

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

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R.M., Appellant)	
)	
and)	Docket No. 18-1067
)	Issued: May 7, 2020
DEPARTMENT OF DEFENSE, DEFENSE)	
LOGISTICS AGENCY, Texarkana, TX,)	
Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 1, 2018 appellant filed a timely appeal from April 10, 2018 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the April 10, 2018 decisions, 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 his burden of proof to establish that he was disabled from work on January 11 and 12 and February 12 and 13, 2018 causally related to his accepted May 9, 2016 employment injury.

FACTUAL HISTORY

On May 11, 2016 appellant, then a 44-year-old preservation servicer, filed a traumatic injury claim (Form CA-1) alleging that, on May 9, 2016, he injured his lower right leg and left thumb when a ramp fell on his right leg while he was in the performance of duty. He stopped work on May 9, 2016 and returned to work with restrictions on August 8, 2016. OWCP accepted the claim for a nondisplaced spiral fracture of the shaft of the right fibula, a nondisplaced fracture of the proximal phalanx of the left thumb, a right thigh abrasion, a right lower leg abrasion, and a sprain of the ligaments of the lumbar spine.

On May 9, 2016 appellant underwent an irrigation and debridement of an open fracture, a neuroplasty of the digital nerves of the left thumb, and exploration of the flexor tendon of the left thumb.

Appellant stopped work on May 9, 2016 and OWCP paid him wage-loss compensation on the periodic rolls effective June 23, 2016. He returned to work with restrictions on August 8, 2016.³

On January 5, 2017 appellant underwent arthrodesis of the interphalangeal joint of the left thumb and a four flap Z-plasty with web space release and adductor release of the first web space.

Appellant stopped work and was returned to the periodic rolls by OWCP effective January 5, 2017. He returned to modified employment on April 12, 2017, but stopped work again on April 24, 2017.

Appellant returned to work on November 28, 2017 with restrictions of: no lifting or carrying over 10 pounds intermittently; no climbing, kneeling, bending, stooping, twisting; pushing and pulling intermittently up to one hour; simple grasping intermittently up to seven hours; fine manipulation intermittently up to six hours; sitting intermittently up to six hours; standing and walking intermittently up to two hours; reaching above the shoulder up to four hours; driving an automatic vehicle intermittently up to two hours; and no operation of machinery.

On January 11, 2018 Dr. Marion Milstead, a Board-certified orthopedic surgeon, examined appellant for complaints of increasing pain and stiffness in the thumb and hand.⁴ On physical examination, he found a healed fusion with matured scar tissue and full thumb abduction.

³ By decision dated October 20, 2016, OWCP denied appellant's claim for compensation for the period August 22 through September 2, 2016, finding that he had not provided sufficient medical evidence to support disability related to his accepted conditions for that time period.

⁴ By decision dated January 25, 2018, OWCP suspended appellant's benefits because he did not complete and return a Form CA-1032.

Dr. Milstead indicated that x-rays showed some joint space narrowing at the metacarpophalangeal and carpal/metacarpal joints of the thumb. He advised that appellant may have early arthritis and concluded that therefore, “he will be given a note for his employer that he needs to avoid any temperature extremes of very cold environments and even very hot environments.” Dr. Milstead indicated that appellant required medication to control arthritis symptoms as a result of his crush injury. In a return-to-work report of even date, he diagnosed status post left hand arthrodesis and found that he could resume light work lifting no more than 20 pounds, frequently lifting and carrying up to 10 pounds, and avoiding extreme temperatures.

In a report dated January 17, 2018, Dr. Charles E. Willis II, a Board-certified anesthesiologist, noted that he had evaluated appellant on January 12, 2018 for complaints of hand, upper back, hip, thigh, knee, ankle, and foot pain on the right side. He reviewed appellant’s history of a May 9, 2016 injury and provided examination findings. Dr. Willis diagnosed: a nondisplaced spiral fracture of the shaft of the right fibula; a nondisplaced fracture of the proximal phalanx of the left thumb; a right thigh abrasion; a right lower leg abrasion; a sprain of the ligaments of the lumbar spine; an injury of the digital nerve of the left index finger; a lesion of the ulnar nerve of the left upper limb; an abrasion of the sequela of the right hand; a hypertrophic scar; osteochondritis dissecans of the right ankle and joints of the right foot; and primary osteoarthritis of the right ankle and foot. In a duty status report (Form CA-17) of even date, he advised that appellant could perform modified employment and provided restrictions that were consistent with those of his modified position, with the addition of working in a climate controlled environment.

On January 19, 2018 appellant filed a wage-loss compensation claim (Form CA-7) for January 11 and 12, 2018.

In a development letter dated February 2, 2018, OWCP informed appellant that the evidence of record was insufficient to establish his wage-loss compensation claim for January 11 and 12, 2018. It requested that he provide a detailed medical narrative supporting that he was disabled for work during the claimed period. OWCP afforded appellant 30 days to submit the requested evidence.

In a work status note dated February 9, 2018, Dr. Willis indicated that he had treated appellant on that day and advised that he could return to work on February 14, 2018. In a Form CA-17 report of even date, he provided work restrictions consistent with those previously found on January 18, 2018.

On February 16, 2018 appellant filed a wage-loss compensation claim (Form CA-7) for the period February 5 through 16, 2018. In an attached time analysis form (Form CA-7a), he indicated that he was off work for eight hours on February 9, 2018 due to a doctor’s appointment, and that his physician had taken him off work on February 12 and 13, 2018.

