United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 20-1621**
	)	**Issued: June 28, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Los Angeles, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 10, 2020 appellant filed a timely appeal from an August 25, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish total disability from work, commencing May 11, 2019, causally related to his accepted October 30, 2012 employment injury.

FACTUAL HISTORY

On October 30, 2012 appellant, then a 53-year-old city tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on that date, when unloading a heavy mail container, he injured his left knee while in the performance of duty. OWCP accepted the claim

[1] 5 U.S.C. § 8101 *et seq.*

for sprain of unspecified sites of left knee and leg, and tear of the lateral meniscus of the left knee. It later expanded his claim to include left hip strain. Appellant did not immediately stop work.[2]

On September 11, 2014 the employing establishment offered appellant rehabilitation light-duty assignment as a customer care agent -- tier 1, effective October 18, 2014, with a salary of $58,004.00. The physical requirements included sitting in a chair with a supportive back or standing at a workstation, occasional simple grasping, occasional pushing/pulling using a computer mouse, and occasional fine manipulation when using a keyboard. The job was in an office setting and the workstation was ergonomically adjustable. The employing establishment indicated that the assignment was in strict compliance with his medically-defined work limitations of limited walking (as tolerated), no pushing/pulling or lifting over 20 pounds, no driving at work, and avoid climbing ladders. Appellant accepted the job offer.

On January 6, 2017 the employing establishment initiated a "Blue Ribbon Intervention" due to appellant's poor attendance record. The stipulations noted that the employee was having problems with his left knee after undergoing surgery.

Appellant submitted several notes dated January 9 through September 27, 2017 as well as an investigative interview dated June 13, 2017, addressing his absences from work.

On April 3, 2017 the employing establishment issued a letter of warning due to unsatisfactory attendance and unscheduled leave usage. It noted unscheduled absences from December 13, 2016 through March 20, 2017.

On August 1, 2017 the employing establishment issued a seven calendar-day suspension due to unsatisfactory attendance. It noted unscheduled absences beginning May 2 through August 1, 2017.[3]

On July 29, 2019 appellant filed a claim for wage-loss compensation (Form CA-7) for leave without pay (LWOP) for the period May 11 through July 19, 2019 as a result of his accepted employment injury. On the reverse side of the Form CA-7 the employing establishment indicated that "appellant took off on his own[.] Manager has stated that claimant was NOT sent home."

In a July 29, 2019 statement, appellant related that he sustained a work-related left knee injury and underwent a "botched operation" on December 8, 2014, which left him permanently disabled. He noted that he was sent to work in a call center and then sent home for not being able to work and placed in LWOP status for five pay periods. Appellant referenced an attached Form CA-7.

[2] On November 14, 2013 appellant filed a notice of recurrence (Form CA-2a) alleging that on September 14, 2013 he sustained a recurrence of disability causally related to his October 30, 2012 work injury. On December 4, 2013 OWCP accepted appellant's claim for a recurrence of disability.

[3] Appellant submitted work status reports from Dr. Christine M. Calderon, a Board-certified family practitioner, dated February 1 through March 21, 2018. She diagnosed chronic low back pain and left knee joint pain. Dr. Calderon noted that appellant was off work February 1, 2, 6, 7, 14, 15, 16, 21, 22, and 23, 2018, February 28 through March 2, 2018, March 5 through 9, and March 21 through 23, 2018. In a work status report dated March 21, 2018, she evaluated appellant and deemed him able to return to work full capacity on March 24, 2018.

In an August 22, 2019 development letter, OWCP advised appellant that additional evidence was needed to establish disability from work during the period claimed. It noted that the evidence of record indicated that, following his original injury, he continued to work until May 11, 2019 when he stopped completely. OWCP indicated that appellant did not submit any supporting documentation with his claim and the most recent medical evidence addressing his left knee injury was from March 21, 2018. It provided a definition of a recurrence of disability and requested appellant substantiate the factual elements of his claim by responding to a questionnaire. OWCP provided 30 days to submit the requested information.

On September 4, 2019 appellant filed a claim for wage-loss compensation (Form CA-7) for leave without pay (LWOP) for the period July 20 through August 16, 2019 and August 17 through 30, 2019. On the reverse side of the Form CA-7 the employing establishment again indicated that there was no medical evidence on file indicating disability, rather the last medical report dated March 21, 2018 returned appellant to full duty.

