

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

R.K., Appellant)	
)	
and)	Docket No. 24-0472
)	Issued: June 27, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
ST. ALBANS COMMUNITY LIVING CENTER,)	
St. Albans, NY, Employer)	
)	

Appearances: *Case Submitted on the Record*
Thomas S. Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On April 2, 2024 appellant, through counsel, filed a timely appeal from an October 31, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 October 31, 2023 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work, commencing January 10, 2023, causally related to her accepted March 9, 2022 employment injury.

FACTUAL HISTORY

On March 17, 2022 appellant, then a 31-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on March 9, 2022 she suffered a right hand and wrist injury when a resident she was assisting tightly grabbed and twisted her right wrist. She stopped work on that date. On May 5, 2022 OWCP accepted the claim for right wrist sprain.

Thereafter, OWCP received reports dated December 21, 2022, by Dr. Joshua T. Mitgang, a Board-certified orthopedic surgeon, who held appellant off work through February 1, 2023.

On January 18, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work commencing January 10, 2023.

In a development letter dated January 23, 2023, OWCP informed appellant of the deficiencies of her claim for compensation commencing January 10, 2023. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

In a February 1, 2023 report, Maurice Dennis Castillo, a physician assistant, held appellant off work.

In a February 21, 2023 report, Dr. Mitgang diagnosed right cubital tunnel syndrome caused by the March 9, 2022 employment injury “where her right hand was grabbed and aggressively twisted.” In an accompanying work slip of even date, he held appellant off work.⁴

By decision dated February 27, 2023, OWCP denied appellant’s claim for compensation for disability from work commencing January 10, 2023, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period causally related to her accepted March 9, 2022 employment injury.

In reports dated March 21 through June 16, 2023, Dr. Mitgang diagnosed right cubital tunnel syndrome and right triangular fibrocartilage complex (TFCC) tear. He continued to hold appellant off work.⁵

By decision dated June 17, 2023, OWCP expanded its acceptance of appellant’s claim to include right ulnar nerve lesion.

⁴ OWCP received occupational therapy notes dated January 6 through February 8, 2023.

⁵ OWCP continued to receive additional occupational therapy notes.

On August 14, 2023 appellant, through counsel, requested reconsideration of OWCP's February 27, 2023 decision.

In a June 13, 2023 report, Dr. Mitgang summarized a history of injury and treatment. He recounted that appellant reported on December 7, 2022 that she attempted to wear a prescribed wrist brace while working but experienced skin irritation. Appellant's symptoms improved as of March 21, 2023 but she continued to experience paresthesias. Dr. Mitgang diagnosed right cubital tunnel syndrome, right TFCC injury, and partial right scapholunate tear. He continued to hold appellant off work.

OWCP continued to receive reports from Dr. Mitgang dated through September 21, 2023 holding appellant off work.

By decision dated October 31, 2023, OWCP denied modification of the February 27, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim,⁷ 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 incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹¹ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹² 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.¹³ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a

⁶ *Supra* note 2.

⁷ *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

⁸ *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).

⁹ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

¹⁰ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

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

¹² *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹³ *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.¹⁴

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.¹⁵

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.¹⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing January 10, 2023, causally related to her accepted March 9, 2022 employment injury.

OWCP accepted appellant's claim for right wrist sprain and right ulnar nerve lesion. Dr. Mitgang opined on December 21, 2022 that appellant was disabled from work and held her off work through February 12, 2023. He continued to hold appellant off work in reports dated February 21 through September 21, 2023. However, these reports did not explain, with rationale, how or why appellant was unable to perform her light-duty position during the claimed period of disability due to her accepted conditions of right wrist sprain and right ulnar nerve lesion. 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 period of disability has an employment-related cause.¹⁷ Dr. Mitgang's reports are, therefore, insufficient to establish appellant's disability claim.

OWCP also received a February 1, 2023 report by Mr. Castillo, a physician assistant, wherein he held appellant off work, and a series of occupational therapy notes. However, the Board has held that medical reports signed solely by physician assistants or occupational therapists

¹⁴ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹⁵ 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).

¹⁶ See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

¹⁷ *K.K.*, Docket No. 24-0205 (issued April 23, 2024). See *S.S.*, Docket No. 21-0763 (issued November 12, 2021); *A.G.*, Docket No. 21-0756 (issued October 18, 2021); *T.S.*, Docket No. 20-1229 (issued August 6, 2021).

are of no probative value, as such healthcare providers are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion.¹⁸

As the medical evidence of record is insufficient to establish disability from work during the claimed period due to the accepted employment injury, the Board finds that appellant has not met her burden of proof.¹⁹

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 January 10, 2023, causally related to her accepted March 9, 2022 employment injury.

¹⁸ 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a (May 2023); *C.G.*, Docket No. 20-0957 (issued January 27, 2021) (physician assistants are not considered physicians as defined under FECA); *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).

¹⁹ *K.K.*, *supra* note 17; *K.A.*, Docket No. 17-1718 (issued February 12, 2018).

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 27, 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