In a development letter dated March 2, 2018, OWCP informed appellant that the evidence of record was insufficient to establish his wage-loss compensation claim for the additional period. It noted that the medical evidence then of record failed to establish the reason that he was off work or whether the period of disability was employment related. OWCP requested that appellant submit medical evidence establishing disability from work for the entire period claimed causally related to his employment injury. It afforded him 30 days to submit this evidence.

Thereafter, appellant submitted a February 9, 2018 procedure note from Dr. Willis, who administered right lumbosacral facet injections at L3-4, L4-6, and L5-S1 on that date. He diagnosed chronic low back pain and lumbar facet syndrome. In a report of even date, Dr. Willis noted that appellant would be off work for three days after the lumbar facet injection and could then resume work with restrictions.

On March 9, 2018 appellant filed a wage-loss compensation claim (Form CA-7) for the period February 9 through 13, 2018.

By decision dated April 10, 2018, OWCP denied appellant's claim for wage-loss compensation for February 12 and 13, 2018. It found that the medical evidence of record failed to establish why he was off work additional days after the lumbar facet injection. OWCP indicated that it was processing a payment for eight hours of wage-loss compensation on February 9, 2018 for appellant's lumbar facet procedure.

By separate decision of even date, OWCP denied appellant's wage-loss compensation claim for four hours on both January 11 and 12, 2018. It found that he was entitled to four hours of wage-loss compensation on January 11 and 12, 2018 for time lost to obtain medical treatment. OWCP determined, however, that the medical evidence failed to establish that he was totally disabled on either date.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim.⁶ 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.⁷ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁸ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.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

⁵ *Supra* note 1.

⁶ *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

⁷ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁸ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁹ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he was disabled from work on January 11 and 12, 2018 and February 12 and 13, 2018 causally related to his accepted May 9, 2016 employment injury.

Regarding appellant's claim for wage-loss compensation on January 11 and 12, 2018, the Board notes that OWCP has already accepted that he is entitled to four hours of wage-loss compensation for time lost to obtain medical treatment on those dates.¹¹ The issue is whether he has established entitlement to an additional four hours of compensation on both January 11 and 12, 2018.

On January 11, 2018 Dr. Milstead evaluated appellant for pain and stiffness of the thumb and hand and opined that he may have developed early arthritis. He advised that he should avoid temperature extremes. In a return to work note of even date, Dr. Milstead found that appellant could work lifting no more than 20 pounds occasionally and 10 pounds frequently. The modified position that he was performing at that time was within the restrictions found by Dr. Milstead, and thus his opinion fails to support total disability on that date.¹²

In a January 17, 2018 report, based on a January 12, 2018 evaluation, Dr. Willis provided a history of appellant's May 9, 2016 employment injury and discussed his complaints of pain in his right hand, upper back, hip, thigh, knee, ankle, and foot. He diagnosed: a nondisplaced spiral fracture of the shaft of the right fibula; a nondisplaced fracture of the proximal phalanx of the left thumb; a right thigh abrasion; a right lower leg abrasion; a sprain of the ligaments of the lumbar spine; an injury of the digital nerve of the left index finger; a lesion of the ulnar nerve of the left upper limb; an abrasion of the sequela of the right hand; a hypertrophic scar; osteochondritis dissecans of the right ankle and joints of the right foot; and primary osteoarthritis of the right ankle and foot. In a Form CA-17 report, Dr. Willis found that appellant could perform modified employment and provided work restrictions that were consistent with those of his limited-duty position. Consequently, his report is insufficient to establish that he was disabled from work on January 12, 2018 due to his accepted employment injury.¹³

Appellant further filed a claim for wage-loss compensation on February 9, 12, and 13, 2018. OWCP paid him wage-loss compensation for February 9, 2018, the date that Dr. Willis performed a lumbar facet injections at L3-4, L4-6, and L5-S1. The issue, therefore, is whether appellant has established that he was disabled on February 12 and 13, 2018 causally related to his accepted employment injury.

In a February 9, 2018 report, Dr. Willis diagnosed lumbar facet syndrome and chronic low back pain. He advised that he was performing a lumbar facet injection. Dr. Willis found that

¹¹ For a routine medical appointment, a maximum of four hours of compensation for time lost to obtain medical treatment is usually allowed. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19(c) (February 2013); *see also* K.A., Docket No. 19-0679 (issued April 6, 2020); *William A. Archer, id.*

¹² *See M.H.*, Docket No. 19-1287 (issued January 13, 2020).

¹³ *Id.*

appellant should be off work for three days post procedure. In a work status note of even date, he indicated that he could resume work on February 14, 2018. Dr. Willis did not, however, specifically attribute the need for the lumbar facet injection to accepted back condition of lumbar sprain or adequately explain how the injection was competent to cause disability during the claimed period. 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.¹⁴

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's claimed periods of disability and his accepted May 9, 2016 employment injury, the Board finds that he has not met his burden of proof.¹⁵

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 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 that he was disabled from work on January 11 and 12, 2018 and February 12 and 13, 2018, causally related to his accepted May 9, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 7, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁴ *M.N.*, Docket No. 18-0741 (issued April 2, 2020).

¹⁵ *M.N., id.; J.W.*, Docket No. 19-1688 (issued March 18, 2020).