

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

_____)	
H.A., Appellant)	
)	
and)	Docket No. 20-1555
)	Issued: December 22, 2022
U.S. POSTAL SERVICE, POST OFFICE, San Diego, CA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On August 27, 2020 appellant, through counsel, filed a timely appeal from a July 23, 2020 merit decision 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 23, 2020 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 his burden of proof to establish disability from work, commencing September 3, 2019, causally related to his accepted employment injury.

FACTUAL HISTORY

On April 16, 2019 appellant, then a 66-year-old mail clerk, filed an occupational disease claim (Form CA-2) alleging that he developed plantar fasciitis in his right foot due to factors of his federal employment. He noted that he first became aware of his condition on February 20, 2019 and realized its relation to his federal employment on February 27, 2019. Appellant asserted that he saw his doctor due to pain in the bottom of his right foot and the doctor informed him that the type of work he performed for long periods of time caused him to tear his plantar fascia. He stopped work on April 16, 2019.

OWCP accepted appellant's claim for right foot pes planus, right foot plantar fascial fibromatosis, right foot strain of unspecified muscle and tendon at the ankle and foot level, and contusion of the right foot.

Appellant submitted a July 17, 2019 diagnostic report wherein Dr. Michael Wong, a Board-certified radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's right foot and diagnosed plantar fasciitis including a moderate to high-grade tear involved in the central, medial and lateral cords of the plantar fascia from there calcaneal attachments, a grade one strain of the muscle belly of the central cord/flexor digitorum brevis, osseous edema of the middle cuneiform and mild subcutaneous edema of the foot.

In a July 24, 2019 medical report, Dr. Paul Jain, Board-certified in internal medicine, provided a report relating to appellant's right foot conditions and advised that he remain on temporary partial disability with light-level duty restrictions.

In a September 3, 2019 medical report, Dr. Paul Kim, Board-certified in pain management, reviewed appellant's treatment for his right foot injury and held him off work with no prolonged standing or walking, and only sitting duties if available. Dr. Kim indicated that if sitting duties were not available, appellant would be held off work for recovery and healing. In a duty status report (Form CA-17) of even date, Dr. Kim diagnosed right foot plantar fasciitis and checked boxes marked "No," advising that appellant should not resume work and that he was unable to perform his regular work duties. He held appellant off work until October 1, 2019, and provided restrictions of no standing, walking, or climbing.

Appellant subsequently filed a claim for wage-loss compensation (Form CA-7) for disability from work commencing September 3, 2019.

In an October 1, 2019 medical report, Dr. Kim evaluated appellant's right foot injury and opined that he could return to work with restrictions.

In a development letter dated October 3, 2019, OWCP informed appellant of the deficiencies of his claim for compensation. It advised him of the type of medical evidence needed to establish his claims and afforded him 30 days to respond.

In Form CA-17 duty status reports dated October 1 and 28, 2019, Dr. Kim diagnosed right foot plantar fasciitis and checked a box marked, “No” indicating that appellant was disabled from work. He held appellant off work through November 25, 2019.

In an October 28, 2019 medical report, Dr. Kim reviewed appellant’s history of treatment for his accepted right foot conditions. He reviewed an October 2, 2019 medical evaluation in which Dr. Noushin Shoaee, a Board-certified podiatrist, suggested that appellant needed to have his foot and ankle immobilized with absolutely no weight bearing. Dr. Kim recommended that he perform no weight bearing, which could progressively aggravate the grade one tear of the plantar fascia region. He noted that appellant attempted to continue working through September 3, 2019, but was unable to tolerate his work, bear any weight on his foot or perform duties involving walking. Dr. Kim agreed with Dr. Shoaee’s recommendation that he perform no weight bearing as it could severely impact his recovery and placed him on temporary total disability.

On December 3 and 24, 2019 appellant filed additional Form CA-7 claims for compensation.

Appellant also submitted a December 23, 2019 Form CA-17 in which Dr. Kim diagnosed right foot plantar fasciitis and checked a box marked “No” to indicate that appellant was disabled from work. He held appellant off work through January 20, 2020.

By decision dated January 14, 2020, OWCP denied appellant’s Form CA-7 claims for compensation, finding that the medical evidence of record was insufficient to establish disability from work, commencing September 3, 2019, causally related to the accepted employment injury.

OWCP continued to receive evidence. In an October 2, 2019 form report, Dr. Shoaee noted diagnoses of right foot medium-high grade tear of the central/medium/lateral plantar fascia, strain of the right foot and right foot edema of the middle cuneiform due to appellant’s employment duties as a mail handler.

