

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability for the periods May 17, 2014 to March 29, 2015; May 16 to September 18, 2015; and June 23, 2016 and continuing causally related to her accepted February 13, 2014 employment injury.

FACTUAL HISTORY

On February 15, 2014 appellant, then a 40-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 2014 she sustained neck, back, lumbar spine, left hip, and right knee injuries when she was involved in a motor vehicle accident while delivering mail. She stopped work on February 13, 2014. OWCP initially accepted the claim for a head contusion.

Appellant filed numerous forms requesting wage-loss compensation (CA-7 forms) for periods of disability commencing February 13, 2014. The record indicates that appellant was paid wage-loss compensation on the supplemental rolls for the period February 14 to May 16, 2014

In a May 16, 2014 report, Melissa Cooper, a nurse practitioner, related that appellant had completed physical therapy and had been released to return to work, without restrictions. On October 3, 2014 she related that appellant had work restrictions due to her February 13, 2014 employment injury.

In an August 26, 2014 memorandum to file, OWCP reported that appellant had been employed less than one year and that the employing establishment terminated her employment during her probationary period. It noted that she had been released to full-duty work in a medical report dated May 16, 2014.

On March 30, 2015 appellant was examined by Dr. Kathleen Warner, a Board-certified internist, who diagnosed lumbosacral, right knee, and left hip sprains and lumbar radiculopathy. Dr. Warner noted that appellant had been involved in a motor vehicle accident while delivering mail on February 13, 2014 and that the claim had only been accepted for the condition of head contusion. She provided a medical history and details of the February 13, 2014 motor vehicle accident. Dr. Warner noted that appellant had been disabled from work since February 13, 2014 and that the employing establishment terminated her employment on March 8, 2014 based on her failure to report to work. She related that the mechanism of injury was consistent with the diagnosed low back conditions.

In a March 30, 2015 duty status report (Form CA-17), Dr. Warner noted a February 13, 2014 injury and provided work restrictions

In reports dated June 1 and 16, 2015, Dr. Rhett Krone, an emergency medicine physician, provided examination findings. He opined that appellant's motor vehicle accident aggravated a chronic underlying lumbosacral condition as she had no pain prior to the accident, but was currently experiencing chronic lumbosacral pain. Dr. Krone observed that appellant's symptoms were suggestive of L4-5 radiculopathy.

Dr. Krone, in a July 6, 2015 report, opined that appellant sustained injuries due to the February 13, 2014 employment-related motor vehicle accident and he provided examination findings.

By decisions dated July 29 and August 7, 2015, OWCP advised appellant that acceptance of her claim had been expanded to include the additional conditions of sprain of right knee lateral collateral ligament; and sprain of the hip and thigh; and sprain of the lumbar region of the back.

In an August 10, 2015 report, Dr. Krone provided examination findings and opined that appellant might have a compressed spine fracture based on her continued pain complaints. On September 14, 2015 he related that review of appellant's lumbosacral magnetic resonance imaging (MRI) scan revealed some mild L4-5 and L5-S1 disc bulging.

In a report dated June 8, 2016, Dr. Jeff Summers, Board-certified in pain medicine, diagnosed lumbar spondylosis and hip pain, with resolved lumbar radiculopathy. He noted that appellant was neurologically intact and that she had reported no symptoms in her lower extremities following her last epidural steroid injection.

In another report dated June 8, 2016, Dr. Michael Winkleman, a Board-certified physiatrist, related that appellant was seen for refill of her medications, and that she still had complaints of pain in the distribution of the left greater trochanteric bursa.

On August 18, 2016 OWCP received appellant's CA-7 form claiming wage-loss compensation for the period May 17, 2014 to September 18, 2015.

By development letter dated August 26, 2016, OWCP informed appellant that additional evidence was needed to establish her wage-loss claim for the period May 17, 2014 to September 18, 2015. It afforded her 30 days to provide the requested information.

