

ISSUE

The issue is whether appellant has met her burden of proof to establish disability for the period January 6, 2013 through December 31, 2018 causally related to her accepted March 16, 2010 employment injury.

FACTUAL HISTORY

On March 18, 2010 appellant, then a 60-year-old temporary census enumerator, filed a traumatic injury claim (Form CA-1) alleging that on March 16, 2010 she injured her back and left lower extremity when she stepped on a mat which collapsed and caused her to fall in a twisting motion while in the performance of duty. OWCP initially accepted her claim for a lumbar strain. Appellant stopped work on March 16, 2010 and returned to work the next day. Her temporary employment with the employing establishment ended on May 30, 2010.

On August 3, 2010 appellant filed a notice of recurrence (Form CA-2a) alleging a recurrence of the need for medical care to treat her accepted March 16, 2010 employment injury. She advised that the pain in her back and left lower extremity had never stopped and noted that she had been working for the city of Lake Mary, Florida, as manager of the farmer's market each Saturday since January 2009.

OWCP reopened appellant's claim for the receipt of medical benefits and, on February 22, 2011, it expanded the acceptance of her claim to include aggravation of left tarsal tunnel syndrome based on the opinion of Dr. David B. Lotman, a Board-certified orthopedic surgeon acting as second opinion examiner.

Appellant submitted an August 25, 2017 report from Dr. Robert Reppy, an osteopath Board-certified in family medicine, who discussed appellant's factual and medical history, including the mechanism of her March 16, 2010 accident and the subsequent medical treatment she received. Dr. Reppy noted that appellant reported that she fell on March 16, 2010, with her left leg twisting behind her and that she felt snapping sensations a few inches above her left knee and a few inches above her left ankle. He advised that appellant's current reported symptoms included burning sensation in her left leg/foot with pain and burning sensation extending up her left lower extremity. Dr. Reppy indicated that medical evaluators diagnosed appellant with such conditions as left tarsal tunnel syndrome, lumbar spine syndrome, and left lumbar radiculopathy. He opined that appellant's diagnoses from the March 16, 2010 accident were lumbar radiculopathy, intervertebral lumbar disc disorder, and tarsal tunnel syndrome.

In a February 9, 2018 letter to OWCP, appellant claimed that her March 16, 2010 employment injury had never been completely diagnosed until she had been evaluated by Dr. Reppy. Appellant asserted that her employment injury prevented her from leading a normal life.

Appellant submitted an August 10, 2018 report from Dr. Reppy who noted that her chief complaints were low back pain and left leg pain (mostly distal from the knee). Dr. Reppy noted that she exhibited a mildly antalgic gait and that lumbar range of motion was decreased in all axes. He diagnosed tarsal tunnel syndrome and spinal stenosis at L2-3.

In September 14, October 12, and November 16, 2018 reports, Dr. Reppy diagnosed tarsal tunnel syndrome, spinal stenosis at L2-3, osteoarthritis of the metatarsals of the left foot, chondromalacia (grade 4) of the left knee with severe cartilage loss at the patellafemoral compartment, and tears of the peroneus brevis tendon, anterior talofibular ligament, and calcanofibular ligament.

On April 30, 2019 appellant filed a claim for compensation (Form CA-7) alleging that her March 16, 2010 employment injury caused disability from work for the period January 6, 2013 through December 31, 2018.

In a May 20, 2019 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her disability claim, including a physician's report supported by a medical explanation of the relationship between her claimed disability and the March 16, 2010 employment injury. It requested that she complete and return an enclosed questionnaire. OWCP afforded appellant 30 days to submit the requested evidence.

In response, appellant submitted an undated letter, received by OWCP on June 24, 2019, in which she further described her March 16, 2010 employment injury and its effect on her ability to work on and after January 6, 2013.

