United States Department of Labor
Employees' Compensation Appeals Board

D.V., Appellant	)	
	)	
and	)	**Docket No. 21-1393**
	)	**Issued: April 8, 2024**
U.S. POSTAL SERVICE, POST OFFICE, Santa Clarita, CA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 22, 2021 appellant, through counsel, filed a timely appeal from an August 2, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish that the remaining claimed intermittent disability from work commencing February 10, 2016, was causally related to the accepted December 21, 2015 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 30, 2015 appellant, then a 39-year-old carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 21, 2015 he sustained a lumbar strain and right hip contusion when he slipped on ice and fell in a customer's driveway while in the performance of duty. He stopped work on December 21, 2015.

Appellant received medical treatment from Dr. Katayoon Shahrokh, a Board-certified physical medicine and rehabilitation physician. In a February 2, 2016 attending physician's supplemental report (Form CA-20a) and a progress note of the same date, Dr. Shahrokh related that on December 21, 2015 appellant slipped on ice and fell directly onto his right hip and back. On physical examination she observed tenderness on the right hip and normal range of motion. Examination of appellant's lumbar spine revealed decreased range of motion and tenderness. Dr. Shahrokh discussed appellant's diagnostic test results and reported a diagnosis of lumbar radiculopathy. She opined that appellant was totally disabled from work from February 1 through 15, 2016.

On February 4, 2016 appellant filed a claim for compensation (Form CA-7) for intermittent disability for the period February 5 through 19, 2016.

By decision dated February 10, 2016, OWCP accepted appellant's claim for lower back muscle strain and right hip contusion.

In a letter dated February 22, 2016, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation. It advised him of the type of medical evidence needed and afforded him 30 days to submit the necessary evidence.

On March 9, 2016 appellant submitted a Form CA-7 for wage-loss compensation for intermittent disability for the period February 22 through March 4, 2016.

Appellant subsequently returned to modified duty.

[3] Docket No. 17-1344 (issued March 19, 2018).

In a March 29, 2016 progress note and a Form CA-20a of the same date, Dr. Shahrokh provided examination findings and noted diagnoses of chronic low back pain and lumbar muscle strain. She recommended that appellant perform modified-duty work.

On April 4 and 5, 2016 appellant filed CA-7 forms for intermittent disability during the period March 7 through April 1, 2016.

Appellant subsequently submitted physical therapy treatment notes dated March 16, 18, 21, 23, and 25, and April 8, 2016, which indicated that he underwent physical therapy to treat his lumbar spine.

In an April 19, 2016 attending physician's supplementary report, Dr. Shahrokh recounted that appellant informed her of an improvement in symptoms with physical therapy. On examination of the lumbar spine, she observed decreased range of motion and normal straight leg raise testing. Dr. Shahrokh diagnosed lumbar muscle strain and chronic low back pain. She recommended that appellant work modified duty with restrictions of standing and walking up to 45 minutes and bending at the waist, squatting, kneeling, knee bending, up to 10 minutes and lifting, carrying, pushing, and pulling up to 10 pounds.

In a May 10, 2016 attending physician's supplementary report, Dr. Shahrokh noted a diagnosis of low back pain and indicated that appellant could work modified duty from May 10 through 31, 2016.

Appellant continued to file additional CA-7 forms claiming wage-loss compensation for intermittent disability.

By decision dated May 12, 2016, OWCP denied appellant's claim for intermittent disability from work during the period February 5 through April 29, 2016, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period due to the accepted December 21, 2015 employment injury.[4]

Appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on May 23, 2016.

Appellant submitted additional physical therapy treatment notes dated March 20, May 9, 11, 13, 17, 19, 23, and 26, 2016, which indicated that he received treatment for his lumbar spine.

In a May 31, 2016 attending physician's supplementary report, Dr. Shahrokh provided examination findings and noted diagnoses of lumbar muscle strain and chronic low back pain. She recounted appellant's complaints of mild pain that flared with bending and lifting heavy boxes. Dr. Shahrokh indicated that appellant could work modified duty with restrictions of standing and walking up to 45 minutes per hour; bending at the waist, squatting, kneeling, and knee bending up to 15 minutes; and lifting, carrying, pushing, and pulling up to 20 pounds.

[4] By separate decision of even date, OWCP also denied appellant's request to expand acceptance of his claim to include lumbar disc herniation with radiculopathy, lumbar spondylosis, and muscle spasm.

In a June 21, 2016 report, Dr. Shahrokh indicated that appellant was evaluated for a change in work status. She discussed appellant's diagnostic testing results and reported lumbar examination findings of normal range of motion and tenderness. Dr. Shahrokh diagnosed lumbar muscle strain. She released appellant to work full duty. Appellant continued to receive medical treatment from Dr. Shahrokh and submitted additional progress notes.

