United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 24-0513**
	)	**Issued: June 27, 2024**
U.S. POSTAL SERVICE, POST OFFICE, Sandston, VA, 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:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On April 18, 2024 appellant, through counsel, filed a timely appeal from a March 12, 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 March 12, 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work commencing October 1, 2023, causally related to his accepted August 16, 2023 employment injury.

FACTUAL HISTORY

On August 16, 2023 appellant, then a 39-year-old mail handler, filed a traumatic injury claim alleging that on that date he sustained a crush injury to his left foot when an empty all-purpose mail container (APC) fell on his left foot. He stopped work on even date and returned to full-time modified work on December 18, 2023.

In an August 31, 2023 disability note, Dr. Benjamin Nicholson, a Board-certified emergency medicine physician, related that appellant had been treated in the emergency department that day for reevaluation of his August 16, 2023 foot injury. He reported that a metal box fell on appellant's foot.[4] Dr. Nicholson reported that appellant may return to work on September 21, 2023, but must first be cleared by an orthopedic surgeon.

On September 21, 2023 a functional capacity evaluation (FCE) was performed, which indicated that appellant demonstrated the ability to work in a sedentary position for up to eight hours. Carlos Uria Moffett, a kinesiotherapist, performed the evaluation and Beatrice B. Brown, a nurse practitioner, cosigned the report.

Beginning on October 13, 2023, appellant filed claims for compensation (Form CA-7) for disability from work commencing October 1, 2023.

In a development letter dated October 18, 2023, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation commencing October 1, 2023. It advised him of the type of medical evidence needed to establish his claim. OWCP afforded appellant 30 days to respond.

By decision dated December 5, 2023, OWCP accepted appellant's claim for left foot contusion.

By decision dated January 5, 2024, OWCP denied appellant's claim for compensation for disability from work commencing October 1, 2023, finding that he failed to submit any medical evidence establishing disability from work for the claimed period causally related to his accepted August 16, 2023 employment injury.

In visit notes dated January 8 and February 9, 2024, Dr. Ernesto Africano, a Board-certified internist, recounted the history of appellant's August 16, 2023 injury. He related that appellant's physical examination demonstrated left foot and ankle tenderness and swelling on palpation, left ankle pain with decreased range of motion and limited mobility, left foot pain during palpation, inability to bear weight on left foot while walking, and inability to walk on toes or heels

[4] Dr. Nicholson refers to the right foot, which appears to be a typographical error as the metal box fell on appellant's left foot.

without pain. Dr. Africano diagnosed left foot contusion and opined that appellant was restricted to sedentary work as he was limited in walking and standing during an eight-hour workday to prevent further left foot injury. He prescribed physical therapy.

OWCP also received physical therapy notes from February 29 through March 8, 2024 signed by physical therapists.

On March 8, 2024 appellant, through counsel, requested reconsideration.

By decision dated March 12, 2024, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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 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]

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[5] *Supra* note 2.

[6] *See S.C.*, Docket No. 24-0202 (issued April 26, 2024); *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

[7] *See S.C.*, *id.*; *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).

[8] *S.C.*, *id.*; *T.W.,* Docket No. 19-1286 (issued January 13, 2020).

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

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

[11] *See S.C.*, *supra* note 6; *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

[12] *See S.C., id.; K.H.*, Docket No. 19-1635 (issued March 5, 2020).

[13] *See S.C.*, *id.*; *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

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]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish total disability from work commencing October 1, 2023, causally related to his accepted August 16, 2023 employment injury.

In an August 31, 2023 disability note, Dr. Nicholson released appellant to return to work on September 21, 2023, if clearance was received by an orthopedic surgeon. However, this report does not address the claimed period of disability. As such, the Board finds that Dr. Nicholsons report is insufficient to establish appellant's claimed period of disability.[16]

The record indicates that appellant returned to modified full-time work on December 18, 2023.

In visit notes dated January 8 and February 9, 2024, Dr. Africano described the August 16, 2023 injury and diagnosed left foot contusion. He opined that appellant was capable of performing sedentary work. Dr. Africano did not provide an opinion that appellant was totally disabled as of October 1, 2023 until he returned to work on December 18, 2023 due to an accepted left foot contusion.[17] Rather, the physician found appellant was capable of working a sedentary position eight hours per day as of the dates of his examinations. Thus, these reports are insufficient to establish appellant's claim.

In support of his claim, appellant submitted a series of PT notes signed by physical therapists and an FCE, signed by a nurse practitioner. However, the Board has held that medical reports signed solely by a physical therapist or nurse practitioner are of no probative value, as such

[14] *See 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 S.C.*, *supra* note 6; *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 9.

[16] *See R.B.*, Docket No. 23-0395 (issued October 2, 2023); *P.R.*, Docket No. 20-0596 (issued October 6, 2020); *M.L.*, Docket No. 18-1058 (issued November 21, 2019); *A.P.*, Docket No. 19-0446 (issued July 10, 2019); *D.J.*, Docket No. 18-0200 (issued August 12, 2019).

[17] *See G.P.*, Docket No. 23-1133 (issued March 19, 2024); *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).

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 his 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 his burden of proof to establish total disability from work commencing October 1, 2023, causally related to his accepted August 16, 2023 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 (January 2013); *W.V.*, Docket No. 24-0185 (issued April 11, 2024); *D.H.,* Docket No. 22-1050 (issued September 12, 2023) (nurses and nurse practitioners are not considered physicians as defined under FECA); *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] *W.V.*, *id.*; *K.A.,* Docket No. 17-1718 (issued February 12, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 12, 2024 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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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