

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

C.L., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Orlando, FL, Employer)

**Docket No. 20-0510
Issued: June 9, 2021**

Appearances:

Wayne Johnson, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 6, 2020 appellant, through counsel, filed a timely appeal from July 10 and 30, 2019 merit decisions 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 July 30, 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 intermittent disability during the period April 29 through September 7, 2018, causally related to her accepted employment injury.

FACTUAL HISTORY

On May 9, 2014 appellant, then a 53-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained injury to her neck, shoulders, and arms due to factors of her federal employment, including pushing and pulling containers and tubs. On May 13, 2015 OWCP accepted the claim for temporary aggravation of degeneration of cervical intervertebral disc, temporary aggravation of cervical radiculopathy, and bilateral shoulder impingement. Appellant was last exposed to her work conditions determined to have caused her injuries on May 7, 2014. On June 17, 2015 she accepted a full-time, limited-duty position, which required lifting up to 20 pounds.

On May 14, 2018 appellant filed a claim for compensation (Form CA-7) for intermittent disability from April 28 through May 11, 2018. In an attached time analysis form (Form CA-7a), she listed 8 hours of leave without pay (LWOP) used on April 29 and May 4, 5, and 6, 2018, for a total of 32 hours.

In an April 27, 2018 report and accompanying duty status report (Form CA-17), Dr. Robert R. Reppy, an osteopathic physician specializing in family medicine, noted appellant's complaints that her left shoulder stiffened at work, and she felt "clumsy with her hands," but denied any numbness. He noted that appellant was working full time five days a week; however, she had missed five days of work during the last month due to flare-ups of her condition. Dr. Reppy diagnosed: disc herniation at T1-2 and T3-4; bilateral T1 neuropathy; cervical stenosis at multiple levels; left shoulder degenerative joint disease; and cervical disc herniation at C4-C5, C5-C6, and C6-C7 with radiculopathy to the upper extremities. He indicated that appellant had a 20-pound lifting restriction and was expected to miss up to five days a month due to flare-ups of her condition.

Evidence received also included April 28 and May 2, 2018 notes from a physician with an illegible signature, excusing appellant from work for the dates April 28 and May 2 through 5, 2018 due to flare-ups.

In a development letter dated May 22, 2018, OWCP advised appellant that medical evidence of record was insufficient to support her claim 8 hours of wage-loss each on April 29 and

May 4, 5, and 6, 2018, for a total of 32 hours. It advised her to submit additional medical evidence. OWCP afforded appellant 30 days to respond.⁴

On July 9, 2018 appellant filed a Form CA-7 claim for compensation for intermittent disability during the period June 23 through July 6, 2018. In attached Form CA-7a, she claimed .09 hours of leave used on June 27, 2018, as well as 8 hours of LWOP used on June 24, 28, 29, and 30, and July 1 and 4, 2018 due to “physician’s orders,” for a total of 48.09 hours.

In a June 1, 2018 report, Dr. Reppy noted that appellant’s trigger point injection to the trapezius area had worn off. Appellant reported dropping objects with both hands, but the frequency had not increased. Dr. Reppy indicated that appellant was working full time five days a week, but missed nine days of work during the prior month due to flare-ups of “this condition.” Physical examination revealed cervical rotation within normal limits at 80 degrees bilaterally, side bending at 30 degrees bilaterally and extension within normal limits. Dr. Reppy noted that appellant had mild-to-moderate spasticity in the trapezius muscles bilaterally. He continued to diagnose disc herniation at T1-2 and T3-4; bilateral T1 neuropathy; cervical stenosis at multiple levels; left shoulder degenerative joint disease; and cervical disc herniation at C4-C5, C5-C6, and C6-C7 with radiculopathy to the upper extremities. Dr. Reppy indicated that appellant had a 20-pound lifting restriction. In a June 1, 2018 duty status report (Form CA-17), he advised that she would miss work due to flare-ups.

Physical therapy notes dated June 6 to July 18, 2018 were received.

In June 29 and July 5 and 16, 2018 notes, a physician with an illegible signature, excused appellant from work on June 29 and 30, 2018 and July 3, 4, and 14, 2018 due to flare-ups.

In a July 13, 2018 report, Dr. Reppy continued to diagnose disc herniation at T1-2 and T3-4; bilateral T1 neuropathy; cervical stenosis at multiple levels; left shoulder degenerative joint disease; and cervical disc herniation at C4-C5, C5-C6, and C6-C7 with radiculopathy to the upper extremities. He continued appellant’s 20-pound lifting restriction. In a July 13, 2018 Form CA-17, Dr. Reppy provided a 15-pound lifting restriction and advised “expect frequent flare-ups of her condition causing missed days.”

