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E.A., Appellant)	
)	
and)	Docket No. 25-0287
)	Issued: March 11, 2025
U.S. POSTAL SERVICE, BRONXVILLE POST)	
OFFICE, Bronxville, NY, Employer)	
)	

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

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 3, 2025 appellant, through counsel, filed a timely appeal from a January 2, 2025 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 an 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 disability from work during the period September 10, 2021 through July 29, 2022, causally related to her accepted April 12, 2021 employment injury.

FACTUAL HISTORY

On April 29, 2021 appellant, then a 37-year-old city carrier assistant 1, filed a traumatic injury claim (Form CA-1) alleging that on April 12, 2021, she sustained a right shoulder injury when carrying heavy mail on her shoulder while in the performance of duty. She stopped work on April 15, 2021. On March 3, 2022, OWCP accepted the claim for impingement syndrome of the right shoulder, and strain of muscle, fascia, and tendon at the neck level.

OWCP received claims for compensation (Form CA-7) for disability from work during the period May 28, 2021 through July 29, 2022.

In a July 29, 2021 report, Dr. Michael Cushner, a Board-certified orthopedic surgeon, diagnosed impingement syndrome of the right shoulder and cervical radiculopathy. He noted that appellant was totally disabled from work from July 29 through September 9, 2021.

In an August 4, 2021 report, Dr. Andrew Illig, Board-certified in physical medicine and rehabilitation, diagnosed cervical radiculopathy and impingement syndrome of the right shoulder. He noted that appellant was unable to work until September 9, 2021.

In a November 3, 2021 report, Dr. Cushner indicated that he examined appellant on October 7, 2021 and related that appellant's employment incident was the competent medical cause of her injury. He also noted that appellant was 19 weeks pregnant and had a high-risk pregnancy resulting in an emergent cerclage on September 9, 2021. Dr. Cushner responded that appellant had 100 percent temporary impairment. He noted that she was unable to undergo a magnetic resonance imaging (MRI) scan or take nonsteroidal anti-inflammatory drug (NSAID) medication due to the pregnancy. In a November 21, 2021 report, Dr. Cushner recounted that appellant was seen on May 6, 2021 and was noted to have radiculopathy, as well as shoulder conditions. When appellant was next seen on May 27, 2021 she had undergone an MRI scan, which demonstrated herniated discs at C5-C6, at which time she was referred for pain management and continued physical therapy. Dr. Cushner also related that appellant was seen on September 16, 2021, at which time she was 15 weeks pregnant. He explained that she had a high demand job and that the placement of a pack on the right shoulder placed stress across the trapezius muscle and indirectly on the cervical spine and led to some degeneration of her cervical spine, which was asymptomatic prior to April 12, 2021. Dr. Cushner provided examination findings noting decreased range of motion, positive impingement sign, and pain in a radicular pattern. He explained that appellant's injury event and the type of work performed by appellant resulted in impingement syndrome, bursitis, and tendinitis.

In a development letter dated May 7, 2024, OWCP related that the evidence supported disability from May 28, 2021 to September 9, 2021. However, it also found that the medical evidence of record did not establish that disability beyond September 9, 2021 was caused by the accepted April 12, 2021 employment injury. OWCP advised her of the type of factual and medical

evidence necessary to establish her claim. It afforded appellant 30 days to submit the necessary evidence.

On May 22, 2024, Erin Lipp, a physician assistant, completed a form wherein she recounted that appellant was unable to work following her April 12, 2021, injury due to shoulder and neck pain. She also related that subsequent to the employment injury appellant became pregnant, that she was unable to undergo treatment for her injuries due to a high-risk pregnancy, and that she was out of work from May 28, 2021 through July 29, 2022.

By decision dated August 9, 2024, OWCP denied appellant's claim for disability from work during the period September 10, 2021 through July 29, 2022. It found that the medical evidence of record was insufficient to establish disability during the claimed period actually related to the accepted employment injury.

On August 20, 2024, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 22, 2024.

OWCP continued to receive current progress reports.

By decision dated January 2, 2025, OWCP's hearing representative affirmed the August 9, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 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

³ *Id.*

⁴ See *A.H.*, Docket No. 22-0001 (issued July 29, 2022); *A.R.*, Docket No. 20-0583 (issued May 21, 2021); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

⁵ 20 C.F.R. § 10.5(f); see *J.M.*, Docket No. 18-0763 (issued April 29, 2020); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁶ *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁷ See *M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

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 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.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work during the period September 10, 2021 through July 29, 2022, causally related to her accepted April 12, 2021 employment injury.

In support of her claim, appellant submitted a July 29, 2021 report from Dr. Cushner who diagnosed impingement syndrome of the right shoulder and cervical radiculopathy. He opined that appellant was 100 percent temporarily disabled and unable to work from July 29 to September 9, 2021. Appellant also submitted an August 4, 2021 report from Dr. Illig who also diagnosed cervical radiculopathy and impingement syndrome of the right shoulder and also opined that appellant was unable to work until September 9, 2021. However, neither report provided an opinion that appellant was unable to work after September 9, 2021. The Board has held that medical reports are of no probative value regarding appellant's claim for disability during the claimed period if they do not offer an opinion on disability.¹⁰ This evidence is, therefore, insufficient to establish the disability claim.

In a November 3, 2021 report of an October 7, 2021 examination, Dr. Cushner noted that appellant was 19 weeks pregnant, had a high risk pregnancy, and was unable to undergo an MRI scan or take NSAID medication due to the pregnancy. In a November 21, 2021 report, he recounted appellant's history of injury, and provided examination findings noting decreased range of motion, positive impingement sign, and pain in a radicular pattern. Dr. Cushner explained that appellant's injury event and the type of work performed by appellant resulted in impingement syndrome, bursitis, and tendinitis. The Board notes that while Dr. Cushner also indicated that appellant was temporarily disabled from work, he did not provide an opinion that the claimed disability was causally related to the accepted employment conditions, rather than appellant's high risk pregnancy.¹¹ The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue

⁸ See *A.R.*, *supra* note 4; *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

⁹ See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁰ *A.S.*, Docket No. 25-0106 (issued January 2, 2015); see also *P.L.*, Docket No. 22-0337 (issued September 9, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ See *T.L.*, Docket No. 16-1408 (issued June 26, 2017).

of causal relationship.¹² This evidence is, therefore, of no probative value and insufficient to establish the disability claim.

The record contains reports from a physician assistant. However, certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.¹³ Consequently, these reports do not suffice for purposes of establishing entitlement to FECA benefits.

As the medical evidence of record is insufficient to establish disability from work during the period September 10, 2021 through July 29, 2022, causally related to the accepted April 12, 2021 employment injury, the Board finds that appellant has not met her burden of proof.¹⁴

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 during the period September 10, 2021 through July 29, 2022, causally related to her accepted April 12, 2021 employment injury.

¹² See *P.L.*, Docket No. 22-0337 (issued September 9, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ Section 8101(2) provides that 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 also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.F.*, Docket No. 19-1573 (issued March 16, 2020) (medical reports signed solely by a physician assistant or a nurse practitioner are of no probative value as these care providers are not considered physicians as defined under FECA); *N.B.*, Docket No. 19-0221 (issued July 15, 2019) (reports from physician assistants have no probative medical value as they are not considered physicians as defined under FECA).

¹⁴ The Board notes appellant's November 20, 2023 request to expand the claim. However, OWCP has not issued a decision on expansion of the claim and this issue therefore is interlocutory and not presently before the Board on appeal.

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2025
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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