By decision dated October 1, 2019, OWCP denied appellant's claim for wage-loss compensation for disability from work commencing May 11, 2019. It indicated that he did not submit any evidence in support of his claim. OWCP found that the medical evidence of record was insufficient to establish that he was disabled from work due to his accepted work-related medical condition.

Appellant was treated by Delia Mendoza-Zesati, a physician assistant, on January 2, 2019 for a left knee injury occurring at work on October 30, 2012. He reported working as a call center operator, but had been off work since June 2018. Appellant indicated that he underwent a failed arthroscopic surgery on December 8, 2014. Ms. Mendoza-Zesati diagnosed left knee meniscus disorder.

On January 11, 2019 appellant was treated by Dr. Dana Haughton McKay, a Board-certified family practitioner, for ongoing left knee pain and a cough. Findings on examination revealed a left knee brace, pain when standing, and lumbar tenderness to palpation. Dr. McKay diagnosed left knee joint pain, chronic low back pain, cough, and dermatitis.

Appellant continued to submit claims for wage-loss compensation (Form CA-7) for leave without pay (LWOP) for the periods: August 31 through September 27, 2019; September 28 through October 25, 2019; October 26 through December 20, 2019; December 23, 2019 through January 3, 2020; January 4 through 31, 2020; February 1 through 28, 2020; and February 29 through March 27, 2020.

On January 10, 2020 appellant was treated by Dr. Paul H. Woodworth, a Board-certified orthopedist, who assessed left knee joint pain. He reported that his left knee continued to be painful, that it buckled daily, and the he had to wear a brace at all times. Appellant noted no relief in symptoms from a knee injection. Findings on examination revealed tenderness over the anterior knee, medial knee, lateral knee, and limited range of motion. Dr. Woodworth referred appellant to pain management.

In an undated statement received by OWCP on April 8, 2020, appellant requested the status of his Form CA-7 claims for compensation. He reported receiving pay stubs reflecting no pay and attached a copy of a paystub from 2020. Appellant submitted several notes dated July 11, 2019

through April 27, 2020. He asserted that he would continue to submit CA-7 claims for compensation.

OWCP received additional evidence. A July 10, 2018 Letter of Instruction from the employing establishment indicated that, effective July 11, 2018, appellant was placed on paid administrative leave during the pendency of the disciplinary process and was required to not report to work until further notice. OWCP received a May 6, 2019 letter from the employing establishment informing appellant that the agency was placing him in a LWOP status, effective May 11, 2019. It indicated that appellant was placed in administrative pay status in August 2018 with the understanding that he would cooperate with the agency's interactive reasonable accommodation process. However, after eight months, appellant failed to provide the requested documents needed to evaluate the request and identify reasonable accommodation.

On May 5, 2020 appellant requested reconsideration.

OWCP received additional Form CA-7 claims for wage-loss compensation for disability from work during the periods March 28 through April 24, 2020, and April 25 through May 22, 2020.

In a June 12, 2020 development letter, OWCP requested additional information from the employing establishment. It noted that appellant was requesting reconsideration of the decision denying compensation beginning May 11, 2019. OWCP indicated that the Form CA-7 dated July 29, 2019 noted that appellant took off on his own and that the manager did not send him home. It requested documentation regarding the light-duty position appellant was working prior to his claim for disability on May 11, 2019. OWCP further requested evidence to support the employing establishment's claim that appellant was not sent home as a result of the employer's inability to accommodate his work restrictions.

Appellant submitted a June 25, 2020 statement and indicated that, upon receipt of the July 10, 2018 Letter of Instruction, he was escorted out of the building and off the property.

OWCP received an August 14, 2018 employing establishment memorandum regarding a Notice of Removal dated July 6, 2018, which charged appellant with failure to maintain regular attendance/failure to follow instructions. It provided a 30 days' notice of his removal, which was effective August 13, 2018.

In an August 7, 2020 follow-up letter, OWCP requested additional information from the employing establishment. It requested the date appellant returned to work after his surgery on December 8, 2014, whether he returned to his previous light-duty position at the customer care center, whether he continued the light-duty job until he was placed on administrative leave on July 11, 2018, and copies of written job offers.

