

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

M.M., Appellant)	
)	
and)	Docket No. 21-1342
)	Issued: November 2, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Mayfield Heights, OH, 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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On August 27, 2020 appellant, through counsel, filed a timely appeal from a July 24, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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 an 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 Appellant, through counsel, also appealed from a separate July 24, 2020 merit decision issued under OWCP File No. xxxxxx516. That appeal will be addressed under Docket No. 20-1557.

³ 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent disability from work during the period February 24 through November 22, 2016 causally related to her accepted November 27, 2015 employment injury.

FACTUAL HISTORY

On December 13, 2015 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 2, 2015 she injured the knuckle of her right hand when loading her vehicle while in the performance of duty. She stopped work on November 27 and returned to work on November 30, 2015. OWCP accepted the claim for an abrasion of the right hand, and assigned OWCP File No. xxxxxx745.⁴

On January 29, 2016 appellant underwent a right dorsal hand mass excision with soft tissue rearrangement. She stopped work on January 29, 2016, returned to part-time employment on February 24, 2016, and then to full-time employment on March 3, 2016.

On November 3, 2016 Dr. Bev Guo, a Board-certified orthopedic surgeon, evaluated appellant for drainage from the surgical site. She diagnosed a presumed pyogenic granuloma and recommended a magnetic resonance imaging (MRI) scan to confirm that the lesion was benign.

On July 11, 2017 appellant filed a claim for compensation (Form CA-7) requesting leave buy back for intermittent disability from January 12 to December 9, 2016. Time analysis forms (Form CA-7a) dated January 8, 2017 provided the number of hours claimed, but not the reason for the leave used.

By letter dated November 7, 2017, OWCP indicated that it had accepted only an abrasion of the right hand as employment related. It advised that it appeared that appellant was claiming wage loss due to surgery for a preexisting condition of the hand. OWCP notified her that it must first determine whether her surgery was employment related before adjudicating her request for leave buy back.

Thereafter, OWCP received a February 11, 2016 report from Dr. Guo, who had evaluated appellant two weeks after her right dorsal mass excision. Dr. Guo diagnosed a right dorsal hand pyogenic granuloma. She opined that appellant should remain off work one more week and could then, if her skin had healed, return to work without restrictions.

On March 2, 2016 Dr. Guo noted that appellant had good range of motion, some tightness over the scar, but no other complaints. She released her to follow up on an as needed basis.

⁴ OWCP subsequently accepted that appellant sustained a left wrist contusion, a left hand contusion, a left forearm contusion, a left knee sprain, bilateral knee abrasions, a right forearm abrasion, and a left wrist abrasion on June 10, 2016, assigned OWCP File No. xxxxxx030. It administratively combined the claims with OWCP File No. xxxxxx745 serving as the master file.

In a May 4, 2016 report, Dr. Guo evaluated appellant for right hand pain after an injury two weeks prior at work.⁵ She diagnosed a right hand contusion.

On December 7, 2017 Dr. David J. Slutsky, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), opined that appellant's January 29, 2017 right hand surgery was medically necessary and causally related to her accepted employment injury.

On February 5, 2020 OWCP advised that it had not received the necessary medical documentation supporting the additional hours claimed in 2016 and informed her of the need to submit a medical report or therapy slip verifying an appointment for the time claimed. It afforded appellant 30 days to submit the requested evidence. No additional evidence was received.

By decision dated March 6, 2020, OWCP denied appellant's claim for compensation for intermittent disability from work.

On March 17, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on June 5, 2020.

By decision dated July 24, 2020, OWCP's hearing representative affirmed the March 6, 2020 decision, finding that the medical evidence of record was insufficient to establish that appellant was intermittently disabled from work during the claimed period.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁷ The term disability is defined as the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of 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 probative and reliable medical opinion evidence.¹⁰

⁵ The record contains a June 15, 2016 duty status report (Form CA-17) providing work restrictions; however, the signature of the provider and most of the form is illegible.

⁶ *Supra* note 3.

⁷ *See T.A.*, Docket No. 18-0431 (issued November 7, 2018).

⁸ 20 C.F.R. § 10.5(f); *C.T.*, Docket No. 20-0786 (issued August 20, 2021); *S.T.*, Docket No. 18-0412 (issued October 22, 2018).

⁹ *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *William A. Archer*, 55 ECAB 674 (2004).

¹⁰ *See K.C.*, Docket No. 17-1612 (issued October 16, 2018).

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

The Board finds that appellant has not met her burden of proof to establish intermittent disability from February 24 through November 22, 2016 causally related to her accepted November 27, 2015 employment injury.

On March 2, 2016 Dr. Guo advised that appellant had good range of motion after her right dorsal mass excision with some tightness over the scar. She released her to follow up on an as needed basis. In a May 4, 2016 report, Dr. Guo diagnosed a right hand contusion after an work injury two weeks prior. On November 3, 2016 she diagnosed a presumed pyogenic granuloma and recommended an MRI scan study. However, Dr. Guo did not address the question of whether appellant was able to work for the periods claimed. As noted, 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.¹² Dr. Guo's reports do not contain a medical opinion regarding appellant's disability from work for any specific dates due to the accepted condition. Accordingly, they are of no probative value and insufficient to establish appellant's claim.¹³

As the evidence of record is insufficient to establish that appellant was intermittently disabled from work during the claimed period, the Board finds that she has not met her burden of proof to establish her claim.

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 from work during the period February 24 through November 22, 2016 causally related to her accepted November 27, 2015 employment injury.

¹¹ *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹² *C.T.*, Docket No. 20-0786 (issued August 20, 2021); *Fereidoon Kharabi*, *id.*.

¹³ *See M.V.*, Docket No. 20-0872 (issued January 27, 2021); *C.S.*, Docket No. 19-1279 (issued December 30, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 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