In a November 25, 2019 medical report, Dr. Kim observed appellant’s history of treatment for his right foot conditions related to his employment duties. He advised that appellant continue with immobilization and cast placement of his right foot and ankle, per Dr. Shoaee’s suggestions and that he continue with no weight bearing. Dr. Kim held appellant off work through December 23, 2019.

In a December 23, 2019 medical report, Dr. Kim reviewed appellant’s treatment for his accepted right foot conditions and indicated that he continued to utilize a walking boot with no weight bearing to his right foot. He continued to hold appellant off work with no weight bearing on the right foot for four weeks, explaining that any weight bearing on the right foot can severely impact his recovery and healing.

In a January 20, 2020 medical report, Dr. Kim recounted appellant’s treatment in relation to his accepted right foot conditions as well as his subsequent care from Dr. Shoaee. He diagnosed plantar fasciitis fibromatosis, a strain of the unspecified muscle and tendon at the ankle and foot level, a contusion of the right foot, right foot pes planus, right foot osseous edema of the middle cuneiform and right foot subcutaneous edema of the foot. In a Form CA-17 of even date, Dr. Kim diagnosed right foot plantar fasciitis and held appellant off work through February 17, 2020.

On February 6, 2020 appellant submitted an additional Form CA-7 claim for compensation for disability from work for the period December 24, 2019 through February 6, 2020.

In a February 10, 2020 medical report, Dr. Kim indicated that appellant was first placed on limited-duty restrictions on July 24, 2019 and that when he returned for a follow-up appointment on September 3, 2019 he was held off work as he was still experiencing pain on limited-duty assignment. Dr. Kim provided that removing his work duties that were aggravating and progressively worsening his medical conditions was necessary in order for him to reach maximum medical improvement (MMI). On October 1, 2019 he advised that appellant could return to work only performing sit-down duties, but he was informed that there were no sit-down work duties available for appellant. On October 28, 2019 appellant was again held off work. Dr. Kim concluded that because there had been no sit-down work duties available for him, appellant had been held off work since September 3, 2019.

In a February 17, 2020 medical report, Dr. Kim noted his evaluation of appellant for a follow-up appointment concerning his diagnosed right foot conditions. He found that appellant was still symptomatic and referred him for a possible surgical procedure. Dr. Kim advised that he continue with his current course of treatment and therapy and suggested that he remain off work as he was unable to tolerate any walking, standing, driving or any of his usual physical duties. In a Form CA-17 of even date, he diagnosed right foot plantar fasciitis, advised that appellant was not able to perform his regular work duties and continued to hold him off work.

On February 24, 2020 appellant informed Dr. Shoae that his condition was approximately 50 percent improved and only encountered pain in his right foot after three minutes of standing.

In a March 10, 2020 medical report, Dr. Kim observed that appellant remained symptomatic for his right foot conditions after a course of conservative treatments. He indicated that appellant had been removed from his cast and that he could not tolerate standing on his right foot for more than a few minutes as it caused a severe exacerbation of his symptoms. Dr. Kim offered that it was imperative that he remain off work until a more definitive treatment could be implemented. In a Form CA-17 of even date, he diagnosed right foot plantar fasciitis, advised that appellant was not able to perform his regular work duties and held appellant off work.

Appellant submitted a Form CA-7 claim for compensation for disability from work during the period February 7 through March 16, 2020.

On April 13, 2020 appellant requested reconsideration of OWCP's January 14, 2020 decision.

OWCP continued to receive medical evidence. In an April 7, 2020 medical report, Dr. Kim observed appellant's history of treatment in relation to his right foot conditions and advised him to follow up with Dr. Shoae for further recommendations for a possible surgical procedure.

In an April 8, 2020 Form CA-17, Dr. Kim diagnosed right foot plantar fasciitis, advised that appellant was not able to perform his regular work duties and held him off work.

On April 16, 2020 appellant filed a Form CA-7 claim for compensation for disability from work for the period of March 17 through April 16, 2020.

In a May 5, 2020 medical report, Dr. Kim observed appellant's history of treatment for his right foot conditions and that he continued to have persistent pain and could not apply pressure or walk on his foot as the pain in his right foot severely increased when he did so. He advised that appellant continue with his current course of treatment until he was evaluated by Dr. Shoaee again for possible surgical intervention. In a Form CA-17 of even date, Dr. Kim diagnosed right foot plantar fasciitis, advised that appellant was not able to perform his regular work duties and held him off work.

On May 8, 2020 appellant filed a Form CA-7 claim for compensation for disability from work for the period April 17 through May 8, 2020.

In a June 2, 2020 medical report, appellant informed Dr. Kim that he experienced an ongoing dull and achy pain in his right foot, which was aggravated by any weight bearing, standing or walking. He advised that he resume his course of conservative treatments until his surgical intervention as his symptoms were much more stable with treatment. Dr. Kim found that appellant should remain off work as he was certainly unable to tolerate any of his work activities. In a Form CA-17 of even date, he diagnosed right foot plantar fasciitis, advised that appellant was not able to perform his regular work duties and held appellant off work.

