

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

_____)	
T.S., Appellant)	
)	
and)	Docket No. 23-0201
)	Issued: August 2, 2023
U.S. POSTAL SERVICE, ROCKVILLE POST)	
OFFICE, Rockville, MD, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On November 8, 2022 appellant filed a timely appeal from an August 23, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 her burden of proof to establish disability from work for the period commencing April 14, 2021, causally related to her accepted February 27, 2021 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the August 23, 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 March 1, 2021 appellant, then a 28-year-old sale services distribution associate, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury to her back on February 27, 2021 when an all-purpose container (APC) fell on her back while in the performance of duty.³ She stopped work on March 1, 2021.

The employing establishment issued an authorization for examination and/or treatment (Form CA-16). In Part B-attending physician's report, A.W., a certified registered nurse practitioner (CRNP), reported that appellant was discharged from the hospital on March 1, 2021 after injuring her back at work. She opined that appellant's acute back pain was caused or aggravated by the employment activity and that she was totally disabled from March 1 through 21, 2021. In a May 6, 2021 duty status report (Form CA-17), A.W. diagnosed lumbago with sciatica and decreased range of motion. She opined, based on April 21, 2021 examination findings, that appellant was unable to work.

In April 30 and May 28, 2021 reports, Dr. John P. Byrne, a Board-certified orthopedic surgeon, noted that appellant was bending down to place mail in a rack when part of the device came down and hit her on the back. He noted that on musculoskeletal examination appellant had persistent central lower back pain. Dr. Byrne diagnosed lumbar strain. In corresponding disability notes dated April 30 and May 28, 2021, he opined that appellant was disabled from April 30, 2021 through May 28, 2021 and from May 28 through June 25, 2021, respectively. In reports dated July 23 and August 13, 2021, Dr. Byrne continued to access lumbar strain and opine that appellant was totally disabled.

In an October 1, 2021 report, Dr. Byrne reported that he advised appellant that she could return to work as of October 1, 2021 with restrictions. He indicated that appellant's persistent central lower back pain had minimally improved, and that she should start physical therapy for her lumbar strain. In an October 2, 2021 duty status report (Form Ca-17), Dr. Byrne advised that appellant could resume light-duty work with restrictions.

On January 3, 2022 OWCP accepted the claim for strain of muscle, fascia and tendon of lower back.

On January 26, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period April 14 through May 7, 2021. On February 22, 2022 she filed additional CA-7 forms for disability from work for the periods April 14 through May 6, 2021, and May 14 through August 3, 2021.

OWCP continued to receive medical evidence. In a January 28, 2022 report, Dr. Byrne provided an assessment of lumbar sprain and lumbar hernia. He opined that appellant could continue to work light duty.

In a March 4, 2022 development letter, OWCP noted that appellant was claiming temporary total disability compensation effective May 14, 2021. It informed her of the

³ OWCP also received a typed Form CA-1 dated March 24, 2021.

deficiencies of her claim for compensation. OWCP advised appellant of the type of medical evidence needed to establish her claim and afforded her 30 days to respond.

OWCP received disability notes dated June 28 and July 23, 2021 from Dr. Byrne. In the June 28, 2021 note, Dr. Byrne opined that appellant was disabled and could not return to work until her next appointment on July 23, 2021. In the July 23, 2021 note, he related that appellant could return to light work on July 26, 2021 and remain on light work until August 13, 2021. In an August 13, 2021 note, Dr. Byrne opined that appellant was totally incapacitated from April 30, 2021 until further notice.

In a January 28, 2022 Form CA-17 and corresponding disability note, Dr. Byrne continued to opine that appellant was totally disabled.

In two separate decisions dated May 5, 2022, OWCP denied appellant's Form CA-7 claims for compensation for the period April 14 through May 7, 2021, and from May 14, 2021 and continuing, respectively. It found that the medical evidence of record was insufficient to establish disability from work, for the above periods, causally related to the accepted employment injury.

OWCP continued to receive medical evidence, including Dr. Byrne's April 30 and May 28, 2021 reports previously of record. Additional reports from Dr. Byrne included: a July 23, 2021 report, in which Dr. Byrne opined that appellant was disabled due to her lumbar strain; an August 13, 2021 disability note, in which Dr. Byrne opined that appellant was totally disabled from April 30, 2021; and an October 1, 2021 report, in which Dr. Byrne presented examination findings and diagnosed a lumbar strain.

