

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

K.M., Appellant)	
)	
and)	Docket No. 24-0320
)	Issued: May 8, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Denham Springs, LA, Employer)	
)	

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
JANICE B. ASKIN, Judge

JURISDICTION

On February 2, 2024 appellant filed a timely appeal from an October 23, 2023 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 October 23, 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 for the period May 2 through June 25, 2017, causally related to the accepted September 18, 2015 employment injury.

FACTUAL HISTORY

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

On September 15, 2016 appellant, then a 46-year-old customer service supervisor, filed a traumatic injury claim (Form CA-1) alleging that on September 18, 2015 she fractured a disc in her neck and sustained bulging discs in her neck and lower back when she was involved in a motor vehicle accident (MVA) while in the performance of duty. She did not stop work.

On September 23, 2016 appellant accepted a modified job offer as a customer service supervisor.

In an unsigned report dated May 12, 2017, Dr. Charles R. Bowie, a Board-certified neurosurgeon, evaluated appellant for a C5-6 disc osteophyte complex and noted that she had increased pain in the neck and arm.

On June 26, 2017 appellant underwent an anterior cervical discectomy and fusion from C3 to C6.

On June 17, 2019 OWCP accepted the claim for other intervertebral disc degeneration, lumbosacral region, and a fracture of other parts of the neck.

On June 24, 2019 appellant filed a claim for compensation (Form CA-7) for intermittent disability from work during the period August 26, 2016 through July 5, 2019 due to her accepted employment injury. The employing establishment indicated that she separated from employment on August 31, 2018.

In a development letter dated July 29, 2019, OWCP informed appellant of the deficiencies of her claim for disability compensation. It advised her of the type of medical evidence needed, including a reasoned opinion from a physician supporting disability from work during the claimed period due to the accepted employment injury. It afforded her 30 days to submit the necessary evidence.

By decision dated October 30, 2019, OWCP denied appellant's claim for intermittent disability from work during the period August 26, 2016 through July 5, 2019 causally related to the accepted employment injury.

³ Docket No. 17-1263 (issued December 19, 2018).

On November 12, 2019 appellant, through her then-representative, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

On January 30, 2020 OWCP subsequently expanded its acceptance of the claim to include cervical spondylosis.

A telephonic hearing was held on March 17, 2020. OWCP's hearing representative noted that there was no evidence that appellant had received medical care for her neck from the time of her September 18, 2015 MVA until September 2016. Counsel advised that the employing establishment had told her that her injury had not occurred in the performance of duty. Appellant related that she sought medical treatment in May 2016.

By decision dated May 19, 2020, OWCP's hearing representative set aside the October 30, 2019 decision. She noted that the first medical evidence that mentioned the September 18, 2015 MVA was dated September 13, 2016, and that appellant had been hospitalized in December 2015 and August 2016 with no mention of the accident. OWCP's hearing representative remanded the case for OWCP to obtain medical evidence from 2016 and to refer appellant for an opinion on whether the September 18, 2015 accident caused or aggravated her preexisting neck and low back conditions and, if not, for OWCP to follow proper procedures to rescind its acceptance of the claim. If the evidence supported causation, she ordered OWCP to adjudicate her claim for disability and advise whether her June 2017 surgery was employment related.

In a report dated February 10, 2022, Dr. Simon Finger, a Board-certified orthopedic surgeon and OWCP referral physician, found that appellant sustained cervical and lumbar strain due to the employment injury that had resolved. He opined that she had preexisting degenerative conditions of the cervical and lumbar spine unrelated to the employment injury. Dr. Finger further opined that appellant's need for surgery was unrelated to her MVA. In a supplemental report dated June 9, 2022, he noted that appellant had not sought treatment for more than six months after her injury, and that if she had experienced an aggravation of her underlying degenerative conditions, she would have had acute symptoms.

By decision dated July 19, 2022, OWCP denied appellant's claim for intermittent disability from work during the period August 26, 2016 through July 5, 2019.⁴

On September 2, 2022 appellant, through her then representative, requested reconsideration.

On August 11, 2023 appellant's then-representative requested that she receive compensation for wages loss from June 26 through October 17, 2017, when she resumed limited-duty work at the employing establishment.

⁴ By separate decision dated July 19, 2022, OWCP denied appellant's request authorization of cervical surgeries performed on June 26, 2017 and in December 2021. By decision dated November 1, 2022, it modified its July 19, 2022 decision denying surgical authorization and approved appellant's June 26, 2017 removal of cervical instrumentation/anterior plate and screws at C3-6 and December 2021 revision of the anterior cervical discectomy and fusion at C5-6 and C6-7.

On August 18, 2023 appellant filed claims for compensation (Form CA-7) for disability from work during the periods August 26 through September 10, 2016; October 6, 2016 through January 27, 2017; May 2 through October 21, 2017; and August 6 through 31, 2018.

In a development letter dated August 25, 2023, OWCP advised appellant that it had received her CA-7 forms claiming compensation for disability from May 2 through October 21, 2017 and August 6 through 31, 2018. It indicated that it had approved the payment of compensation from June 26 through October 21, 2017. OWCP informed appellant of the deficiencies in her claim for the remaining claimed periods of disability and requested that she submit a reasoned opinion from a physician supporting disability from work due to the accepted employment injury. It afforded her 30 days to submit the necessary evidence.

