

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

A.C., Appellant)	
)	
and)	Docket No. 24-0603
)	Issued: July 12, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
BATAVIA VA MEDICAL CENTER,)	
Batavia, NY, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 16, 2024 appellant filed a timely appeal from an April 22, 2024 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 22, 2024 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work commencing September 3, 2022, causally related to her accepted April 27, 2016 employment injury.

FACTUAL HISTORY

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

On April 27, 2016 appellant, then a 52-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she sustained a lumbosacral strain/sprain when assisting in the podiatry clinic while in the performance of duty. She stopped work on the claimed date of injury and has not returned.⁴ On April 9, 2019 OWCP accepted the claim for strain of muscle, fascia, and tendon of lower back, sprain of ligaments of thoracic spine, sciatica, lumbar radiculopathy, and aggravation of preexisting lumbar degenerative disc disorder.

On February 7, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work for the period September 3, 2022 through February 7, 2023.

In a development letter dated February 8, 2023, 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. No additional evidence was received.

By decision dated April 19, 2023, OWCP denied appellant's claim for disability from work commencing September 3, 2022, finding that the medical evidence of record was insufficient to establish disability due to the accepted April 27, 2016 employment injury.

In an October 13, 2023 report, Dr. Seth M. Zeidman, a Board-certified neurosurgeon, recounted a history of the April 27, 2016 employment injury and subsequent treatment. He related appellant's symptoms of chronic lumbar pain and pressure. On examination, Dr. Zeidman observed limited lumbar motion, normal sensation throughout the bilateral lower extremities, and a normal gait. He reviewed a March 29, 2023 lumbar magnetic resonance imaging (MRI) study, which revealed mild lumbar spondylosis, mild-to-moderate canal stenosis at L4-5, improvement at the L4-5 level when compared to an August 18, 2022 study, and a resolved L4-5 disc extrusion. Dr. Zeidman noted that a June 14, 2023 electromyogram (EMG) study revealed chronic left L3, L4, S1 and right L4, S1 lumbar polyradiculopathy. He diagnosed other lumbosacral intervertebral disc disease, and lumbar radiculopathy. At the conclusion of the narrative portion of the report, Dr. Zeidman answered "Yes" to indicate that the April 27, 2016 employment injury was the

³ Docket No. 18-0683 (issued November 6, 2018).

⁴ Appellant was terminated from the employing establishment in 2018 for failure to maintain nursing licensure.

competent cause of the diagnosed conditions, that appellant’s complaints were consistent with her history of injury, and that the history of illness was consistent with objective findings. He found appellant “100 percent” disabled. Dr. Zeidman prescribed physical therapy.

In a March 15, 2024 report, Dr. Zeidman reiterated previous findings and diagnoses. He noted that appellant continued “to remain out of work and had been disabled since 2016.” Dr. Zeidman answered questions “Yes” indicating that the April 27, 2016 employment injury was the competent cause of the diagnosed conditions, that appellant’s complaints were consistent with her history of injury, and that the history of illness was consistent with objective findings. He found appellant “90 percent” disabled.

On April 12, 2024 appellant requested reconsideration.

OWCP received appellant’s statements describing her symptoms and diagnoses, printouts of internet literature on spinal conditions, an undated medical report from Carrie VanGrol, a nurse practitioner, and an August 8, 2019 Social Security Administration (SSA) decision finding appellant disabled for the period commencing February 15, 2017.

In a September 14, 2022 report, Dr. Zeidman recounted a history of the April 27, 2016 employment injury and subsequent treatment. He diagnosed lumbosacral disc degeneration. Dr. Zeidman answered questions “Yes” indicating that the April 27, 2016 employment injury was the competent cause of the diagnosed condition, that appellant’s complaints were consistent with her history of injury, and that the history of illness was consistent with objective findings. He found appellant 100 percent disabled.

A June 14, 2023 EMG and nerve conduction velocity (EMG/NCV) study revealed mild polysensory neuropathy likely related to cold skin temperatures, mild right peroneal neuropathy with axonal features, delayed/diminished right tibial H-reflex, and chronic left L3, L4, S1 and right L4, S1 lumbar polyradiculopathy.

By decision dated April 22, 2024, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim,⁶ including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁷ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled

⁵ *Supra* note 1.

⁶ *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

⁷ *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).

from work as a result of the accepted employment injury.⁸ 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.⁹

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.¹⁰ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹¹ 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.¹² 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.¹³

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 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.¹⁴

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.¹⁵

⁸ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁹ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

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

¹¹ *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹² *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

¹³ *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹⁴ *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).

¹⁵ *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 9.

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing September 3, 2022, causally related to her accepted April 27, 2016 employment injury.

In a series of reports dated from September 14, 2022 through March 15, 2024, Dr. Zeidman answered questions “Yes” indicating that the April 27, 2016 employment injury was competent to cause the diagnosed lumbar and lumbosacral conditions, and found appellant 90 to 100 percent disabled. Although Dr. Zeidman found appellant unable to work during portions of the claimed period of disability due to the accepted employment injury, he did not provide medical reasoning explaining the nature of the relationship between the claimed disability and the accepted employment injuries.¹⁶ As such, these reports are insufficient to establish appellant’s claim.

Appellant also submitted a June 14, 2023 EMG/NCV study. However, the Board has long held that diagnostic studies, standing alone, lack probative value, because they do not address whether the employment injury caused any of the diagnosed conditions or associated disability.¹⁷ For this reason, the diagnostic report is insufficient to establish appellant’s disability claim.

OWCP also received internet literature on spinal conditions. The Board has long held that excerpts from publications have little probative value in resolving medical questions unless a physician establishes the applicability of the general medical principle discussed in the article to the specific factual situation in the case.¹⁸

Appellant submitted an undated medical report from a nurse practitioner. However, certain healthcare providers such as nurse practitioners are not considered “physician[s]” as defined under

¹⁶ *M.F.*, Docket No. 24-0445 (issued May 23, 2024); *T.H.*, Docket No. 23-0811 (issued February 13, 2024); *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *R.C.*, Docket No. 17-0748 (issued July 10, 2018); *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹⁷ *See T.V.*, Docket No. 23-0803 (issued December 22, 2023); *T.W.*, Docket No. 20-1669 (issued May 6, 2021); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁸ *W.K.*, Docket No. 23-0379 (issued October 26, 2023); *S.B.*, Docket No. 21-0683 (issued December 16, 2021); *T.S.*, Docket No. 18-1518 (issued April 17, 2019); *W.C. (R.C.)*, Docket No. 18-0531 (issued November 1, 2018); *K.U.*, Docket No. 15-1771 (issued August 26, 2016); *Roger D. Payne*, 55 ECAB 535 (2004).

FECA.¹⁹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.²⁰

Additionally, OWCP received an August 18, 2019 SSA disability determination. However, it is well established that the findings of other federal agencies are not dispositive with regard to questions arising under FECA.²¹

As the medical evidence of record is insufficient to establish disability from work commencing September 3, 2022, 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 commencing September 3, 2022, causally related to her accepted April 27, 2016 employment injury.

¹⁹ Section 8102(2) of FECA provides as follows: (2) 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. § 8102(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); *P.D.*, Docket No. 24-0281 (issued May 16, 2024) (nurse practitioners are not considered physicians as defined under FECA).

²⁰ *David P. Sawchuk, id.*; *P.D., id.*

²¹ *See M.S.*, Docket No. 20-0166 (issued May 14, 2021); *A.B.*, Docket No. 10-2108 (issued July 13, 2011); *Ernest J. Malagrida*, 51 ECAB 287, 291 (2000).

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2024
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