

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

<hr/>		
T.A., Appellant)	
)	
and)	Docket No. 24-0300
)	Issued: May 1, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Parsippany, NJ, Employer)	
<hr/>)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 31, 2024 appellant filed a timely appeal from a January 23, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent disability from work during the period January 14 through December 2, 2019, causally related to her accepted December 3, 2018 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 11, 2019 appellant, then a 42-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 3, 2018 she injured her right knee when loading her truck, a postal cart struck her right knee while in the performance of duty. On March 4, 2022 OWCP accepted the claim for contusions of the right quadriceps, knee, and leg.

Beginning April 7, 2022, appellant filed claims for compensation (Form CA-7) for intermittent disability from work during the period January 14 through December 2, 2019.

In development letters dated April 26 and May 9, 2022, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of medical evidence needed and afforded her 30 days to submit the necessary evidence.

OWCP subsequently received a December 6, 2019 note from Dr. Maria Pilar Capo, a pulmonologist, who released appellant to return to work effective December 10, 2019.

By decision dated July 28, 2022, OWCP denied appellant's claims for wage-loss compensation, finding that the medical evidence of record was insufficient to establish intermittent disability from work during the claimed period causally related to the accepted employment injury.

OWCP continued to receive medical evidence.

In December 13, 2019 and January 2, 2020 notes, Dr. Tadeusz J. Majchrzak, a specialist in family medicine, diagnosed right knee torn meniscus and partial tears of the ACL and MCL.

In a January 15, 2020 medical report, Dr. Michael T. Benke, a Board-certified orthopedic surgeon, reviewed a May 15, 2019 magnetic resonance imaging (MRI) scan, diagnosed complex tears of the medial and lateral menisci of the right knee, and recommended surgery. In a January 31, 2020 operative report, Dr. Benke related that he performed a right knee arthroscopy with partial medial and lateral meniscectomies. His postoperative diagnoses included medial and lateral meniscus tears. In a February 12, 2020 follow-up report, Dr. Benke noted that appellant was healing well from arthroscopic knee surgery. In a report dated February 19, 2020, he advised that she would be incapacitated from work for the period January 31 through March 26, 2020 due to complex tears of the medial and lateral menisci.

On August 11, 2022 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on December 13, 2022.

By decision dated February 16, 2023, an OWCP hearing representative affirmed the July 28, 2022 decision in part, finding that the evidence of record was insufficient to establish that

² Docket No. 23-0523 (issued November 2, 2023).

appellant was disabled from work during the period January 14 through December 2, 2019, due to her accepted employment conditions.³

On March 9, 2023 appellant appealed to the Board.⁴ By decision dated November 2, 2023, the Board affirmed the February 16, 2023 decision and found that appellant had not met her burden of proof to establish intermittent disability from work during the period January 14 through December 2, 2019, causally related to her accepted December 3, 2018 employment injury.⁵

On November 18, 2023 appellant requested reconsideration. She submitted a narrative statement but submitted no additional medical evidence.

By decision dated January 23, 2024, OWCP denied modification. It found that the medical evidence provided by appellant was not relevant to the claimed period of disability.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁷

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.⁸ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁹ 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 injury, has no disability as that term is used in FECA.¹⁰ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical

³ The hearing representative further vacated in part, finding that the case was not in posture for decision as to whether the acceptance of the claim should be expanded to include meniscal injuries. He remanded the case for further development on the issues of expansion, authorization for surgery, and disability from work during the period December 7, 2019 through March 27, 2020.

⁴ By decision dated June 16, 2023, OWCP expanded acceptance of the claim to include tear of medial meniscus, right knee, and other tear of lateral meniscus, right knee.

⁵ *Supra* note 2.

⁶ *Supra* note 1.

⁷ See *A.H.*, Docket No. 22-0001 (issued July 29, 2022); *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); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ 20 C.F.R. § 10.5(f); see *J.M.*, Docket No. 18-0763 (issued April 29, 2020); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁹ *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹⁰ See *M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

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

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.¹³ The opinion of the physician 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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work during the period January 14 through December 2, 2019, causally related to her accepted December 3, 2018 employment injury.

Preliminarily, the Board notes that findings made in prior Board decisions are *res judicata*, absent further merit review by OWCP, under section 8128 of FECA.¹⁵ It is, therefore, unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's February 16, 2023 decision, as the Board considered that evidence in its November 2, 2023 decision.¹⁶

Following OWCP's February 16, 2023 decision, appellant submitted a narrative statement but submitted no additional medical evidence. As noted above, 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.¹⁷ To establish causal relationship between the disability claimed and the employment injury, an employee must

¹¹ See *A.R.*, *supra* note 7; *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹² See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

¹³ See *D.V.*, Docket No. 19-0868 (issued March 21, 2022); *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁴ *Id.*

¹⁵ *A.A.*, Docket No. 20-1399 (issued March 10, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

¹⁶ See *R.B.*, Docket No. 22-0954 (issued December 29, 2022); *M.S.*, Docket No. 20-1095 (issued March 29, 2022); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *Clinton E. Anthony, Jr.*, *id.*

¹⁷ *Supra* note 11.

submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.¹⁸ A lay opinion regarding causal relationship does not constitute probative medical evidence.¹⁹ Appellant's statement is therefore insufficient to establish the claim.

As the evidence of record is insufficient to establish intermittent disability from work during the period January 14 through December 2, 2019, causally related to the accepted December 3, 2018 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 intermittent disability from work during the period January 14 through December 2, 2019, causally related to her accepted December 3, 2018 employment injury.

¹⁸ *Supra* note 12.

¹⁹ *See M.S.*, Docket No. 23-0866 (issued March 8, 2024); *E.H.*, Docket No. 19-0365 (issued March 17, 2021).

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 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