United States Department of Labor
Employees' Compensation Appeals Board

T.W., Appellant	)	
and	)	**Docket No. 20-1669**
	)	**Issued: May 6, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Cynthiana, KY, 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 28, 2020 appellant filed a timely appeal from an April 1, 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 her burden of proof to establish disability from work for the period commencing on August 31, 2019 causally related to her accepted employment injury.

FACTUAL HISTORY

On July 17, 2019 appellant, then a 55-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she fractured her right arm while in the performance of

[1] 5 U.S.C. § 8101 *et seq.*

duty. She explained that she had just delivered a parcel on a porch when she began to hear dogs barking. As the barking became louder, appellant began rushing towards her long life vehicle (LLV). She then tripped over gravel and fell towards her LLV, hitting the upper part of her right arm on the step plate of the LLV. Appellant stopped work on July 18, 2019.

On September 12, 2019 OWCP accepted appellant's claim for a displaced spiral fracture of the shaft of the humerus of the right arm and a closed fracture of the shaft of the humerus of the right arm.

In medical reports dated August 5 and 12, 2019, Dr. Schwindel evaluated appellant in relation to her right humerus fracture and observed that she was experiencing moderate-to-mild pain.

In a September 5, 2019 medical report, Dr. Schwindel diagnosed a closed spiral fracture of the shaft of the right humerus and advised that appellant continue to wear her brace and begin physical therapy when approved to do so. In a September 5, 2019 Form CA-17, he diagnosed a right humerus fracture and advised that appellant was not able to perform her regular work duties. In a diagnostic report of even date, Dr. Bond performed an x-ray scan of appellant's right humerus, noting no change in the healing fracture of the right humerus.

On September 23 and 30, 2019 appellant submitted claims for wage-loss compensation (Form CA-7) for disability from work for the periods August 31 to September 13, 2019 and August 14 to September 27, 2019, respectively.

In medical reports dated July 19 and 26, 2019, Dr. Schwindel reviewed x-ray scans of appellant's right humerus and diagnosed a closed displaced spiral fracture of the shaft of the right humerus and advised that she remain in a brace before rechecking her x-ray scans.

In a September 23, 2019 medical report, Dr. Schwindel noted that appellant's right humerus fracture was healing well and that she still experienced some soreness. In a diagnostic report of even date, Dr. Bond performed an x-ray scan of her right humerus, noting healing of the right mid shaft humeral fracture.

In a September 25, 2019 Form CA-17, Dr. Schwindel diagnosed a right humerus fracture and advised that appellant was not able to perform her regular work duties.

In therapy reports dated September 30 and October 2, 2019, Anne Vandergriff, a physical therapist, evaluated appellant for her right arm fracture of the shaft of the humerus and developed a physical therapy treatment plan for her to follow.

In an October 4, 2019 development letter, OWCP requested that the employing establishment submit information concerning appellant's total wages and pay status for the period July 18 through August 30, 2019. It afforded the employing establishment 15 days to submit the requested evidence.

In therapy reports dated October 4 and 7, 2019, Ms. Vandergriff provided treatment notes relating to appellant's right shoulder physical therapy.

In an October 9, 2019 Form CA-17, Dr. Schwindel diagnosed a right humerus fracture and advised that appellant would be able to resume work as of that day.

In therapy reports dated October 10 to 21, 2019, Ms. Vandergriff provided treatment notes relating to appellant's right shoulder physical therapy.

In a development letter dated October 28, 2019, OWCP requested that appellant submit a well-reasoned medical report from her attending physician detailing whether objective findings related to her accepted condition restricted her from performing full-duty work. It afforded her 30 days to submit the requested evidence.

In an October 25, 2019 medical report, Dr. Schwindel observed that appellant was completely out of her arm brace, working part time, and still working through physical therapy in order to treat her mid-shaft humerus fracture. In a medical note of even date, she referred appellant to physical therapy for strength conditioning and advised that she was to return to work without restrictions. In an October 25, 2019 diagnostic report, Dr. Bond performed an x-ray scan of appellant's right humerus, noting healing of the mid shaft humerus fracture.

On November 1, 2019 appellant submitted Form CA-7s seeking compensation for disability for the period September 28 to October 25, 2019. In time analysis form (Form CA-7a) of even date, she claimed 61.5 hours of LWOP used for the period September 28 to October 11, 2019 and 40.2 hours of LWOP used for the period October 12 to 25, 2019 due to her physician's restrictions.

In therapy notes dated from October 24 to November 22, 2019, Ms. Vandergriff provided treatment updates for appellant's right shoulder therapy as she began her work conditioning.

On November 25, 2019 appellant submitted Form CA-7 claims for compensation for disability for the period October 26 to November 22, 2019. In Form CA-7s of even date, she claimed 44.5 hours of LWOP used for the period October 26 to November 8, 2019 and 55.25 hours of LWOP used for the period November 9 to 22, 2019.[2]

In a November 25, 2019 diagnostic report, Dr. Bond performed an x-ray scan of appellant's right humerus, observing healing of the right mid shaft humeral fracture.