Appellant also submitted a May 24, 2019 report from Dr. Mark D. Bornstein, a podiatrist, who discussed appellant's factual and medical history, including the nature of her March 16, 2010 accident at work and her subsequent medical treatment. Dr. Bornstein reported physical examination findings, noting that the examination was positive for tarsal tunnel syndrome. He indicated that appellant had tarsal tunnel syndrome in her left foot as a result of the March 16, 2010 accident and opined that her favoring of her right foot led to the development of tarsal tunnel syndrome in her right foot. Dr. Bornstein noted that the inability to bear weight will cause significant problems in other areas of the body and that it was common for an altered gait to lead to low back problems. He noted that appellant did have low back problems at the time of the March 16, 2010 accident, and indicated that her foot problems over the past several years aggravated this problem. Dr. Bornstein noted that he had prescribed a boot for appellant's left foot and that surgery was the next step if this treatment failed. He advised that a recent magnetic resonance imaging (MRI) scan showed cartilage damage in the left ankle and foot, which he believed was consistent with her March 16, 2010 employment injury and its sequelae. Dr. Bornstein advised that appellant had bilateral tarsal tunnel syndrome as a result of her March 16, 2010 accident, and indicated that her altered gait from the tarsal tunnel syndrome led to an aggravation of her low back condition and knee problems. He opined that appellant would have been restricted from the time of her March 16, 2010 injury, and she would not have been able to engage in prolonged standing or walking (no more than 30 minutes). Moreover, any employment would have needed to be sedentary (sitting six out of eight hours). Dr. Bornstein indicated that appellant would not have been able to perform her job at the employing establishment. He noted that he would place appellant completely off of work in order to start the aggressive treatment that she never had.

In a June 7, 2019 report, Dr. Reppy noted that, although appellant favored her left foot due to her left tarsal tunnel syndrome and back problems from her March 16, 2010 accident, constant weight-bearing on her left foot caused the acceleration of arthritis in her left foot and knee. He noted that appellant was not able to work for the employing establishment after 2010 and indicated that she would not have been able to perform her job at the employing establishment due to

continuous walking. Dr. Reppy noted that, by the time he saw her, appellant “would be on a no-work status as we did diagnostic testing and work-up.” He indicated that Dr. Bornstein also placed appellant on no-work status for surgical considerations. Dr. Reppy provided a similar opinion in a report dated June 28, 2019.

By decision dated July 30, 2019, OWCP denied appellant’s disability claim, finding that she had not met her burden of proof to establish disability for the period January 6, 2013 through December 31, 2018, causally related to her accepted March 16, 2010 employment injury. It determined that she had not submitted sufficient medical evidence to establish her claim. OWCP noted that Dr. Reppy’s opinion on causal relationship is “simply too far removed from the onset of disability to be of probative value in establishing injury-related disability.”

On August 9, 2019 appellant, through counsel, requested a hearing before a representative of OWCP’s Branch of Hearings and Review.

Appellant submitted an August 16, 2019 report, in which Dr. Reppy reported examination findings and diagnosed tarsal tunnel syndrome, spinal stenosis at L2-3, osteoarthritis of the metatarsals of the left foot, chondromalacia (grade 4) of the left knee with severe cartilage loss at the patellafemoral compartment, and tears of the peroneus brevis tendon, anterior talofibular ligament, and calcanofibular ligament. Dr. Reppy indicated that he disagreed with OWCP’s July 30, 2019 decision denying appellant’s disability claim. He noted that appellant’s left leg/ankle problems took years to diagnosis and opined that any delay in properly evaluating appellant’s medical condition was due to OWCP’s “own actions or lack thereof.” In a September 12, 2019 report, Dr. Reppy again indicated that he disagreed with OWCP’s July 30, 2019 decision. He noted that, in February 2011, appellant’s accepted conditions were expanded to include left tarsal tunnel syndrome and noted that, because this condition provided a credible explanation for appellant’s left leg symptoms, no one looked any closer and missed the tears of her peroneus brevis tendon, anterior talo fibular ligament, and calcano fibular ligament.

During the hearing held on November 8, 2019, appellant testified that her actual job title while working for the employing establishment was recruiting assistant rather than enumerator. She advised that, while working for the employing establishment, she was able to perform a lot of her work from home while in a reclining position. Appellant explained that she also was able to work in a reclining position for much of the time she worked one day per week as manager of a farmer’s market, a position she had not held since 2013. She indicated that she was claiming wage-loss compensation for disability from work commencing January 6, 2013 due to residuals of her March 16, 2010 employment injury.

