

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

E.B., Appellant)	
)	
and)	Docket No. 19-1548
)	Issued: July 14, 2020
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Coppell, TX, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On July 15, 2019 appellant, through counsel, filed a timely appeal from an April 29, 2019 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.³

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.*

³ The Board notes that, following the April 29, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period December 4, 2016 through August 13, 2017 causally related to her accepted November 21, 2016 employment injury.

FACTUAL HISTORY

On March 15, 2018 appellant, then a 45-year-old former rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on November 21, 2016 she broke her left index finger when she fell after missing a step in front of a home on her delivery route while in the performance of duty.⁴ OWCP accepted her claim for closed displaced fracture of the medial phalanx of the left index finger.

Appellant submitted a February 7, 2018 report from Dr. Lan Hua, a Board-certified hand surgeon, who examined appellant for complaints of left index finger pain at the proximal interphalangeal joint (PIP), and bilateral wrist pain, numbness, and tingling. She reported to Dr. Hua that she had fallen on her left hand at work in November 2016. Dr. Hua diagnosed bilateral wrist pain, bilateral cubital tunnel syndrome, left finger osteoarthritis, and sequela of a closed displaced fracture of the middle phalanx of the left index finger. She advised against surgery due to the age of the left index finger fracture and recommended that appellant undergo occupational therapy.

Appellant submitted a partial report dated February 26, 2018 from Dr. Victoria Knoll, a Board-certified hand surgeon, who reviewed an x-ray of appellant's left hand, observing old healed fractures at the PIP and the radial base of the distal phalanx of the left index finger. Dr. Knoll diagnosed bilateral lesions of the ulnar nerve of the upper limbs and left hand stiffness, and noted that appellant's healed left finger fractures did not appear to necessitate surgery.

On May 11, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) due to disability from work for the period December 4, 2016 through August 13, 2017. On the employing establishment's portion of the Form CA-7, a supervisor noted that appellant had been separated from service on December 4, 2016, and advised that he was unable to certify the claim as her injury had been reported to a physician two years after the date of injury. In an attached letter, the supervisor recalled that appellant entered duty on October 29, 2016 and voluntarily resigned on December 4, 2016 without giving a reason.⁵

By letter dated May 23, 2018, OWCP requested that appellant submit additional evidence in support of her claim for wage-loss compensation, including a medical report explaining how her employment-related condition worsened such that she was no longer able to perform the duties of her position when she stopped work on December 4, 2016. It afforded her 30 days to respond.

⁴ Appellant voluntarily resigned from her position at the employing establishment on December 4, 2016.

⁵ In a time analysis form (Form CA-7a) accompanying her claim, appellant reported a total of 1,128 hours of leave without pay due to an injured left index finger. An employing establishment official was unable to certify that the claimed dates were accurate, as there was no medical evidence supporting temporary total disability and appellant had been separated from service. In an attached notification of personnel action (PS Form-50), it was noted that appellant had voluntarily resigned on December 4, 2016 and gave no reason for the resignation.

Appellant submitted a June 17, 2018 statement in which she explained that she separated from the employing establishment on December 4, 2018 because she continually injured her fractured left index finger and both her hands while working.

In a June 12, 2018 report, Dr. Knoll advised that appellant reported sustaining a finger injury in November 2016 and noted that she first examined her on February 26, 2018 at which time the physical examination of her left index finger revealed stiffness upon range of motion (ROM) without instability/laxity of any joint. She related that x-ray testing demonstrated a healed fracture at the radial base of the proximal phalanx of the index finger and a possible healed volar plate avulsion. Dr. Knoll indicated that appellant reported difficulty performing her work duties after the injury, but appellant noted that she was unable to make a statement of any functional impairment in her left index finger prior to February 26, 2018. She attached a complete copy of her February 26, 2018 report in which she noted that the examination of even date revealed moderately decreased ROM of the left index finger. Dr. Knoll reviewed a February 26, 2018 x-ray of the left index finger and diagnosed bilateral lesions of the ulnar nerve of the upper extremities and left hand stiffness.⁶

Appellant also submitted administrative documents regarding her participation in occupational therapy treatment and a May 22, 2018 report from Kristen Keeseey, an occupational therapist, who described a therapy session conducted on even date.

By decision dated August 22, 2018, OWCP denied appellant's claim for wage-loss compensation for disability from work for the period December 4, 2016 through August 13, 2017. It found that the medical evidence of record failed to provide clinical objective findings from a treating physician that supported her inability to work for the claimed period.

On September 14, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.⁷

Appellant submitted a January 3, 2019 report from Dr. Jordan Pastorek, a Board-certified internist, who noted that she reported a November 21, 2016 employment injury to her left index finger. She asserted that she had resigned from the employing establishment due to her inability to perform the duties of her position after the incident. On physical examination of the left upper extremity, Dr. Pastorek observed positive Finkelstein's, Phalen's, and bracelet tests with limited ROM and moderate pain on palpation of the left index finger. He diagnosed closed displaced fracture of the middle phalanx of the left index finger.