In a December 4, 2019 letter, the employing establishment provided that no limited-duty work was available for appellant on various days from October 29 to November 22, 2019 and she, accordingly, did not work on those days.

By decision dated December 20, 2019, OWCP denied appellant's claim, finding that she had not established disability from work for the period commencing August 31, 2019 causally related to her accepted medical conditions. It found that, with respect to the claimed period of

[2] Appellant's supervisor verified that appellant used 43.78 hours of LWOP and provided that she was entitled to 32.64 hours per week for the period October 26 to November 8, 2019 and verified 54.43 hours of LWOP and provided that she was entitled to 32.64 hours per week for the period November 9 to 22, 2019.

disability, "the additional medical evidence of record at this time fails to support disability during the period you claimed."

OWCP continued to receive evidence. Appellant resubmitted copies of medical reports dated from July 17 to November 25, 2019 from Dr. Schwindel.

On April 1, 2020 OWCP denied modification of its December 20, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.[4] 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.[5] 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.[6]

Under FECA, the term "disability" means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.[7] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any 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 specific employment factors identified by the claimant.[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

[3] *Supra* note 1.

[4] *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *D.P.*, Docket No. 18-1439 (issued April 30, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

[5] *Id.*; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[6] 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020).

[7] *Id.* at § 10.5(f); *see J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[8] *J.T.*, *id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

[9] *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period August 31 to November 22, 2019 causally related to her accepted employment injury.

In medical reports dated July 19 to October 25, 2019, Dr. Schwindel diagnosed a closed spiral fracture of the shaft of the right humerus and provided treatment notes related to her recovery as she wore a brace on her right arm and participated in physical therapy. As of her October 25, 2019 medical report, she referred appellant to work conditioning and advised that she was able to return to work. However, Dr. Schwindel offered no opinion as to whether appellant's accepted conditions were the cause of her disability. The Board has held that medical evidence that does not provide an opinion regarding whether a period of disability is due to an accepted employment condition is of no probative value and, thus, is insufficient to establish a claim.[11] Dr. Schwindel did not provide rationale explaining how or why appellant was disabled from work. Consequently, her reports are insufficient to meet appellant's burden of proof.[12]

Appellant also submitted Form CA-17s dated from July 19 to October 9, 2019 in which Dr. Schwindel diagnosed a right humerus fracture and advised that she was unable to perform her regular employment duties until October 9, 2019. However, these Form CA-17 reports are mere form reports and do not contain a rationalized opinion on whether the accepted July 17, 2019 employment injury caused disability from work during the claimed period. Consequently, they are of no probative value on the issue of causal relationship and are insufficient to establish appellant's claim.[13]

In Dr. Schwindel's July 19, 2019 Form CA-20, she diagnosed a right closed humeral shaft fracture and checked a box marked "Yes" to indicate her belief that appellant's injury was caused by the July 17, 2019 employment incident. However, she did not explain how the accepted July 17, 2019 employment incident resulted in appellant's disability from work. The Board has held that an opinion on causal relationship with an affirmative check mark, without more by way of medical rationale, is insufficient to establish the claim.[14] As such, the July 19, 2019 Form CA-20 is insufficient to establish appellant's claim.

[10] *D.P., supra* note 4; *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[11] *See L.L.*, Docket No. 19-1794 (issued October 2, 2020); *C.R.*, Docket No. 19-1427 (issued January 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] *Id*.

[13] *A.A.*, Docket No. 19-0957 (issued October 22, 2019); *L.D.*, Docket No. 19-0263 (issued June 19, 2019).

[14] *See C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

In his July 17, 2019 medical report, Dr. Chesnut treated appellant for her humerus fracture, which she sustained after falling at work. He observed an obvious deformity of the right arm and ordered x-ray scans of her right humerus for further evaluation. However, as Dr. Chesnut's medical report offered no opinion regarding whether appellant's claimed period of disability was due to her accepted condition, his medical report is insufficient to meet appellant's burden of proof.[15]

Appellant also submitted multiple diagnostic reports dated from July 17 to November 25, 2019 in which she underwent multiple x-ray scans of her right humerus. However, the Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions or associated disability.[16] For this reason, the diagnostic reports of record are insufficient to establish appellant's burden of proof.

The remaining medical evidence of record consists of therapy reports dated from September 30 to November 22, 2019 signed by a physical therapist. The Board has consistently held that certain healthcare providers such as physician assistants, registered nurses, physical therapists, and social workers are not considered physicians as defined under FECA.[17] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[18]

As the medical evidence of record is insufficient to establish disability from work commencing August 31, 2019, the Board thus 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 August 31 to November 22, 2019 causally related to her accepted employment injury.

[15] *Supra* note 11.

[16] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[17] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[18] 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). *See also T.W.*, Docket No. 19-1412 (issued February 3, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *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); *D.H.*, Docket No. 18-0072 (issued January 21, 2020) (physical therapists are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 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