After the hearing, appellant submitted a December 20, 2019 report in which Dr. Reppy provided a summary of the care appellant received and noted that he concurred with appellant’s prior physicians, including Dr. Bornstein, as to her work status. Dr. Reppy noted that he agreed with Dr. Bornstein’s May 24, 2019 opinion that appellant would have been restricted from the time of her March 16, 2010 injury and would not have been able to do any prolonged standing or walking (no more than 30 minutes). He noted that he also agreed with Dr. Bornstein that appellant should have been completely off work after the May 24, 2019 evaluation in order to begin aggressive treatment. Dr. Reppy diagnosed bilateral tarsal tunnel syndrome, spinal stenosis at L2-3, osteoarthritis of the metatarsals of the left foot, chondromalacia (grade 4) of the left knee with severe cartilage loss at the patellafemoral compartment, and tears of the peroneus brevis tendon, anterior talofibular ligament, and calcanofibular ligament. He maintained that these

conditions were related to the March 16, 2010 employment injury, noting that lack of treatment aggravated all the conditions in appellant's left leg.

By decision dated January 22, 2020, OWCP's hearing representative affirmed the July 30, 2019 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 the fact 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 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

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.¹⁰

⁴ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁵ 20 C.F.R. § 10.5(f).

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 *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹⁰ *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability for the period January 6, 2013 through December 31, 2018 causally related to her accepted March 16, 2010 employment injury.

In support of her disability claim, appellant submitted a May 24, 2019 report from Dr. Bornstein who indicated that appellant had tarsal tunnel syndrome in her left foot as a result of the March 16, 2010 accident and opined that her favoring of her right foot led to the development of tarsal tunnel syndrome in her right foot. Dr. Bornstein advised that a recent MRI scan showed cartilage damage in the left ankle and foot, which he believed was consistent with her March 16, 2010 employment injury and its sequelae. He advised that appellant had bilateral tarsal tunnel syndrome as a result of her March 16, 2010 accident, and indicated that the altered gait from the tarsal tunnel syndrome led to an aggravation of her low back condition and knee problems. Dr. Bornstein opined that appellant would have been restricted from the time of her March 16, 2010 injury, and that she would not have been able to do any prolonged standing or walking (no more than 30 minutes). Moreover, any employment would have needed to be sedentary in nature (sitting six out of eight hours). Dr. Bornstein asserted that appellant would not have been able to perform her job at the employing establishment. He noted that he would have appellant completely off of work in order to start the aggressive treatment that she never had.

The Board finds that Dr. Bornstein's opinion is of limited probative value regarding appellant's claim of disability for the period January 6, 2013 through December 31, 2018 causally related to the accepted March 16, 2010 employment injury because Dr. Bornstein did not provide adequate medical rationale in support of his opinion on causal relationship. It is noted that Dr. Bornstein attributed appellant's disability, at least in part, to conditions that have not been accepted as related to the March 16, 2010 accident, including right tarsal tunnel syndrome and degenerative disease of the left knee. Dr. Bornstein has not provided adequate medical rationale to establish that these conditions are employment related. Nor has he explained how disability would have been caused by the only conditions accepted in the present case, *i.e.*, left knee strain and aggravation of left tarsal tunnel syndrome. Such medical rationale is particularly necessary in the present case given that Dr. Bornstein did not begin treating appellant until years after she sustained her March 16, 2010 employment injury. The Board notes that the case record lacks medical records for long periods after March 16, 2010¹¹ and Dr. Bornstein did not adequately discuss bridging evidence, which would support his opinion of extended periods of disability related to the March 16, 2010 employment injury.¹² Dr. Bornstein did not adequately explain why any period of disability would not have been due to some nonwork-related condition, such as the natural progression of appellant's preexisting tarsal tunnel syndrome condition or the degenerative condition of her left knee. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical

¹¹ For example, the case record contains no medical reports produced between September 7, 2012 and August 25, 2017.

¹² *V.H.*, Docket No. 18-0456 (issued August 9, 2019); *J.D.*, Docket No. 16-0064 (issued June 1, 2016) (regarding the importance of providing bridging medical evidence to establish a given period of disability).

condition/period of disability has an employment-related cause. Therefore, Dr. Bornstein's May 24, 2019 report is insufficient to establish appellant's claim.¹³

In a June 7, 2019 report, Dr. Reppy noted that, although appellant favored her left foot due to her left tarsal tunnel syndrome and back problems from her March 16, 2010 accident, constant weight-bearing on her left foot caused the acceleration of arthritis in her left foot and knee. He noted that appellant was not able to work for the employing establishment after 2010 and indicated that she would not have been able to perform her job at the employing establishment due to the need for continuous walking. Dr. Reppy noted that, by the time he saw her, appellant "would be on a no-work status as we did diagnostic testing and work-up." He indicated that Dr. Bornstein also placed appellant on no-work status for surgical considerations. Dr. Reppy provided a similar opinion in a report dated June 28, 2019.

