

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

_____)	
D.J., Appellant)	
)	
and)	Docket No. 24-0175
)	Issued: May 2, 2024
U.S. POSTAL SERVICE, ROSWELL POST OFFICE, Roswell, GA, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
Wayne Johnson, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 13, 2023 appellant, through counsel, filed a timely appeal from a June 16, 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.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period December 23, 2017 through April 27, 2019 causally related to her accepted April 6, 2005 employment injury.

FACTUAL HISTORY

On April 7, 2005 appellant, then a 49-year-old sales service assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 6, 2005 she sustained pain, soreness and a bruise on her right leg when standing at window/counter while in the performance of duty. She did not stop work. OWCP accepted the claim for varicose veins of the lower extremities with other complications.³

In a report dated March 22, 2018, Dr. David Allison, a Board-certified vascular interventional radiologist, noted that appellant was seen for venous insufficiency and knots on her legs from an automobile accident. On physical examination he reported abnormal gait, positive straight leg test, no crepitus, pain with knee bending, and limited range of motion. Dr. Allison diagnosed compression of vein, low back pain, bilateral lower extremity varicose veins with pain, and chronic peripheral venous insufficiency. He referred appellant for a venous ultrasound.

In a report dated May 2, 2018, Dr. John W. Ross, an internist, recounted appellant's medical course of treatment and diagnosed right lower extremity varicose veins with other complications and recommended physical therapy.

On May 4, 2018 Dr. Allison opined appellant's venous system had a stable appearance and was not the cause of her edema. He found that she had reached maximum medical improvement (MMI) from a vascular standpoint.

In a January 8, 2019 report, Dr. Victor Osisanya, a Board-certified physiatrist, diagnosed bilateral leg varicose veins, bilateral leg atherosclerosis arteries, and bilateral leg atherosclerosis vein bypass. Dr. Osisanya described appellant's job duties and medical history. He recommended part-time, light-duty work, noting that she last worked on April 17, 2015.

Dr. Allison in a January 31, 2019 report, diagnosed chronic peripheral venous insufficiency, low back pain, bilateral lower extremity varicose veins with pain, and compression of vein.

³ OWCP assigned the present claim OWCP File No. xxxxxx711. Appellant has a series of prior claims before OWCP. Under OWCP File No. xxxxxx071, OWCP accepted aggravation of bilateral lower extremity varicose veins with other complications, necrotizing vasculopathy, unspecific atherosclerosis of native arteries of bilateral lower extremities, and other atherosclerosis of autologous vein bypass graft of the bilateral lower extremities due to a March 17, 2014 employment injury. Under OWCP File No. xxxxxx148, appellant alleged that she sustained head, neck, back, and bilateral leg and arm injuries due to a March 19, 2018 automobile accident while traveling to physical therapy. OWCP has administratively combined OWCP File Nos. xxxxxx148, xxxxxx071, and xxxxxx711, with the latter serving as the master file.

A report dated January 31, 2019, from Dr. Eriece B. Harris, a chiropractor, was cosigned by Dr. Allison. Appellant's complaints of piercing bilateral leg pain and her use of a walker for stability were noted. Her physical examination findings and diagnoses of chronic peripheral venous insufficiency, low back pain, vein compression, and bilateral lower extremity varicose veins with pain were related. Daily walking and stretching were recommended.

Dr. Osisanya, in a February 13, 2019 report, noted that appellant was seen for a reevaluation of her bilateral leg injuries after complaints of neck, right arm, low back, and bilateral knee pain were noted. Her diagnoses were listed as right shoulder impingement syndrome, right shoulder rotator cuff strain, right wrist ganglion cyst, right elbow lateral epicondylitis, lumbar radiculopathy, and bilateral knee osteoarthritis. Dr. Osisanya related that appellant had been temporarily incapacitated since a fall in 2015.

In a duty status report (Form CA-17) dated February 13, 2019, Dr. Osisanya noted an April 28, 2015 employment injury and diagnoses of cervical radiculopathy, right shoulder impingement syndrome, right shoulder rotator cuff strain, right wrist ganglion cyst, right elbow lateral epicondylitis, lumbar radiculopathy, and bilateral knee osteoarthritis. He found that appellant could work with restrictions of up to 10 pounds of intermittent lifting/carrying, up to one hour of standing and walking, and up to four hours of driving a personal vehicle. Clinical findings concerned the cervical lumbar paraspinal muscles and pain.