Subsequently, OWCP received a November 29, 2022 report from Dr. Chad Domangue, a Board-certified neurologist, who discussed appellant's complaints of pain in her left buttock radiating into her foot. In progress reports dated March through July 2023, Dr. Domangue evaluated her for pain in her low back, neck, and hip. He indicated that appellant's pain caused functional disability in her activities of daily life. On October 11, 2023 Dr. Domangue scheduled her for a bilateral greater trochanteric bursa injection.

On August 7, 2023 Dr. Sean Rider, a Board-certified orthopedic surgeon, evaluated appellant for neck and low back pain radiating into the upper and lower extremities. He recommended further diagnostic testing and noted that she should remain out of work.

An August 8, 2023 MRI scan of appellant's thoracic spine revealed herniation at the T12-L1 level.

In a report dated August 23, 2023, Dr. John W. Ellis, an osteopath Board-certified in family medicine, noted that OWCP had denied appellant's claim for disability from work commencing August 26, 2016. He discussed her history of two cervical surgeries. Dr. Ellis indicated that appellant initially had no cervical symptoms after her MVA. After her 2016 gall bladder removal, appellant advised her physicians that she had pain in her neck radiating into her arms. She continued to work but her symptoms worsened. Dr. Ellis diagnosed lumbosacral intervertebral disc degeneration, a fracture of the neck, and cervical spondylosis. He related that as a result of the September 18, 2015 MVA, appellant had sustained temporary total disability such that she was "unable to perform her job duties as a supervisor for various time periods."

In a report dated September 12, 2023, Dr. Ellis repeated his findings and conclusions from his August 23, 2023 report.

On October 2, 2023 Dr. Rider discussed appellant's complaints of neck pain radiating into both arms. He indicated that she had a disc herniation at L3-4 and that her neck was doing well.

In a duty status report (Form CA-17) dated October 11, 2023, a physician with an illegible signature found that appellant was totally disabled.

By decision dated October 23, 2023, OWCP found that appellant was entitled to wage-loss compensation for intermittent disability during the period June 26 through October 21, 2017.⁵ However, it denied her claim for wage-loss compensation for disability during the period May 2 through June 25, 2017 as the evidence was insufficient to support disability from employment during this period.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim including the fact 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, which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.⁹

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.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 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

⁵ The Board notes that OWCP did not specifically address appellant's claims for compensation for disability from work during the periods August 26 through September 10, 2016; October 6, 2016 through January 27, 2017; and August 6 through 31, 2018. Payment records, however, indicate that OWCP paid appellant wage-loss compensation for the period August 6 through 31, 2018.

⁶ *Supra* note 1.

⁷ *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).

⁸ *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Kathryn Haggerty*, 45 ECAB 383 (1994).

⁹ 20 C.F.R. § 10.5(f); *L.M.*, Docket No. 21-0063 (issued November 8, 2021); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹⁰ 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).

¹¹ *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹² *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.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 the claimant, 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 her burden of proof to establish disability from work during the period May 2 through June 25, 2017 causally related to the accepted September 18, 2015 employment injury.

Appellant has not submitted any evidence addressing disability for the time in question due to the accepted employment injury. On August 23, 2023 Dr. Ellis indicated that he had reviewed OWCP's finding that she was not entitled to wage-loss compensation beginning August 26, 2016. He diagnosed lumbosacral intervertebral disc degeneration, a fracture of the neck, and cervical spondylosis. Dr. Ellis advised that appellant had sustained temporary total disability resulting in her inability to work as a supervisor "for various time periods." On September 12, 2023 he referenced his August 23, 2023 report for information regarding her claim for wage-loss compensation due to disability from May 2 through October 21, 2017 and August 6 to 31, 2018. However, in his reports, Dr. Ellis found that appellant was disabled for various periods of time without specifically referencing the claimed period of disability. As noted above, the medical evidence must directly address the specific dates of disability for which compensation is claimed.¹⁶ Therefore, these reports are insufficient to establish the disability claim.

Appellant submitted progress reports from 2022 and 2023 from Dr. Domangue and August 7 and October 2, 2023 progress reports from Dr. Rider. However, these reports failed to

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

¹⁴ *D.S.*, Docket No. 23-0414 (issued December 4, 2023); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹⁵ *A.G.*, Docket No. 21-0756 (issued October 18, 2021); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁶ See *F.B.*, Docket No. 22-0679 (issued January 23, 2024); *F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

address the relevant issue of whether appellant was disabled from work during the claimed period due to her accepted employment injury, and thus are of no probative value on this issue.¹⁷

Appellant also submitted a CA-17 form dated October 11, 2023 from a physician with an illegible signature indicating that she was disabled. However, the Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence.¹⁸ Therefore, this evidence is of no probative value and is insufficient to establish appellant's claim.

OWCP also received diagnostic testing reports. However, the Board has held that diagnostic tests, standing alone, lack probative value as they do not provide a physician's opinion on causal relationship.¹⁹

As the medical evidence of record is insufficient to establish employment-related disability during the claimed period due 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 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 during the period May 2 through June 25, 2017 causally related to her accepted September 18, 2015 employment injury.

¹⁷ *W.K.*, Docket No. 23-0379 (issued October 26, 2023); *S.P.*, Docket No. 21-0380 (issued November 22, 2022); *B.B.*, Docket No. 19-0511 (issued July 22, 2019); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁸ *J.R.*, Docket No. 23-0215 (issued July 28, 2023); *J.E.*, Docket No. 22-0683 (issued November 10, 2022); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁹ *See P.A.*, Docket No. 18-0559 (issued January 29, 2020); *A.P.*, Docket No. 18-1690 (issued December 12, 2019); *R.M.*, Docket No. 18-0976 (issued January 3, 2019).

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 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