The Board finds that these reports also are of limited probative value regarding appellant's claim of disability for the period January 6, 2013 through December 31, 2018 causally related to the accepted March 16, 2010 employment injury because Dr. Reppy did not provide adequate medical rationale in support of his opinion on causal relationship. The Board notes that Dr. Reppy's reports have deficiencies, which are similar to those of Dr. Bornstein's May 24, 2019 report. Dr. Reppy also attributed appellant's disability to conditions, which have not been accepted as related to the March 16, 2010 employment injury, including degenerative conditions of the left foot and knee. He also did not begin treating appellant until years after she sustained her March 16, 2010 employment injury and failed to provide adequate bridging evidence. Dr. Reppy did not describe the medical process through which the accepted conditions, lumbar strain and aggravation of left tarsal tunnel syndrome, could have been responsible for the claimed period of disability.

In an August 16, 2019 report, Dr. Reppy indicated that he disagreed with OWCP's July 30, 2019 decision denying appellant's disability claim. He noted that appellant's left leg/ankle problems took years to diagnosis and opined that any delay in properly evaluating appellant's medical condition was due to OWCP's "own actions or lack thereof." In a September 12, 2019 report, Dr. Reppy again indicated that he disagreed with OWCP's July 30, 2019 decision. He noted that, in February 2011, appellant's accepted conditions were expanded to include left tarsal tunnel syndrome and asserted that, because this condition provided a credible explanation for appellant's left leg symptoms, no one looked any closer and missed the tears of her peroneus brevis tendon, anterior talofibular ligament, and calcanofibular ligament. These reports also are of limited probative value regarding the underlying issue of this case because Dr. Reppy did not provide any additional medical rationale on the cause of appellant's disability.¹⁴ Dr. Reppy merely expressed his disagreement with OWCP's denial of appellant's disability claim and repeated his assertion that disability was caused by several conditions which have not been accepted as employment related.

In a December 20, 2019 report, Dr. Reppy noted that he agreed with Dr. Bornstein's May 24, 2019 opinion that appellant would have been restricted from the time of her March 16, 2010 injury and would not have been able to do any prolonged standing or walking (no more than 30 minutes) and that any employment needed to be sedentary in nature (sitting six out of eight hours). He noted that he also agreed with Dr. Bornstein that appellant should have been completely

¹³ See *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

¹⁴ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

off work after the May 24, 2019 evaluation in order to begin aggressive treatment. Dr. Reppy diagnosed bilateral tarsal tunnel syndrome, spinal stenosis at L2-3, osteoarthritis of the metatarsals of the left foot, chondromalacia (grade 4) of the left knee with severe cartilage loss at the patellafemoral compartment, and tears of the peroneus brevis tendon, anterior talofibular ligament, and calcanofibular ligament. He maintained that these conditions were related to the March 16, 2010 employment injury, noting that lack of treatment aggravated all the conditions in appellant's left leg. This report of Dr. Reppy also is of limited probative value with respect to appellant's disability claim because it does not provide any additional medical rationale regarding disability, but rather only expresses agreement with Dr. Bornstein's opinion and provides a conclusory opinion that several conditions were related to the March 16, 2010 employment injury.¹⁵

Appellant also submitted other reports of Dr. Reppy dated between August 25, 2017 and November 16, 2018. However, these reports are of no probative value regarding the underlying issue of the present case because they do not contain an opinion on disability. 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 of causal relationship.¹⁶ Therefore, these reports are insufficient to establish appellant's claim.

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 for the period January 6, 2013 through December 31, 2018 causally related to her accepted March 16, 2010 employment injury.

¹⁵ *Id.* See also *L.G.*, Docket No. 19-0142 (issued August 8, 2019); *C.M.*, Docket No. 14-0088 (issued April 18, 2014) (regarding the limited probative value of conclusory opinions on causal relationship).

¹⁶ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board