In a report dated August 1, 2019, Dr. Daniel McDevitt, a Board-certified vascular surgeon, noted a history of bilateral lower extremity discomfort and swelling and a back injury. He diagnosed vein compression, bilateral lower extremity varicose veins with other complications, unspecified necrotizing vasculopathy, low back pain, peripheral chronic venous insufficiency, and bilateral legs unspecified atherosclerosis of native arteries of extremities. Dr. McDevitt recommended daily stretching and walking.

On October 8 and 9, 2019 appellant filed claims for wage-loss compensation (Form CA-7) for disability from work for the period December 23, 2017 through April 27, 2019.

By decision dated January 28, 2020, OWCP denied appellant's claims for wage-loss compensation for the period December 23, 2017 through April 27, 2019, finding that the medical evidence of record was insufficient to establish disability from work due to the accepted April 6, 2005 employment injury during the claimed period.

On February 27, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated April 20, 2020, OWCP's hearing representative found the case not in posture for decision and remanded the case for OWCP to refer appellant for a second opinion evaluation and issue a *de novo* decision.

In a report dated June 4, 2020, Dr. McDevitt stated that appellant was seen for complaints of chronic bilateral leg swelling and numbness. On examination, he observed moderate bilateral lower extremity pain, varicose veins, and edema. Dr. McDevitt diagnosed vein compression, bilateral lower extremity varicose veins with other complications, bilateral leg unspecified atherosclerosis of native arteries of extremities, unspecified necrotizing vasculopathy, chronic

peripheral venous insufficiency, and low back pain. He opined that appellant appeared to be doing well at baseline level and required no further intervention at that time.

On June 30, 2020 appellant requested reconsideration and submitted additional medical evidence.

In the May 4, 2018 letter, Dr. Allison advised that a recent ultrasound showed a stable appearance of the venous system with no suggested etiology from a vascular point of view for appellant's edema. He opined that she had reached MMI from a vascular point of view.

Dr. Osisanya, in a May 8, 2018 report, noted that appellant's latest ultrasound was negative for deep vein thrombosis (DVT). Diagnoses included bilateral leg varicose veins, bilateral leg atherosclerosis arteries, bilateral leg atherosclerosis vein bypass. Dr. Osisanya recommended light-duty, part-time work, noting appellant last worked on April 17, 2015. Work restrictions included no lifting over 15 pounds and no prolonged sitting, standing, or walking as such activities could exacerbate her pain.

On January 21, 2021 appellant again requested reconsideration.

Dr. Osisanya, in a January 20, 2021 report, noted that he had not treated appellant for the current claim, but instead treated her under OWCP File No. xxxxxx071 for the conditions of bilateral legs varicose veins -- necrotizing vasculopathy, bilateral legs atherosclerosis arteries, and bilateral leg atherosclerosis vein bypass. He further related that after reviewing OWCP's January 28, 2020 decision, he assumed that the period claimed for disability, December 23, 2017 through April 27, 2019, had been transcribed incorrectly. Dr. Osisanya explained that, under OWCP File No. xxxxxx071, appellant was advised to continue with part-time light-duty work with restrictions noted on a Form CA-17. He also noted that she last worked on April 17, 2015 when she sustained a fall at work. Dr. Osisanya explained that the employing establishment was unable to find work compatible with her work restrictions and that appellant had been advised to continue with the work restrictions noted on her Form CA-17 regardless of the period in question, December 23, 2017 through April 27, 2019. Appellant was not offered a modified job within her restrictions until August 15, 2019.

By decision dated March 24, 2021, OWCP denied modification.

OWCP continued to receive evidence which consisted of notes from a nurse practitioner relating to her medical treatment.

On March 24, 2022 appellant, through counsel, requested reconsideration.

By decision dated March 28, 2022, OWCP denied modification.

On March 28, 2023 appellant, through counsel, requested reconsideration. In support thereof, counsel submitted a series of office visit notes covering the period November 15, 2016 through September 27, 2017 wherein Dr. Jay B. Bender, a Board-certified physiatrist, noted that she had been seen for a follow-up evaluation for varicose veins. He reported a history of venous insufficiency and DVT, which had been treated with stent replacement and venogram, and complaints of low back pain radiating into both lower extremities. On physical examination

Dr. Bender reported limited lumbar flexion and extension, tenderness on palpation of the lumbar paraspinal muscles, bilateral edema, greater on the right side, and an antalgic gait. He diagnosed bilateral lower extremity varicose veins, unilateral native arteries in the extremities, and bypass of the extremities and autologous vein. Appellant was instructed to continue wearing compression stockings and take medication for pain. Dr. Bender concluded that appellant continued to be disabled from work.