In a letter dated September 1, 2016, appellant noted her disagreement with her termination from employment by the employing establishment as well as the denial of her claim for wage-loss compensation by OWCP.

By decision dated October 19, 2016, OWCP denied appellant's claim for wage-loss compensation for the period May 17, 2014 to September 18, 2015. It found that none of the medical evidence she submitted addressed disability for the period in question.

By separate decision also dated October 19, 2016, OWCP denied appellant's claim for wage-loss compensation for June 23, 2016 and continuing as none of the medical evidence she submitted addressed disability for the period in question.

On October 24, 2016 OWCP received a report and office notes dated October 13, 2016 from Dr. Samuel J. Chmell, Board-certified in orthopedic surgery. Dr. Chmell detailed the history of appellant's accepted February 13, 2014 employment injury and her medical history. He provided appellant's physical examination findings. Dr. Chmell indicated that appellant's medical records had been reviewed, including MRI scans, and that the records were consistent with her history. He diagnosed L4-5 and L5-S1 disc protrusions with facet arthropathy and radiculopathy, right knee torn posterior medial horn meniscus with coccydynia and chondromalacia, and left hip

greater trochanteric bursitis with sprain and aggravation of osteoarthritis, which he attributed to the accepted February 13, 2014 employment injury. Dr. Chmell observed that appellant continued to have pain in the lower back, left hip, and right knee and that physical examination findings showed objective deficits. He recommended that appellant's claim be expanded to include the above-listed conditions.

Appellant, in a letter dated November 2, 2016, requested a review of the written record by an OWCP hearing representative of the October 19, 2016 decisions denying her wage-loss compensation claims for the periods May 17, 2014 to September 18, 2015 and June 23 and continuing. She argued that the October 13, 2016 report by Dr. Chmell supported her disability from work for the periods in question.

In a December 8, 2016 report, Dr. Chmell noted that appellant was evaluated on October 13, 2016 for multiple injuries sustained as the result of a February 13, 2014 employment-related motor vehicle accident. He concluded that as a result of the employment injury, appellant had sustained lumbar sprain, right torn medial meniscus, left hip traumatic arthritis, L4-5 and L5-S1 disc herniations with radiculopathy, and coccydynia. Dr. Chmell opined that appellant required further medical treatment for her work injuries and that she was currently totally disabled from work due to her employment injury.

A March 22, 2017 report from Dr. Winkleman noted examination findings, medication, and treatment provided.

By decision dated April 21, 2017, an OWCP hearing representative affirmed the October 19, 2016 decision denying appellant's claim for disability compensation for the period May 17, 2014 to September 18, 2015³ and June 23, 2016 and continuing. She found that appellant failed to submit rationalized medical evidence attributing her disability for the periods in question to her accepted February 13, 2014 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁵ For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.⁶ Whether a particular injury causes an employee to become

³ The Board, in Docket No. 17-0875 (issued December 13, 2018) affirmed the denial of total disability for the period March 30 to May 15, 2015. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA. See *B.R.*, Docket No. 17-0294 (issued May 11, 2018).

⁴ *Supra* note 1.

⁵ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel A. Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁶ See *Amelia S. Jefferson, id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁷

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.⁸ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁹ 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 her employment, she is entitled to compensation for any loss of wages.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability for the periods May 17, 2014 to March 29, 2015; May 16 to September 18, 2015; and June 23, 2016 and continuing.

In support of her claims for wage-loss compensation for the period May 17, 2014 to March 29, 2015, and from May 16 to September 18, 2015, appellant submitted reports from a nurse practitioner, Ms. Cooper, as well as Drs. Warner and Krone. For period the June 23, 2016 and continuing, she submitted reports from Drs. Chmell and Winkelmann.

