United States Department of Labor
Employees' Compensation Appeals Board

S.N., Appellant	)	
and	)	**Docket No. 24-0742**
	)	**Issued: August 21, 2024**
U.S. POSTAL SERVICE, MIDDLE GROVE POST OFFICE, Middle Grove, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On July 2, 2024 appellant, through counsel, filed a timely appeal from a May 21, 2024 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.[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 May 21, 2024 decision, appellant submitted additional evidence to OWCP. However, the Boards *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 December 28, 2022, causally related to his accepted employment condition.

FACTUAL HISTORY

On January 3, 2023 appellant, then a 38-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that he sustained chronic back pain due to factors of his federal employment, including lifting, and riding in a delivery vehicle. Appellant first became aware of his condition on November 18, 2022 and related it to factors of his federal employment on December 29, 2022. Following a period of light duty, he stopped work on December 27, 2022 and did not return.

In a December 29, 2022 report, Dr. Joshua E. Ross, a Board-certified anesthesiologist, recounted that appellant experienced right-sided low back pain while lifting and delivering heavy packages at work. On examination, he observed a positive facet loading test on the right. Dr. Ross diagnosed low back pain and prescribed physical therapy. He found appellant 50 percent temporarily disabled. Dr. Ross answered a question "Yes" to indicate that the employment incident was the cause of the injury/illness. He restricted appellant to light-duty work, with lifting limited to 20 pounds, and no bending, twisting, stooping, climbing, or prolonged sitting or standing.

In a February 9, 2023 report, Dr. Ross noted an impression of low back pain. He responded to a question "Yes" to indicate that appellant's complaints were consistent with his history of injury. Dr. Ross found appellant 50 percent temporarily disabled. He prescribed physical therapy.

In periodic reports dated June 14 through November 3, 2023, Dr. Tory B. Speert, an osteopath Board-certified in physiatry, recounted a history of the employment incident. On examination, he observed slight discomfort with lumbar extension. Dr. Speert stated an impression of acute low back pain. He responded to a question "Yes" to indicate that appellant's complaints were consistent with his history of injury. Dr. Speert found appellant 50 percent disabled and prescribed work restrictions.

By decision dated February 6, 2024, OWCP accepted the claim for lumbar sprain.

Commencing March 1, 2024, appellant submitted a series of claims for compensation (Form CA-7) for total disability from work for the period commencing December 28, 2022.

In a development letter dated March 7, 2024, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation. It advised him of the type of factual and medical evidence needed and afforded him 30 days to respond.

In reports dated March 11 and 21, 2024, Dr. Speert diagnosed acute back pain. He opined that appellant was 50 percent temporarily disabled.

In a May 1, 2024 note, Dr. Speert returned appellant to limited-duty work effective that date, with no bending, stooping, or leaning, and driving limited to two to three hours.

By decision dated May 21, 2024, OWCP denied appellant's claim for compensation for disability from work commencing December 28, 2022, finding that the medical evidence of record was insufficient to establish disability from work for the claimed period causally related to his accepted employment condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim,[5] including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[6] 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.[7] 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.[8]

Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[9] Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[10] 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 the injury, has no disability as that term is used in FECA.[11] 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.[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 appellant, must be

[4] *Supra* note 2.

[5] *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

[6] *See S.F.*, Docket No. 20-0347 (issued March 31, 2023); *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).

[7] *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

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

[9] 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

[10] *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

[11] *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

[12] *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

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 his burden of proof to establish disability from work commencing December 28, 2022, causally related to his accepted employment injury.

OWCP accepted appellant's claim for lumbar sprain. Dr. Ross, in reports dated December 29, 2022 and February 9, 2023, and Dr. Speert, in reports dated from June 14, 2023 through March 21, 2024, opined that appellant was 50 percent temporarily disabled due to the accepted employment injury. In a May 1, 2024 note, Dr. Speert returned appellant to limited-duty work effective that date. The medical evidence of record thus indicates that appellant was not totally disabled from work commencing December 29, 2022, the date of Dr. Ross's initial report. Rather, Dr. Ross and Dr. Speert found him able to perform limited-duty work during the claimed period of total disability. Furthermore, the Board has held that a mere conclusion without the necessary rationale is of limited probative value.[15] Therefore, their reports are insufficient to establish appellant's claim for total disability commencing December 28, 2022.[16]

As the medical evidence of record is insufficient to establish disability from work during the claimed period causally related to the accepted 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 disability from work commencing December 28, 2022, causally related to his accepted employment injury.

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[13] *See S.C.*, Docket No. 24-0202 (issued April 26, 2024); *B.P.*, Docket No. 23-0909 (issued December 27, 2023); *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

[14] *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 8.

[15] *See M.F.*, Docket No. 21-0533 (issued January 31, 2023); *A.P.*, Docket No. 19-0224 (issued July 11, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[16] *G.P.*, Docket No. 23-1133 (issued March 19, 2024); *see F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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