In a January 28, 2022 Form CA-17, Dr. Byrne continued to opine that appellant was totally disabled.

In a May 10, 2022 report and disability note, Dr. Byrne opined that appellant had lumbar radiculopathy and that she was disabled. He recommended a formal course of physical therapy and a lumbar magnetic resonance imaging (MRI) scan.

In a Form CA-17 dated May 10, 2022, Dr. Byrne opined that appellant was totally disabled due to her lumbar strain. In a Form CA-17 dated June 7, 2022, he related that appellant could work with restrictions.

In a June 7, 2022 report, Dr. Byrne noted that appellant's MRI scan performed on May 26, 2022, was reported as unremarkable. He continued to assess lumbar sprain, and lumbar radiculopathy. Dr. Byrne related that appellant could return to modified work.

On June 12, 2022 appellant requested reconsideration of OWCP's May 5, 2022 decisions.

Appellant submitted a Form CA-7 claim for compensation for disability from work during the period August 5, 2021 through July 6, 2022.

In a July 19, 2022 report, Dr. Byrne noted that appellant still had lumbar pain and weakness. He opined that appellant could work full duty.

By decision dated August 23, 2022, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 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

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

⁴ *Supra* note 1.

⁵ *See C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

⁷ 20 C.F.R. § 10.5(f); *H.A.*, Docket No. 20-1555 (issued December 22, 2022); *J.M.*, Docket No. 18-0763 (issued April 29, 2020).

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 *Supra* note 7; *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period commencing April 14, 2021, causally related to her accepted February 27, 2021 employment injury.

Appellant submitted a series of medical reports, CA-17 forms, and disability notes from Dr. Byrne dated April 30, 2021 through July 19, 2022. In his reports, Dr. Byrne noted appellant's history of injury, and provided updates on appellant's medical condition and work status. In reports dated April 30 through August 13, 2021, he opined that appellant was totally disabled. However, Dr. Byrne failed to provide any medical explanation supported by objective findings as to why appellant was unable to work in any capacity due to her accepted condition.¹² He noted appellant's physical examination findings, but only related that appellant's musculoskeletal examination revealed lumbar pain. Dr. Byrne did not identify any specific objective findings in support of his conclusion that appellant was totally disabled. He also failed to provide any rationale as to why appellant's accepted lumbar sprain remained active and disabling for the period of time claimed. 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.

The Board notes that OWCP also received conflicting reports in which Dr. Byrne related that appellant could return to modified work. In a note dated July 23, 2021, and in an October 1, report, October 2, 2021 Form CA-17, as well as in a January 28, 2022 report, Dr. Byrne opined that appellant could resume light-duty work with restrictions. However, he also opined in his January 28, 2022 Form CA-17 that appellant was totally disabled. Dr. Byrne offered contradictory opinions of appellant's disability status during the claimed period, without further explanation, and he did not sufficiently explain how objective findings on physical examination and diagnostic testing showed that appellant could not perform her regular work due to the effects of her accepted employment conditions. These reports are of limited probative value regarding disability, because they do not contain sufficient medical rationale explaining how a given medical condition/period of disability has an employment-related cause.¹⁴ Therefore, these reports are insufficient to establish appellant's disability claim.

On May 10, 2022, without further explanation, Dr. Byrne again reported that appellant was totally disabled. On June 7, 2022 he noted that appellant's MRI scan was unremarkable, however he continued to diagnose lumbar radiculopathy, and relate that appellant could only perform modified work. As in his prior reports, Dr. Byrne failed to provide any objective findings or

¹² See *M.H.*, Docket No. 20-1404 (issued July 14, 2021); *S.D.*, Docket No. 20-1255 (issued February 3, 2021); *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).

¹³ 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).

¹⁴ *Id.*

medical rationale in support of his conclusion regarding appellant's disability status.¹⁵ His reports were therefore insufficient to establish that appellant was disabled during the claimed periods.

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 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 commencing April 14, 2021, causally related to her accepted February 27, 2021 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2023
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁵ *Id.*