In response to OWCP's development letter, L.F., appellant's supervisor, indicated that appellant returned to work on April 6, 2015. It was unknown whether he returned to his previous light-duty job or if he stayed in that position until placed on administrative leave. L.F. did not remember appellant having any special accommodations. The employing establishment submitted a March 28, 2019 revised rehabilitation assignment offer for a customer care agent -- tier 1, effective March 30, 2019, with a salary of $63,283.00. The physical requirements of a customer care agent included sitting in a chair with a supportive back or standing at a workstation, occasional

simple grasping, occasional pushing/pulling using a computer mouse, occasional fine manipulation when using a keyboard. The job was in an office setting and the workstation was ergonomically adjustable. The employing establishment indicated that the assignment was in strict compliance with his medically-defined work limitation and was not changed from the previous rehabilitation offer.

By decision dated August 25, 2020, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[5] 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.[6] Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues, which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.[7] Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.[8]

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.[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]

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence addressing the specific dates of disability for which compensation is claimed.

[4] 5 U.S.C. § 8101 *et seq.*

[5] *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *Id*.; *William A. Archer*, 55 ECAB 674 (2004).

[7] *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, *id.*

[8] *Dean E. Pierce*, 40 ECAB 1249 (1989).

[9] 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[10] *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

[11] *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.[12]

Where employment is terminated, disability benefits would be payable if the evidence of record established that the claimant was terminated due to injury-related physical inability to perform assigned duties, or the medical evidence of record established that the claimant was unable to work due to an injury-related disabling condition.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish total disability from work, commencing May 11, 2019, causally related to his accepted October 30, 2012 employment injury.

OWCP accepted that on October 30, 2012 appellant sustained sprain of unspecified sites of left knee and leg, tear of the lateral meniscus of the left knee, and left hip strain. Appellant underwent OWCP-authorized left knee surgery on December 8, 2014 and he returned to limited-duty work on April 6, 2015. He was removed from federal employment, effective August 13, 2018, due to irregular attendance/failure to follow instructions. Appellant has alleged that his irregular attendance was due to his work-related injury. The Board has held that, when a claimant stops work for reasons unrelated to his or her accepted employment injury, he or she has no disability within the meaning of FECA.[14] Therefore, it is appellant's burden to submit sufficient medical evidence to establish that he was unable to work due to an injury-related disabling condition.[15]

During his claimed period of disability, appellant received medical treatment from Dr. Woodworth who assessed left knee joint pain. Appellant reported no relief in symptoms after a knee injection and indicated that his left knee continues to be painful, it buckles daily, and he must wear a brace at all times. Findings on examination revealed tenderness over the anterior knee, medial knee, lateral knee, and limited range of motion. Dr. Woodworth, however, did not specifically address the relevant issue of disability from employment and, thus, his report is of no probative value.[16]

Dr. McKay's January 11, 2019 report predates the claimed period of disability and does not otherwise provide medical rationale explaining whether and why appellant was disabled from work for the period beginning May 11, 2019 causally related to his October 30, 2012 employment

[12] *See B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, *supra* note 7; *see also C.S.*, Docket No. 17-1686 (issued February 5, 2019).

[13] *S.S.*, Docket No. 18-1680 (issued March 4, 2019); *S.J.*, Docket No. 17-0783 (issued April 9, 2018).

[14] *V.M.*, Docket No. 16-0062 (issued May 18, 2016); *E.S.*, Docket No. 11-0657 (issued February 9, 2012); *see John W. Normand*, 39 ECAB 1378 (1988).

[15] *S.S.*, *supra* note 13.

[16] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *see also William A. Archer*, *supra* note 6 (the Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of claimed disability).

injury.[17] Without a medical explanation, supported by objective findings, explaining why appellant was disabled on specific dates due to the accepted employment injury, appellant would be self-certifying disability.[18]

Appellant also received medical treatment from Ms. Mendoza-Zesati, a physician assistant. Her medical notes, dated January 2, 2019, predate the claimed period of disability and are of no probative value to establish appellant's disability claim because physician assistants are not considered physicians as defined under FECA.[19]

As the medical evidence of record does not contain sufficient rationale to establish disability during the claimed period, the Board finds that appellant has not met his 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 his burden of proof to establish total disability from work for the period commencing May 11, 2019 due to his accepted October 30, 2012 employment injury.

[17] *Id.*

[18] *See B.K., supra* note 12; *Amelia S. Jefferson, supra* note 7; *see also C.S., supra* note 12.

[19] Section 8101(2) of FECA 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." 5 U.S.C. § 8101(2); 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).

ORDER

IT IS HEREBY ORDERED THAT the August 25, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 28, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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