By decision dated August 25, 2016, OWCP denied appellant's claim for compensation for intermittent disability from work commencing May 16, 2016. It found that the medical evidence of record was insufficient to establish that he was unable to work during the claimed periods due to the accepted December 27, 2015 employment injury.

On September 6, 2016 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on January 11, 2017.

In a decision dated March 28, 2017, OWCP's hearing representative affirmed the May 12 and August 25, 2016 OWCP decisions.

Appellant appealed to the Board.

By decision dated March 19, 2018,[5] the Board affirmed the March 28, 2017 OWCP decision in part, finding that appellant had not met his burden of proof to establish intermittent disability during the period February 5 through April 1, 2016 causally related to his accepted December 21, 2015 employment injury.[6] The Board, however, also set aside the March 28, 2017 decision in part, finding that the case was not in posture for decision with regard to whether appellant was entitled to compensation for intermittent disability commencing April 24, 2016.

By *de novo* decision dated January 21, 2021, OWCP determined that appellant was entitled to up to four hours of wage-loss compensation for medical appointments on May 9, 11, 13, 17, 19, 24, and 26, 2016. However, it denied the remaining claimed intermittent disability for the period commencing February 10, 2016, finding that the medical evidence of record was insufficient to establish that the remaining claimed disability was causally related to the accepted employment injury.

On January 28, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on May 17, 2021.

By decision dated August 2, 2021, OWCP's hearing representative affirmed the January 21, 2021 decision.

[5] *Supra* note 3.

[6] The Board further found that appellant had not met his burden of proof to expand the acceptance of his claim to include additional conditions of lumbar disc herniation with radiculopathy, lumbar spondylosis, and muscle spasm causally related to the December 21, 2015 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] 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] The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.[9] 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.[10] 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 the reliable, probative, and substantial medical evidence.[11]

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.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that the remaining claimed intermittent disability from work for the period commencing February 10, 2016 was causally related to the accepted December 21, 2015 employment injury

In support of her disability claim, appellant submitted several reports from Dr. Shahrokh. In a February 2, 2016 Form CA-20a and progress note of the same date, Dr. Shahrokh opined that appellant was disabled from work for the period February 1 through 15, 2016. However, she did not provide an opinion on causal relationship. In her remaining reports of record, Dr. Shahrokh returned appellant to modified duty and provided restrictions, but again did not provide an opinion on causal relationship between the remaining claimed intermittent disability and the accepted employment injury. 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.[13] These reports, therefore, are insufficient to establish appellant's claim.

---

[7] *Supra* note 2.

[8] *M.C.,* Docket No. 18-0919 (issued October 18, 2018); *B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

[9] 20 C.F.R. § 10.5(f); *S.T.,* Docket No. 18-412 (issued October 22, 2018); *Cheryl L. Decavitch,* 50 ECAB 397 (1999).

[10] *K.C.,* Docket No. 17-1612 (issued October 16, 2018); *William A. Archer,* 55 ECAB 674 (2004).

[11] *S.G.,* Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi,* 52 ECAB 291, 292 (2001).

[12] *J.B.,* Docket No. 19-0715 (issued September 12, 2019).

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

OWCP also received physical therapy notes. However, the Board has held that certain healthcare providers, such as physical therapists, are not considered physicians as defined under FECA.[14] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[15]

As the medical evidence of record is insufficient to establish that the remaining claimed intermittent disability from work for the period commencing February 10, 2016 was causally related to the accepted December 21, 2015 employment injury, the Board finds that appellant 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that the remaining claimed intermittent disability from work for the period commencing February 10, 2016 was causally related to the accepted December 21, 2015 employment injury.

[14] 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); *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 J.M.*, Docket No. 23-1090 (issued December 20, 2023) (physical therapists are not considered qualified physicians as defined under FECA); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists are not considered physicians as defined under FECA).

[15] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2021 decision of the Office of Workers' Compensation Programs is affirmed.[16]

Issued: April 8, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[16] Upon return of the case record, OWCP should consider payment of up to four hours of compensation to appellant for any unpaid lost time from work due to medical appointments to assess or treat symptoms related to the employment injury. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19(c) (February 2013); *J.E.*, Docket No. 19-1758 (issued March 16, 2021); *A.J.*, Docket No. 21-1211 (issued May 4, 2022); *A.V.*, Docket No. 19-1575 (issued June 11, 2020). *See also K.A.*, Docket No. 19-0679 (issued April 6, 2020); *William A. Archer*, 55 ECAB 674 (2004).