In follow-up reports dated January 14, 15, 16, 21, 23, 24, 28, 29, and 31 and February 6, 2019, Dr. Pastorek reported findings for the examinations of appellant's left upper extremity conducted on these dates, including pain/tenderness to palpation of the left index finger. He diagnosed closed displaced fracture of the middle phalanx of the left index finger and noted that appellant had performed rehabilitative/therapeutic exercises on these dates.

⁶ Appellant had previously submitted a partial copy of Dr. Knoll's February 26, 2018 report.

⁷ Appellant submitted an August 23, 2018 letter in which she discussed OWCP's handling of her compensation claim.

A hearing before OWCP's hearing representative was held on February 12, 2019, during which appellant discussed her left upper extremity symptoms.

After the hearing, appellant submitted reports dated February 7, 11, 14, 19, 21, 25, 26, and 28, March 5, 7, 11, 21, 25, and 28, and April 2 and 16, 2019 from Dr. Pastorek who noted examination findings, including pain/tenderness to palpation of the left index finger, and diagnosed closed displaced fracture of the middle phalanx of the left index finger.

Appellant also submitted reports from nurse practitioners, including February 27, March 11 and 25, 2019 reports from Jessica Gerhart, and March 21 and April 9, 2019 reports from Maziana Abiad.

By decision dated April 29, 2019, OWCP's hearing representative affirmed the August 22, 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.⁸

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.⁹ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹⁰ 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.¹¹ 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.¹²

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.¹³

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

⁸ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁹ 20 C.F.R. § 10.5(f).

¹⁰ *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹¹ *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

¹² *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹³ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹⁴

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period December 4, 2016 through August 13, 2017 causally related to her accepted November 21, 2016 employment injury.

Appellant submitted a February 7, 2018 report from Dr. Hua, who noted that appellant reported injuring her left index finger at work on November 21, 2016. Dr. Hua diagnosed several medical conditions, including sequela of a closed displaced fracture of the middle phalanx of the left index finger.¹⁵ In a partial report dated February 26, 2018, Dr. Knoll diagnosed bilateral lesions of the ulnar nerve of the upper limbs and left hand stiffness. In a report dated June 12, 2018, she advised that she was unable to address any functional impairment in appellant's left index finger prior to February 26, 2018. In reports dated from January 3 through April 16, 2019, Dr. Pastorek followed up with appellant for her left upper extremity problems and consistently diagnosed closed displaced fracture of the middle phalanx of the left index finger. The Board notes, however, that Drs. Hua, Knoll, and Pastorek did not provide an opinion as to whether appellant was disabled from work during the claimed period, *i.e.*, December 4, 2016 through August 13, 2017, due to her accepted November 21, 2016 employment injury. 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, the above-noted reports are of no probative value with regard to the issue of appellant's disability for the claimed period, and they are insufficient to establish her claim for wage-loss compensation.

Appellant submitted reports from nurse practitioners, including February 27, March 11, and 25, 2019 reports from Ms. Gerhart, and March 21 and April 9, 2019 reports from Ms. Abiad. She also submitted a May 22, 2018 report from Ms. Keeseey, an occupational therapist. However, these reports do not constitute competent medical evidence because nurse practitioners and occupational therapists are not considered "physicians" as defined under FECA.¹⁷ Consequently, the medical findings and/or opinions of Ms. Gerhart and Ms. Abiad will not suffice for purposes

¹⁴ A.W., Docket No. 18-0589 (issued May 14, 2019).

¹⁵ OWCP accepted that on November 21, 2016 appellant sustained a closed displaced fracture of the medial phalanx of her left index finger.

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

¹⁷ 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. See also 20 C.F.R. § 10.5(t); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); *L.C.*, Docket No. 16-1717 (issued March 2, 2017) (a nurse is not considered a physician under FECA); *R.S.*, Docket No. 16-1303 (issued December 2, 2016) (an occupational therapist is not considered a physician under FECA).

of establishing entitlement to compensation benefits.¹⁸ As such, these reports are of no probative value and are found to be insufficient to establish appellant's claim for compensation.¹⁹

As the medical evidence of record does not include a rationalized opinion on causal relationship between appellant's claimed disability and her accepted November 21, 2016 employment injury, the Board finds that she has not met her burden of proof.

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 for the period December 4, 2016 through August 13, 2017 causally related to her accepted November 21, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2020
Washington, DC

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

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

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

¹⁸ *Id.*

¹⁹ *See L.A.*, Docket No. 19-0820 (issued December 6, 2019); *K.C.*, Docket No. 16-1181 (issued July 26, 2017).