Appellant was initially treated during the time periods in question by Ms. Cooper. The Board has held that treatment notes signed by nurse practitioners have no probative value as these providers are not considered physicians as defined under FECA.¹¹ Therefore, the treatment notes of record from Ms. Cooper are of no probative medical value in establishing appellant’s claim.¹²

The reports from Dr. Warner and reports from Dr. Krone do not directly address appellant’s disability claim for the periods in question. Dr. Warner provided examination findings and diagnoses including low back pain, lumbosacral, strain, right hip and knee sprains, and lumbar radiculopathy while Dr. Krone provided examination findings. Both doctors reported that appellant had been involved in a work-related motor vehicle accident on February 13, 2014. However, none of their reports addressed specific dates of disability or provided medical rationale explaining why appellant was totally disabled from work. An award of compensation may not be

⁷ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁸ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

⁹ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹⁰ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹¹ See *David P. Sawchuk*, 57 ECAB 316, 320n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law); *A.L.*, Docket No. 16-1707 (issued August 17, 2017) (nurse practitioners are not considered physicians as defined under FECA).

¹² See *N.W.*, Docket No. 17-1415 (issued November 7, 2017).

based on surmise, conjecture, speculation, or on the employee's own belief of disability from work.¹³ For this reason, the reports of Drs. Warner and Krone are insufficient to support appellant's claim for wage-loss compensation for the period May 17, 2014 to March 29, 2015 and May 16 to September 18, 2015.

In support of her claims for wage-loss compensation for the period June 23, 2016 and continuing, appellant submitted June 8, 2016 reports from Drs. Summers and Winkleman. These reports from Dr. Summers and Dr. Winkleman do not directly address appellant's disability claim for the period in question. Dr. Summers diagnosed lumbar spondylolysis, resolved lumbar radiculopathy, and hip pain and provided examination findings. Dr. Winkleman noted appellant's complaints of persistent left greater trochanteric bursa distribution pain and lower back pain. Neither physician noted any specific dates of disability. Thus, these reports from Drs. Summers and Winkleman are insufficient to support appellant's claim for wage-loss compensation for June 23, 2016 and continuing.¹⁴

Dr. Chmell, in a December 28, 2016 report, diagnosed lumbar sprain, right torn medial meniscus, left hip traumatic arthritis, L4-5 and L5-S1 disc herniations with radiculopathy, and coccydynia. However, his opinion was based on diagnoses not accepted by OWCP as part of this claim. Dr. Chmell attributed the diagnosed conditions to the accepted February 13, 2014 employment injury, but no supporting rationale was provided as to how or why the additional diagnoses were related to the accepted employment injury. A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.¹⁵ The Board therefore finds that Dr. Chmell's opinion is of limited probative value on the issue of whether appellant's disability on and after June 23, 2016 is causally related to her February 13, 2014 work injury.¹⁶

It is appellant's burden of proof to establish that she was disabled from work during the claimed periods due to her accepted conditions. The record does not contain rationalized medical opinion evidence, based on a complete factual and medical background, supporting causal relationship between the accepted February 13, 2014 conditions and disability for the periods May 17, 2014 to March 29, 2015; May 16 to September 18, 2015; and June 23, 2016 and continuing.¹⁷ The Board therefore finds that the evidence of record is insufficient to meet appellant's burden of proof.

¹³ See *S.H.*, Docket No. 17-1447 (issued January 11, 2018).

¹⁴ *Id.*

¹⁵ See *J.M.*, Docket No. 17-1002 (issued August 22, 2017).

¹⁶ *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁷ *C.S.*, Docket No. 08-2218 (issued August 7, 2009); see also *R.M.*, Docket No. 16-0807 (issued August 26, 2016).

As appellant failed to submit such rationalized evidence, she has failed to establish her claim for wage-loss compensation for the periods May 17, 2014 to March 29, 2015, from May 16 to September 18, 2015, and from June 23, 2016 and continuing.

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 total disability for the periods May 17, 2014 to March 29, 2015; May 16 to September 18, 2015; and June 23, 2016 and continuing causally related to her February 13, 2014 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2018
Washington, DC

Christopher J. Godfrey, 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