United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 25-0009**
	)	**Issued: December 18, 2024**
U.S. POSTAL SERVICE, ALBUQUERQUE POST OFFICE, Albuquerque, NM, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On October 3, 2024 appellant filed a timely appeal from a September 17, 2024 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 her burden of proof to establish disability from work for the period August 15, 2022 through July 12, 2024 causally related to her accepted February 20, 2013 employment injury.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the September 17, 2024 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 February 21, 2013 appellant, then a 35-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 20, 2013 she injured her back when the vehicle she was operating hit a pothole while in the performance of duty. She did not stop work and was placed on modified duty, effective March 4, 2013.[3] On February 27, 2013, OWCP accepted the claim for a sprain of back, lumbar region. It paid appellant intermittent wage-loss compensation on the supplemental rolls from October 24, 2017 through April 22, 2022.

An unsigned April 20, 2022 return to work note released appellant to work without restrictions on May 13, 2022.

On April 26, 2022, the employing establishment offered appellant a part-time modified rural carrier position, which she rejected on April 27, 2022 contending she was unable to stand at all nor lift more than 10 pounds.

An April 27, 2022 right hip x-ray report noted a history of fall with hip pain and provided impressions of probable avulsion fracture in the superior lateral acetabulum, fracture of right femur head along the medical aspect and abnormal narrowing with superolateral subluxation of the right hip joint.

OWCP also received a May 18, 2022 duty status report (Form CA-17) and a July 13, 2022 letter from the employing establishment, which noted that appellant was off work due to a broken hip. In a separate letter, also dated July 13, 2022, the employing establishment noted that a modified job had been available to appellant since April 27, 2022 for her accepted employment injury. In May 19, 2023 notes, Dr. Fariborz Nazari, a family medicine physician, noted the history of the February 20, 2013 employment injury and that appellant recently had hip surgery.[4] He provided diagnoses of back pain, cervical and lumbar strain, and lumbar and cervical radiculopathy. In an accompanying May 19, 2023 form report, Dr. Nazari noted the date of injury as February 20, 2013 and listed "work injury diagnoses" as back strain, cervical strain and lumbar strain. He held appellant off work from May 19 to June 19, 2023. Dr. Nazari continued to submit progress notes with accompanying form reports dated May 19, June 19, July 19 and August 8, 2023 which held appellant off work due to "work injury diagnoses" of back, cervical and lumbar strain. Dr. Nazari referred appellant to rehabilitation therapy for lumbar and cervical conditions on September 18 and 19, 2023. He diagnosed cervical spine strain, and cervical radiculopathy. Copies of physical therapy reports dated September 26, 2023 were also provided.

On September 27, 2023, OWCP expanded the acceptance of the claim to include an additional condition of sprain of ligaments of the lumbar spine.

OWCP continued to receive progress notes with accompanying form reports from Dr. Nazari dated September 18, October 18, November 17, and December 12, 2023 and

[3] A February 24, 2023 notification of personnel action (Standard Form (SF) 50) indicated that appellant subsequently separated from the employing establishment on April 27, 2023.

[4] In the attached patient information sheet, appellant reported a right hip surgery in 2022.

January 12, February 8, March 12, April 12, and May 10, 2024 which continued to hold appellant off work due to "work injury diagnoses" of back, cervical and lumbar strain.

OWCP continued to receive physical therapy progress notes.

In a report dated February 17, 2024, Dr. Nazari reiterated diagnoses of back, cervical and lumbar strains, and lumbar and cervical radiculopathy, which he opined was expected to last at least twelve months.

On August 8, 2024, appellant filed a claim for compensation (Form CA-7) for total disability from work for the period August 15, 2022 through July 12, 2024.

In a development letter dated August 14, 2024, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of factual and medical evidence needed and afforded her 30 days to respond.

In a June 10, 2024 progress notes with an accompanying form report, Dr. Nazari continued to indicate a date of injury of February 20, 2013 and reiterated diagnoses. He opined that appellant was totally disabled from work for the period June 10 through July 10, 2024.

By decision dated September 17, 2024, OWCP denied appellant's claim for disability from work for the period August 15, 2022 through July 12, 2024, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period due to the accepted February 20, 2013 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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.[6]

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work due to 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 an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.[9] When, however, the

[5] *Supra* note 1.

[6] *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).

[7] *Id.*; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[8] 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020).

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

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.[10]

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.[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 her burden of proof to establish disability from work for the period August 15, 2022 through July 12, 2024 causally related to her accepted February 20, 2013 employment injury.

OWCP received an April 27, 2022 right hip x-ray report providing an impression for a broken right femur as a result of a fall of an unknown date, for which she underwent surgery in 2022. This diagnostic study, standing alone, lacks probative value on the issue of causal relationship.[13] Thus, this evidence is insufficient to establish appellant's disability claim.

In support of her claim for compensation, appellant submitted progress notes with accompanying form reports dated May 19, 2023 through June 10, 2024 from Dr. Nazari, who noted the February 20, 2013 date of injury and held appellant off work due to "work injury diagnoses" of back, cervical and lumbar strain. However, Dr. Nazari failed to provide a history of the February 20, 2013 work injury and a well-rationalized opinion which explained how the diagnosed conditions and resultant disability were physiologically caused by the accepted employment injury.[14] Medical evidence that states a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition, is of limited probative

[10] *J.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

[11] *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

[12] *D.M.*, Docket No. 21-0930 (issued February 8, 2023); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[13] *K.B.*, Docket No. 22-0842 (issued April 25, 2023); *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

[14] *See T.L.*, Docket No. 23-0073 (issued January 9, 2023); *V.D.*, Docket No. 20-0884 (issued February 12, 2021); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

value.[15] Therefore, these reports are insufficient to establish that appellant was disabled from work during the claimed period due to her accepted employment injury.

In a September 19, 2023 referral to physical therapy, Dr. Nazari diagnosed cervical spine strain and radiculopathy. However, he failed to provide an opinion on the causal relationship of the diagnosed conditions. 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 on the issue of causal relationship.[16] Thus, this evidence is insufficient to establish appellant's disability claim.

The remainder of the medical evidence consists of reports from physical therapists. The Board has held that certain healthcare providers such as physical therapists are not considered physicians as defined under FECA.[17] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Thus, this evidence is also insufficient to establish the disability claim.

As the medical evidence of record is insufficient to establish disability from work for the period August 15, 2022 through July 12, 2024 due to the accepted February 20, 2013 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 August 15, 2022 through July 12, 2024 causally related to her accepted February 20, 2013 employment injury.

[15] *See S.S.*, Docket No. 24-0814 (issued September 27, 2024); *C.T.*, Docket No. 22-0013 (issued November 22, 2022); *R.B.*, Docket No. 22-0173 (issued July 26, 2022); *A.P.*, Docket No. 20-1668 (issued March 2, 2022); *D.H.*, Docket No. 17-1913 (issued December 13, 2018).

[16] *See J.W.*, Docket No. 25-0011 (issued November 19, 2024); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[17] 5 U.S.C. § 8101(2) 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, 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *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 K.D.*, Docket No. 22-0756 (issued November 2022) (physical therapists are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board