

ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent disability from work commencing August 28, 2021 causally related to her accepted September 3, 2019 employment injury.

FACTUAL HISTORY

On October 10, 2019 appellant, then a 29-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 3, 2019 she was involved in a motor vehicle accident on the way to work after attending a medical appointment for her accepted condition in OWCP master file OWCP File No. xxxxx020.³ OWCP accepted the claim for strain of the sacroiliac joint. Appellant stopped work on September 3, 2019. A memorandum of record dated January 28, 2020 from OWCP's field nurse assigned to the claim related that she returned to work on part-time limited duty on December 4, 2019, working four hours a day. She informed the nurse that she had not received wage-loss compensation for the four hours per day that she was not working. A January 28, 2020 memorandum of telephone call (Form CA-110) indicated that the field nurse had confirmed with the employing establishment that appellant was working only four hours a day.⁴ In a May 28, 2020 note, J.M., a Health and Resource management specialist, indicated that appellant worked intermittently for four hours with an irregular schedule in November through December 2019.⁵

On April 1, 2020 OWCP accepted additional conditions of left hip gluteal tendinitis; right hip gluteal tendinitis, left hip tear of muscle, right hip tear of muscle, lumbar radiculopathy, and lumbar strain.

In an August 18, 2020 report, Dr. John J. Pomponi, an osteopathic physician specializing in orthopedic surgery, noted the history of appellant's December 6, 2018 employment injury and her medical course. He reported that she was not currently working. Dr. Pomponi provided an assessment of possible labral tear of the left hip, greater trochanteric bursitis of the left hip, and lumbar paraspinal myositis. He ordered diagnostic tests and a course of physical therapy.

On December 17, 2020 Dr. Pomponi indicated that appellant would be scheduled for a bilateral hip arthrogram with corticosteroid injections and surgery. He took her off work until S1

³ Under OWCP File No. xxxxxx020, December 6, 2018 date of injury, OWCP accepted a lumbar sprain. It administratively combined that claim with the current claim, OWCP File No. xxxxxx268, and designated OWCP File No. xxxxxx020 as the master file. At the time of the December 6, 2018 injury appellant was a temporary sales and service distribution associate working an irregular schedule for 40 hours a week. She received continuation of pay following this injury. Appellant was released to full-time light-duty work with restrictions effective January 14, 2019, but she again stopped work on January 18, 2019. She filed claims for compensation (Form CA-7) for the periods February 2 through 15, 2019 and continuing, which were denied. OWCP has not paid appellant any wage-loss compensation under OWCP File No. xxxxxx020.

⁴ A January 31, 2020 statement of accepted facts in the current claim indicated that appellant returned to full-time limited-duty work in January 2020.

⁵ The year 2020 was noted and appears to be a typographical error and should be 2019.

joint injections were performed. Appellant underwent the S1 joint injections on February 5 and March 17, 2021.

On March 5, 2021 Dr. Pomponi noted that appellant declined surgery. In that report and in subsequent reports, he opined that she could return to four hours of work with restrictions.

Appellant subsequently claimed intermittent disability.⁶ On September 15, 2021 she filed a Form CA-7 claim for disability for the period August 28 through September 10, 2021. On September 17, 2021 the employing establishment completed a time analysis form (Form CA-7a) covering the claimed period August 28 through September 10, 2021. It noted that on August 28, 2021 appellant was absent without leave (AWOL) for eight hours. The employing establishment advised that she was on leave without pay (LWOP) for 3.93 hours on August 30, 2021; 8 hours on September 1, 2021; 4.04 hours on September 2, 2021; 4 hours on September 3, 2021; 3.93 hours on September 4, 2021; 4 hours on September 8, 2021; 4.86 hours on September 9, 2021; and 4 hours on September 10, 2021.

In an August 22, 2021 report, Dr. Pomponi noted appellant's medical history and provided examination findings. He reviewed a magnetic resonance imaging (MRI) scan and reported an anterior labral tear of the left hip with a CAM deformity. Dr. Pomponi provided an assessment of labral tear of left hip and recommended surgery as conservative treatment had failed. He noted that appellant agreed to undergo the surgical procedure.

In a September 1, 2021 report, Dr. Jorge Chahla, an orthopedic surgeon, noted that appellant's bilateral hip MRI scan showed bilateral symmetric insertional gluteal tendinosis. He provided an assessment of bilateral hip pain, left greater than right.

In a September 9, 2021 report, Dr. Pomponi noted that appellant was diagnosed with a labral tear of both hips, but workers' compensation did not approve her surgery. He provided examination findings and diagnosed right hip labral tear with CAM deformity. Dr. Pomponi opined that appellant could perform seated work only until her right hip arthroscopic surgery was approved. In a September 9, 2021 duty status report (Form CA-17), he noted a December 6, 2018 date of injury and diagnosed labral tears to the right and left hips. Dr. Pomponi opined that appellant could work four hours a day with restrictions.