On June 8, 2020 appellant filed a Form CA-7 claim for compensation for disability from work for the period May 9 through June 8, 2020.

In a July 2, 2020 Form CA-17, Dr. Kim advised that appellant was not able to perform his regular work duties and held him off work.

On July 8, 2020 appellant filed a Form CA-7 claim for compensation for disability from work for the period June 9 through July 8, 2020.

By decision dated July 23, 2020, OWCP denied modification of its January 14, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.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 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.⁷

⁴ *Supra* note 2.

⁵ *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).

⁶ *Id.*; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

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

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.⁸ 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.⁹

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 accepted employment injury.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

The Board finds that appellant has not met his burden of proof to establish disability from work, commencing September 3, 2019, causally related to his accepted employment injury.

Appellant submitted a series of medical reports from Dr. Kim dated September 3, 2019 through June 2, 2020 in which he evaluated appellant’s conservative treatment for his right foot symptoms as they related to his diagnosed right foot pes planus, right foot plantar fasciitis, right foot grade one strain of the muscle belly of the central cord/flexor digitorum brevis, right foot osseous edema of the middle cuneiform with stress injury and right foot subcutaneous edema and the foot and mild diffuse muscle edema of the midfoot. Dr. Kim opined that appellant was disabled from work beginning September 3, 2019 as there were no limited-duty assignments available for him where he could perform his duties while sitting. He explained that weight bearing on the right foot, standing, walking and the other physical activities involved in appellant’s work duties aggravated and progressively worsened his conditions and reasoned that it was necessary for him to be placed on temporary total disability in order for him to reach MMI. Although Dr. Kim provided an opinion that appellant was disabled from work during the claimed period, he did not sufficiently explain how objective findings on physical examination and diagnostic testing showed that appellant could not perform his regular work due to the effects of his accepted employment conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain sufficient medical rationale explaining how a given medical

⁸ *Id.* at § 10.5(f); *see J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁹ *J.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

¹¹ *D.P.*, *supra* note 5; *Sandra D. Pruitt*, 57 ECAB 126 (2005).

condition/period of disability has an employment-related cause.¹² Therefore, Dr. Kim's medical reports are insufficient to establish appellant's disability claim.

Dr. Kim's remaining medical evidence consisted of a series of Form CA-17s dated September 3, 2019 to July 2, 2020 in which he opined that appellant was disabled from performing his regular work duties and held him off work. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/period of disability has an employment-related cause.¹³ Therefore, this evidence is insufficient to establish appellant's disability claim.

Appellant also submitted a July 24, 2019 medical report in which Dr. Jain reviewed appellant's employment duties and on evaluation diagnosed right foot pes planus, right foot plantar fasciitis, a right foot grade one strain of the muscle belly of the central cord/flexor digitorum brevis, right foot osseous edema of the middle cuneiform with stress injury and right foot subcutaneous edema and the foot and mild diffuse muscle edema of the midfoot. He opined that appellant was disabled from work and opined that his conditions were caused by the cumulative trauma of his employment duties. However, this report is of no probative value on the underlying issue of this case as it predates the claimed period of disability.¹⁴ As such, Dr. Jain's medical report is insufficient to establish appellant's disability claim.

Additionally, appellant submitted reports dated October 2, 2019 and February 24, 2020 where Dr. Shoae observed a diagnosis of a right foot medium-high grade tear of the central/medium/lateral plantar fascia, a strain of the right foot and right foot edema of the middle cuneiform due to appellant's employment duties as a mail handler and provided treatment notes. However, Dr. Shoae did not address disability. The Board has held that medical evidence that fails to provide an opinion that an employee was disabled from work during the claimed period of disability due to the accepted employment injury is of no probative value.¹⁵ For this reason, Dr. Shoae's reports are insufficient to establish appellant's disability claim.

The remaining medical evidence consisted of an MRI scan of appellant's right foot. 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, Dr. Wong's medical evidence is of no probative value.

As the medical evidence of record is insufficient to establish causal relationship between the claimed disability and the accepted employment injury, the Board finds that appellant has not met his burden of proof.

¹² See *S.K.*, Docket No. 19-0272 (issued July 21, 2020); *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹³ *Id*

¹⁴ See *R.G.*, Docket No. 18-0027 (issued May 13, 2019); *V.G.*, Docket No. 17-1425 (issued February 16, 2018); *M.C.*, Docket No. 15-1762 (issued August 26, 2016).

¹⁵ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

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

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 disability from work, commencing September 3, 2019, causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 23, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board