencing January 17, 2022 and, thus, is of no probative value and is insufficient to establish appellant's disability claim.¹⁵

Appellant also submitted reports from physician assistants, and physical therapists. However, certain healthcare providers such as physician assistants and physical therapists are not considered qualified "physician[s]" as defined under FECA and thus their findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹⁶ This evidence is therefore insufficient to establish appellant's disability claim.¹⁷

As the medical evidence of record is insufficient to establish disability from work commencing January 17, 2022, causally related to his accepted December 4, 2021 employment injury, the Board finds that appellant has not met his burden of proof.¹⁸

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 his burden of proof to establish disability from work commencing January 17, 2022, causally related to his accepted December 4, 2021 employment injury.

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).

¹⁴ *C.W.*, Docket No. 24-0394 (issued June 5, 2024); *E.F.*, Docket No. 20-1680 (issued November 20, 2021).

¹⁵ *K.R.*, Docket No. 20-0681 (issued January 12, 2021); *M.A.*, Docket No. 19-1119 (issued November 25, 2019).

¹⁶ 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. § 8102(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); *J.A.*, Docket No. 23-0256 (issued December 10, 2024) (physical therapists are not considered physicians as defined under FECA); *M.F.*, Docket No. 19-1573 (issued March 16, 2020) (physician assistants and nurse practitioners are not considered physicians as defined by 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).

¹⁷ *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

¹⁸ *J.M.*, Docket No. 21-1261 (issued September 11, 2023).

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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