Dr. Pomponi also provided a September 9, 2021 report wherein he related that it was obvious from appellant's MRI scan that she did have a right hip labral tear. He related that he had explained to her that her condition would not improve unless she underwent hip arthroscopy with labral debridement and labral repair. Dr. Pomponi further noted that appellant should refrain from standing at work and perform seated work only, until her hip surgery was approved.

In a development letter dated October 22, 2021, OWCP informed appellant of the deficiencies of her claim for compensation. It noted that if the reason for LWOP was medically related, then she should submit medical evidence to support disability for each of the dates claimed.

⁶ The Form CA-7s were filed in master OWCP File No. xxxxxx020. As noted, OWCP denied appellant's claim for disability compensation from February 2, 2019 and continuing. *See supra* note 3.

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

Additional medical evidence from Dr. Pomponi dated November 5, 2021 was received. In a November 5, 2021 attending physician's report (Form CA-20), he noted history of a December 6, 2018 work injury. Dr. Pomponi diagnosed bilateral hip labral tear which he opined was caused or aggravated by the December 6, 2018 employment activity as the pain, popping/clicking, weakness, and difficulty walking developed after her injury. He opined that appellant was totally and partially disabled for the periods August 18, 2020 through April 27, 2021 and April 27 through December 6, 2021, respectively. Dr. Pomponi opined that she could resume light-duty seated work only on April 27, 2021. In a November 5, 2021 Form CA-17 and occupational health status report, he noted the December 6, 2018 date of injury. He diagnosed right and left hip labral tear and greater trochanteric hip bursitis. Dr. Pomponi opined that appellant could perform seated work only for four hours per day. In a November 5, 2021 release/restriction form, he requested that she be excused from October 28 through November 4, 2021 due to increased pain to bilateral hips.

By decision dated November 24, 2021, OWCP denied appellant's claim for compensation, finding that the medical evidence of record was insufficient to establish disability from work for the period August 28 through September 10, 2021 and continuing causally related to the accepted employment injury as there was no well-rationalized explanation from her treating physician as to why she was not able to work or could not continue to work full time with restrictions.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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.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

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.¹¹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that,

⁷ *Supra* note 1.

⁸ See *J.R.*, Docket No. 23-0215 (issued July 28, 2023); *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); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *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).

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

¹¹ *Id.* at § 10.5(f); see *J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

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.¹²

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.¹³

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.¹⁴

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work commencing August 28, 2021 causally related to her accepted September 3, 2019 employment injury.

In an August 22, 2021 report, Dr. Pomponi provided an assessment of labral tear of left hip and recommended surgery. In a September 1, 2021 report, Dr. Chahla provided an assessment of bilateral hip pain, left greater than right. These reports are of limited value regarding appellant's claim for intermittent disability during the claimed period because neither physician offered an opinion as to whether she was disabled. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value.¹⁵ Therefore, these reports are insufficient to establish appellant's disability claim.

In his September 9, 2021 reports, Dr. Pomponi opined that appellant could only work four hours a day in a sedentary position due to the accepted labral tears to the right and left hips. However, he did not provide an opinion, supported by medical rationale, as to why she had partial disability during the claimed period causally related to the accepted employment injuries and was unable to perform her full-time limited-duty sedentary work assignment.¹⁶ In a November 5, 2021 Form CA-20, Dr. Pomponi opined that appellant was partially disabled from April 27 through December 6, 2021 as a result of the accepted bilateral hip labral tear and could only work sedentary duty. However, he failed to provide a medical explanation for her partial disability during the

¹² *J.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

¹³ *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

¹⁴ *D.P., supra* note 9; *A.W.*, Docket No. 18-0589 (issued May 14, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁵ *W.M.*, Docket No. 21-1217 (issued October 11, 2022); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *W.M., id.*

relevant period August 28, 2021 onward, addressing why her condition had worsened so that she was unable to perform her full-time limited-duty assignment.¹⁷

Additionally, in his November 5, 2021 Form CA-17 and occupational health status report, Dr. Pomponi also diagnosed greater trochanteric hip bursitis to which he also attributed appellant's partial disability. 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/level of disability has an employment-related cause.¹⁸ While in his November 5, 2021 release/restriction form, Dr. Pomponi requested that appellant be excused from work on intermittent dates from October 28 through November 4, 2021 due to increased pain to the bilateral hips, he offered no rationale for her total disability during the claimed period or how she would be unable to perform her limited-duty sedentary work during this period.¹⁹ Therefore, these reports are insufficient to establish her disability claim.

As the medical evidence of record does not contain rationale to establish disability during the claimed period, 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 10.607.²⁰

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work commencing August 28, 2021 causally related to her accepted September 3, 2019 employment injury.

¹⁷ *Id.*

¹⁸ *See T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁹ *See supra* note 17.

²⁰ OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed. The evidence must establish that a claimant attended an examination or treatment for the accepted work injury on the dates claimed in order for compensation to be payable. For a routine medical appointment, a maximum of four hours may be allowed. Upon return of the case record OWCP may wish to consider payment for the appropriate amount of wage-loss compensation for time lost for appellant's medical appointments during the claimed period. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19 (February 2013); *E.W.*, Docket No. 17-1988 (issued January 28, 2019).

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 16, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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