By decision dated June 16, 2023, OWCP denied modification.

LEGAL PRECEDENT

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

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ The question of whether an employee is disabled from work is an issue that must be resolved by competent medical evidence.⁸ The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought. 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

To establish causal relationship between the disability claimed and the accepted employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.¹⁰ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale

⁴ *Supra* note 2.

⁵ See *G.H.*, Docket No. 20-1214 (issued December 16, 2022); *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ 20 C.F.R. § 10.5(f); *G.H., id.*; *C.B., id.*; *N.M.*, Docket No. 18-0939 (issued December 6, 2018); *R.C.*, 59 ECAB 546, 551 (2008).

⁷ *Id.*; *T.A.*, Docket No. 18-0431 (issued November 7, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁸ *G.H., supra* note 5; *S.A.*, Docket No. 18-0399 (issued October 16, 2018).

⁹ *G.H., id.*; *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁰ *G.H., id.*; *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.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 December 23, 2017 through April 27, 2019 causally related to her accepted April 6, 2005 employment injury.

In support of her claim, appellant submitted a series of reports from Dr. Osisanya. In reports dated May 8, 2018 and January 8, 2019, Dr. Osisanya recommended part-time work, noting her last worked on April 17, 2015. He, in a February 13, 2019 Form CA-17, advised that appellant was capable of working with restrictions while in a report of even date he noted that she has not worked since a fall at work on April 17, 2015. In a January 20, 2021 report, Dr. Osisanya noted that he had not treated her for the current injury and assumed the disability period claimed for disability was incorrect. He further advised that appellant was capable of working part time with restrictions. While these reports noted that she had work restrictions, the Board finds that none of these reports offered an opinion that her disability from work was causally related to her accepted April 6, 2005 employment injury.¹³ Accordingly, these reports are of no probative value and are insufficient to establish appellant's claim for compensation.¹⁴

Appellant also submitted reports dated March 22 and May 4, 2018 and January 31, 2019 from Dr. Allison, a May 2, 2018 report from Dr. Ross, and reports dated August 1, 2019 and June 4, 2020 from Dr. McDevitt. None of these reports, however, offered an opinion as to whether she was disabled from work. The Board has previously explained that a medical report which does not provide an opinion on appellant's claimed disability from work during the claimed period is

¹¹ *G.H., id.; C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *G.H., id.; T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Fereidoon Kharabi*, *supra* note 9.

¹³ *T.H.*, Docket No. 21-1429 (issued November 2, 2023); *T.T.*, Docket No. 22-0632 (issued November 16, 2022); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *T.H., id.; see M.M.*, Docket No. 18-0817 (issued May 17, 2019); *M.C.*, Docket No. 16-1238 (issued January 26, 2017). *See also F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B., id.; D.K., id.*

of no probative value.¹⁵ Therefore, these reports are of no probative value and are insufficient to establish her claim for compensation.¹⁶

Appellant also submitted reports from Dr. Bender covering the period November 15 through September 27, 2017. Dr. Bender diagnosed bilateral lower extremity varicose veins, unilateral native arteries in the extremities, and bypass of the extremities and autologous vein. However, these reports predate the claimed period of disability and do not address the relevant claimed time period. As such, Dr. Bender's reports are insufficient to establish appellant's claim for compensation.¹⁷

Appellant submitted reports from a nurse practitioner. The Board has held that certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physician[s] as defined under FECA.¹⁸ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁹

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 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 December 23, 2017 through April 27, 2019 causally related to her accepted employment injury.

¹⁵ See *L.B.*, *id.*; *D.K.*, *id.*

¹⁶ *T.A.*, Docket No. 23-0523 (issued November 2, 2023); *L.S.*, Docket No. 19-1231 (issued March 30, 2021); *L.B.*, *id.*; *D.K.*, *id.*

¹⁷ 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).

¹⁸ 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); see also *A.B.*, Docket No. 23-0827 (issued December 27, 2023) (nurse practitioners are not considered physicians as defined under FECA).

¹⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 2024
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board