In a July 24, 2018 development letter, OWCP advised appellant that the evidence submitted for the period June 24 through July 4, 2018 was insufficient to establish disability for 48 hours of LWOP. It noted that the medical evidence did not support a worsening of her accepted conditions and informed appellant of the evidence needed. OWCP requested that she submit additional evidence within 30 days.

⁴ On May 30, 2018 appellant filed a Form CA-7 for intermittent disability from May 12 through 25, 2018. In an attached Form CA-7a, which the employing establishment certified on May 29, 2018, she claimed 8 hours LWOP for May 16, 17, 23, 24 and 25, 2018, for a total of 40 hours. The reason for the leave was noted as either physician’s order or therapy and physician’s order. In its June 1, 2018 development letter, OWCP authorized payment for four hours on May 23, 2018, but informed appellant that the medical evidence submitted was insufficient to establish the remainder of her claim for disability for the period May 12 through 25, 2018. It advised her of the evidence needed to support her claim and afforded her 30 days to submit such evidence. The Board notes that OWCP has not rendered a final decision for appellant’s compensation claim for the period May 12 through 25, 2018.

Appellant submitted physical therapy notes dated July 16 and 25, 2018.

On August 7, 2018 appellant filed a Form CA-7 claim for compensation for intermittent disability during the period July 21 through August 3, 2018. In attached Form CA-7a, she claimed 8 hours of LWOP used on July 24, 28, and 31 and August 1, 2, and 3, 2018 due to “physician’s orders,” for a total of 48 hours.

In notes dated July 27, 28, and 31, and August 1, 2018 a physician with an illegible signature requested that appellant be excused on July 17, 2018 for physical therapy, on July 28, 2018 for inflammation and flare-up, and on July 31 and August 1 through 3, 2018 for flare-up.

In an August 10, 2018 medical report, Dr. Reppy reported that appellant’s chief complaint was neck and left shoulder pain and that she did not miss any days of work during the past month due to flare-up of this condition. He noted the results of her diagnostic testing. Dr. Reppy continued to diagnose disc herniation at T1-2 and T3-4, bilateral T1 neuropathy, cervical stenosis at multiple levels, left shoulder degenerative joint disease, and cervical disc herniation at C4-C5, C5-C6, and C6-C7 with radiculopathy to the upper extremities. He indicated that appellant had a 15-pound lifting restriction. In an August 10, 2018 Form CA-17, Dr. Reppy indicated that she could work full time with lifting restrictions of 15 pounds. He noted “expect frequent flare-ups of her condition causing missed days.”

In an August 20, 2018 development letter, OWCP advised appellant that the evidence submitted was insufficient to establish her claim for compensation for intermittent disability during the period July 21 through August 3, 2018. It afforded appellant 30 days to submit the requested evidence.

On September 4, 2018 appellant filed a Form CA-7 claim for wage-loss compensation for intermittent disability during the period August 18 through 31, 2018. In an attached Form CA-7a, she claimed 8 hours LWOP used on August 18, 23, 24, and 25, 2018 due to “physician’s orders,” for a total of 32 hours. OWCP received notes dated August 23, 24 and 25, 2018, wherein a physician with an illegible signature requested that appellant be excused on those dates due to flare-ups.

In a September 17, 2018 development letter, OWCP advised appellant that the evidence submitted was insufficient to establish her claim for compensation for disability during the period August 18 through 31, 2018. It afforded appellant 30 days to submit the requested evidence.

In a September 17, 2018 Form CA-7, appellant claimed intermittent wage-loss compensation during the period September 1 through 14, 2018. In attached Form CA-7a, she claimed 8 hours of LWOP used on September 7, 2018 due to “physician’s orders.”

In September 6 and 7, 2018 notes, Dr. Reppy asked that appellant be excused on September 6, 2018 due to a flare-up, and on September 7, 2018 for a doctor’s appointment.

Dr. Reppy, in a September 7, 2018 report, noted appellant’s complaints of neck and bilateral shoulder pain. He further noted that she worked full time, five days a week, and did not miss any days of work during the past month due to flare-ups of this condition. Dr. Reppy

indicated that appellant's new restrictions were lifting no more than 15 pounds and no overtime. He also completed a September 7, 2018 Form CA-17 noting such restrictions.

In notes dated September 14 and 15, 2018, a physician with an illegible signature requested that appellant be excused on those dates due to flare ups.

In a September 25, 2018 development letter, OWCP advised appellant that it authorized payment for four hours of wage-loss compensation on June 28, 2018 for her physical therapy appointment, but additional evidence was needed to support the remainder of her claims for compensation for disability during the period June 23 through August 3, 2018. It noted that the medical slips which held her off work due to flare-ups were not sufficient to support her claim as no explanation was provided as to why appellant was disabled from work on the claimed dates of June 28, 29, and 30, July 1, 4, 28, and 29, and August 1, 2, and 3, 2018. OWCP again explained the evidence needed to support her disability claims and afforded her 30 days in which to submit the necessary evidence. No response was received within the time allotted.

