United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 22-1182**
	)	**Issued: August 7, 2023**
U.S. POSTAL SERVICE, POST OFFICE, Tallassee, AL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On August 5, 2022 appellant filed a timely appeal from a June 27, 2022 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.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work commencing March 26, 2022 causally related to his accepted October 24, 2016 employment injury.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the June 27, 2022 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*.

FACTUAL HISTORY

On November 8, 2016 appellant, then a 32-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 24, 2016 he strained his lower back lifting items while in the performance of duty. OWCP accepted the claim for lumbar sprain. It subsequently expanded its acceptance of the claim to include other intervertebral disc displacement at L4-5. Appellant stopped work on February 10, 2017 and returned to part-time modified employment on July 22, 2017. OWCP paid him wage-loss compensation on the supplemental rolls.

In a report dated March 18, 2022, Dr. Bradley Katz, a Board-certified anesthesiologist, evaluated appellant for pain in his low back that increased with physical activity. He noted that appellant's pain began after a 2016 employment injury, and had worsened over the last month. Dr. Katz diagnosed lumbar degenerative disc disease, lumbar spondylosis, sacroiliitis, and lumbar radiculitis.

A notification of personnel action (Standard Form SF-50) indicated that appellant resigned effective March 4, 2022; however, an SF-50 dated March 9, 2022 indicated that he had timely rescinded his resignation.

In a progress report dated April 5, 2022, Dr. Joel McCloud, Jr., an internist, noted that appellant remained off work after a "recurrence of his chronic lumbar regional pain." He indicated that he had "limitations which significantly prohibit his ability to remain at work." Dr. McCloud provided findings on examination, and diagnosed chronic back pain due to chronic lumbar region pain and spasm and secondary radiculopathy. He recommended a magnetic resonance imaging (MRI) scan and noted that he would fill out paperwork for workers' compensation. In a duty status report (Form CA-17) of even date, Dr. McCloud provided work restrictions.

On May 13, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period March 26 through April 8, 2022. On May 20, 2022 he filed a Form CA-7 for disability from work for the period March 12 through 25, 2022 due to his accepted work injury. He continued to file Form CA-7s requesting wage-loss compensation for subsequent periods.

In a development letter dated May 24, 2022, OWCP requested that appellant clarify whether he had resigned, the date of his work stoppage, and his leave usage. It further requested that he explain the reason for his total disability given that a limited-duty assignment was available. OWCP afforded appellant 30 days to submit the requested evidence.

OWCP subsequently received an April 18, 2022 report from Dr. Katz. Dr. Katz discussed appellant's complaints of sacroiliac pain and noted that it was "related to a workplace injury." He opined that his "symptoms are work related." Dr. Katz diagnosed inflammation of the sacroiliac joint.

In a May 31, 2022 response, appellant asserted that his back had healed incorrectly after his October 24, 2016 employment injury because of OWCP's delay in accepting his claim. He accepted a light-duty position, but knew he could not physically maintain the work. Appellant subsequently took a job as a customer service supervisor but found that the work entailed more standing, lifting, and bending. He advised that he had reinjured his back working as a supervisor, because it involved doing the same duties that he performed as a letter carrier.

Appellant submitted physical therapy reports dated April 2022.

By decision dated June 27, 2022, OWCP denied appellant's claim for compensation for disability from work commencing March 26, 2022 causally related to his accepted October 24, 2016 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4]

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[5] Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[6] 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.[7] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work commencing March 26, 2022 causally related to his accepted October 24, 2016 employment injury.

On April 5, 2022 Dr. McCloud advised that appellant was off work due to a recurrence of chronic lumbar pain and noted that he had limitations that prevented him from working. He diagnosed chronic back pain due to lumbar region pain and spasm and secondary radiculopathy. Dr. McCloud, however, did not provide a history of the accepted October 24, 2016 employment injury, or specifically relate appellant's disability to the accepted work injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's disability is of no probative value on the issue of causal relationship.[9] Consequently, Dr. McCloud's report is insufficient to establish appellant's claim.

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[3] *Supra* note 1.

[4] *A.R.*, Docket No. 20-0583 (issued May 21, 2021); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994).

[5] 20 C.F.R. § 10.5(f); *see J.M.*, Docket No. 18-0763 (issued April 29, 2020); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

[6] *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

[7] *See M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

[8] *See A.R.*, *supra* note 4; *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

[9] *See R.H.*, Docket No. 22-0140 (issued August 12, 2022); *A.M.*, Docket No. 20-1144 (issued July 23, 2021); *R.J.*, Docket No. 18-1701 (issued May 18, 2020).

In an April 18, 2022 report, Dr. Katz found that appellant's symptoms of sacroiliac pain were related to an injury at work. He diagnosed inflammation of the sacroiliac joint. On March 18, 2022 Dr. Katz discussed appellant's history of back pain after an employment injury in 2016 that had worsened over the last month. He diagnosed lumbar degenerative disc disease, lumbar spondylosis, sacroiliitis, and lumbar radiculitis. Dr. Katz, however, did not address the relevant issue of whether appellant was disabled from work during the claimed period due to the accepted employment injury; consequently, his reports are of no probative value, and are insufficient to establish appellant's disability claim.[10]

In a Form CA-17, Dr. McCloud provided work restrictions. However, this report is of no probative value regarding the underlying issue of the present case because it does not contain an opinion regarding causal relationship. As discussed, medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[11] Therefore, this report is insufficient to establish appellant's claim.

Appellant further submitted a physical therapy report dated April 2022. However, certain healthcare providers, such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.[12] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[13] Consequently, the physical therapy notes are insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish disability from work during the claimed period due to his accepted employment injury, the Board finds that he 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.

[10] *See R.H., id.*; *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020).

[11] *See L.M.*, Docket No. 21-0063 (issued November 8, 2021); *C.M.*, Docket No. 20-1077 (issued December 18, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *A.Z.*, Docket No. 21-1355 (issued May 19, 2022) (nurse practitioners are not physicians under FECA); *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); *see also E.W.*, Docket No. 20-0388 (issued October 9, 2020) (physical therapists are not considered physicians under FECA).

[13] *Id*.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability from work commencing March 26, 2022 causally related to his accepted October 24, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board