By decision dated November 28, 2018, OWCP denied appellant's claims for compensation for disability for the periods June 23 through July 6, 2018; July 21 through August 3, 2018; and August 18 through 31, 2018.

By decision dated December 18, 2018, OWCP denied appellant's claims for compensation for 32 hours of intermittent disability during the period April 28 through May 11, 2018 and 8 hours of intermittent disability during the period September 1 through 14, 2018.⁵

On December 28, 2018 and January 17, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding OWCP's November 28 and December 18, 2018 decisions, respectively. An oral hearing was held on April 25, 2019 for OWCP's November 28, 2018 decision. Appellant testified that Dr. Reppy only has hours three Fridays a month. She stated that, even though she signed the Form CA-7a's, the dates were incorrect as sometimes they were a day off because she worked nights. Appellant further testified that she had problems lifting and explained that she had flare-ups due to muscle spasms which caused her to miss work. She clarified that the time lost from work was due to flare ups and not to receive medical treatment. Appellant also testified that she worked limited duty, but that she did more than she should be doing. No additional evidence was received.

By decision dated July 10, 2019, the hearing representative affirmed OWCP's November 28, 2018 decision denying compensation for intermittent disability during the periods June 23 through July 6, 2018; July 21 through August 3, 2018; and August 18 through 31, 2018.

Appellant, through counsel requested a review of the written record in lieu of an oral hearing with regard to OWCP's December 18, 2018 decision. By decision dated July 30, 2019, a hearing representative affirmed OWCP's December 18, 2018 decision denying compensation for 36 hours of intermittent disability during the period April 29 through September 7, 2018.

⁵ OWCP paid her four hours of compensation on September 7, 2108 for attending a medical appointment on that date.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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.⁷ The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁸ 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.⁹ 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 the reliable, probative, and substantial medical evidence.¹⁰

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.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish intermittent disability during the period April 29 through September 7, 2018, causally related to her accepted employment injury.

In his report dated April 27, 2018, Dr. Reppy noted that appellant's left shoulder stiffened at work and she felt "clumsy with her hands," but that she was working full time with a 20-pound lifting restriction. He noted appellant's diagnoses of disc herniation at T1-2 and T3-4, bilateral T1 neuropathy, cervical stenosis at multiple levels, left shoulder degenerative joint disease, and cervical disc herniation at C4-C5, C5-C6, and C6-C7 with radiculopathy to the upper extremities, and noted that appellant would continue to miss work due to flare-ups of her condition. The Board has held that evidence that does not address the accepted conditions and dates of disability are of no probative value and are insufficient to establish the claim.¹² As previously noted, appellant's claim was accepted for temporary aggravations of degenerative cervical intervertebral disc and

⁶ *Supra* note 2.

⁷ *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁹ *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

¹⁰ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

¹¹ *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

¹² *A.V.*, Docket No. 19-1575 (issued June 11, 2020); *A.W.*, Docket No. 18-0589 (issued May 14, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

cervical radiculopathy and bilateral shoulder impingement. As this report did not address how appellant's accepted conditions caused disability from work it is of no probative value and is insufficient to establish appellant's claim.¹³

In a June 1, 2018 report, Dr. Reppy related that appellant had missed nine days of work due to flare-ups of her conditions, however, he did not explain how appellant's accepted conditions prevented her from performing her employment duties on any specific date. As noted above, evidence that does not address the accepted conditions and dates of disability are of no probative value and are insufficient to establish the claim.¹⁴

In reports dated July 13, August 10, and September 7, 2018, Dr. Reppy again related that appellant was disabled due to flare-ups of her conditions, but offered no explanation as to whether appellant was disabled from work on the specific dates alleged. As these reports do not contain a medical opinion addressing appellant's disability from work for any specific dates due to the accepted conditions, they are also of no probative value and are insufficient to establish appellant's claim.¹⁵

OWCP received a series of notes from a healthcare provider with an illegible signature indicating that appellant was disabled from work on dates from April 28, 2018 and continuing due to flare-ups. However, as the physician's identity cannot be determined, this note does not constitute competent medical evidence.¹⁶ Thus, these notes are insufficient to establish appellant's wage-loss compensation claim.

Appellant also submitted records from her physical therapist. These reports, however, do not constitute competent medical evidence because physical therapists are not considered physicians as defined under FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.¹⁷

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's claimed intermittent periods of disability and her accepted employment injury, the Board finds that she has not met her burden of proof.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *K.S.*, Docket No. 19-1433 (issued April 26, 2021); *Deborah J. Szumski*, Docket No. 04-608 (issued August 18, 2005); *Charles E. Evans*, 48 ECAB 692 (1997).

¹⁷ 5 U.S.C. § 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," 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); *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).

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 her burden of proof to establish intermittent disability during the period April 29 through September 7, 2018, causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 30 and 10, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 9, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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