

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

_____)	
T.A., Appellant)	
)	
and)	Docket No. 24-0851
)	Issued: November 15, 2024
U.S. POSTAL SERVICE, CANTON POST OFFICE, Canton, OK, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
Christopher L. Kannady, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 19, 2024 appellant, through counsel, filed a timely appeal from a June 13, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the

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 Appellant, through counsel, timely requested oral argument before the Board. 20 C.F.R. § 501.2(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of her request for oral argument appellant's counsel contended that appellant had submitted sufficient medical evidence to support her disability claim. The Board in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent disability from work for the period February 29, 2020 through September 22, 2022 causally related to her accepted June 29, 2019 employment injury.

FACTUAL HISTORY

On July 1, 2019 appellant, then a 50-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on June 29, 2019 she injured her neck when she was involved in a rear-end motor vehicle accident (MVA) while in the performance of duty. She did not stop work.

In an emergency room report dated June 29, 2019, Dr. Carrie Clark, an osteopathic emergency medicine physician, noted appellant's history, complaints, and examination findings, and ordered computerized tomography (CT) and magnetic resonance imaging (MRI) scans of the cervical spine.

In a medical report dated July 17, 2019, Dr. Michael R. Hahn, II, a Board-certified neurosurgeon, performed a physical examination and noted that appellant's MRI scan revealed a disc bulge on the left at C6-7 which was compressing the C7 nerve root. He diagnosed left C7 radiculopathy and released appellant to return to work with restrictions of no lifting greater than 25 pounds and limited pushing, pulling, crawling, climbing, and stooping.

On July 30, 2019, appellant accepted an offer of a modified rural carrier associate position working 19.12 hours per week. The position included casing mail for 2 hours, driving and delivering mail for 5 hours, and collection of mail for 1 hour with no lifting greater than 25 pounds 8 to 10 hours per day.

On August 19, 2019 OWCP accepted the claim for cervical radiculopathy.

In a follow-up report dated November 14, 2019, Dr. Hahn re-reviewed the June 29, 2019 cervical MRI scan and indicated that it revealed no spinal cord compression. He performed a physical examination and indicated that he would "increase [appellant's] work restrictions to 75 pounds."

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the June 13, 2024 decision, OWCP received additional evidence. 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.*

A February 4, 2020 electromyography and nerve conduction velocity (EMG/NCV) study of the upper extremities revealed ulnar neuropathies at the elbows and right-sided carpal tunnel syndrome (CTS), but no evidence of cervical radiculopathy.

In a medical report dated March 12, 2020, Dr. Hahn noted appellant's subjective complaints and documented excellent strength on physical examination in all of the major muscle groups of the upper extremities. He recommended an anesthetic discogram at C6-7 and continued to release her to return to work with lifting no more than 75 pounds.

On March 17, 2020 appellant began filing claims for compensation (Form CA-7) for disability from work commencing February 28, 2020.⁵

In an e-mail dated March 27, 2020, S.J. an employing establishment health and resource management specialist, advised OWCP that appellant was hired as a rural carrier relief for an "H route," which did not include guaranteed or set hours. She also noted that she had been released to full-duty work in November 2019.⁶

In a September 8, 2020 operative report, Dr. Gaylan D. Yates, Board-certified in anesthesiology and pain medicine, performed an anesthetic discogram at C6-7. His pre- and post-procedure diagnoses were cervical displaced disc and spondylosis with radiculopathy. In a report dated September 10, 2020, Dr. Yates indicated that the procedure produced a 40 to 50 percent improvement in appellant's neck, shoulder, and arm pain for three to four hours.

In a September 17, 2020 follow-up report, Dr. Hahn reviewed the discogram and released appellant to return to work lifting up to 75 pounds.

In a January 21, 2021 medical report, Dr. Rita M. Hancock, Board-certified in physiatry and pain medicine, noted that appellant related complaints of pain in her neck, shoulders, elbows, and hands, which she attributed to the June 29, 2019 MVA. She performed a physical examination and diagnosed cervical degenerative disc disease, bilateral ulnar neuropathy, right CTS, and segmental and somatic dysfunction of the head, cervical, thoracic, and lumbar regions and recommended osteopathic manipulative treatment.

In a follow-up report dated January 28, 2021, Dr. Hahn recommended an updated cervical MRI scan and to "keep her current restrictions as outlined by Dr. Hancock."

In reports dated February 24 and March 10, 2021, Dr. Hancock noted examination findings and administered trigger point injections.

⁵ By decision dated May 28, 2020, OWCP denied a prior claim for disability from work for the period February 15 through 28, 2020.

⁶ Time analysis forms (Form CA-7a) dated March 17 and 30, and April 15, 2020 indicated that appellant worked on February 29, March 11, 14, 16, 17, and April 4, 6 through 8, 2020. Pay stubs indicated that she had varying earnings for work performed from April 12, 2020 through January 2, 2021.

A March 11, 2021 cervical MRI scan revealed a right paracentral disc protrusion abutting the ventral cord at C5-6 and degenerative disc changes at C6-7 with minimal central canal stenosis and mild foraminal stenosis.

In a follow-up report dated March 11, 2021, Dr. Hahn reviewed the MRI scan of even date and noted the C6-7 disc bulge did not contact the spinal cord. He opined that appellant had reached maximum medical improvement (MMI) and released her to the care of Dr. Hancock.

Dr. Hancock administered additional trigger point injections on March 25 and April 8 and 2, 2021.

In a July 19, 2021 medical report, Dr. Mark Stephen Wilson, an orthopedist, performed right occipital block. He diagnosed cervical radiculopathy.

In follow-up reports dated August 16 and September 13, 2021, Dr. Wilson indicated that appellant complained of a significant amount of numbness, tingling, and weakness in her upper extremities.

A February 17, 2022 MRI scan of the cervical spine revealed mild degenerative changes at C5-6 but no significant spinal canal stenosis or neuroforaminal narrowing.

In a report dated April 11, 2022, Dr. Hahn reviewed the February 17, 2022 cervical MRI scan and noted that he observed a disc bulge at C5-6 and C6-7 that contacted, but did not compress, the spinal cord. He performed a physical examination, which revealed normal strength in all muscle groups of the upper extremities. Dr. Hahn diagnosed cervical radiculopathy and recommended permanent restrictions of no lifting greater than 25 pounds due to the June 29, 2019 MVA.

OWCP thereafter received physical therapy reports dated April 20 through June 22, 2023 and medical reports dated May 15 and October 9, 2023 wherein Dr. Kristopher Avant, an orthopedic surgeon, noted his evaluation of appellant for right wrist and elbow complaints.

OWCP also received an employing establishment job description for rural carrier, which listed functional requirements for the position of lifting up to 70 pounds intermittently and carrying 35 pounds or more intermittently.

On January 19, 2024, appellant filed a Form CA-7 claim for disability from work for the period February 15, 2020 through September 22, 2022.

In a development letter dated January 29, 2024, OWCP informed appellant of the deficiencies of her claim for compensation. It advised her of the type of factual and medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence. No response was received.

By decision dated March 21, 2024, OWCP denied appellant's claim for compensation finding that the medical evidence of record was insufficient to establish disability from work for the period February 29, 2020 through September 22, 2022 due to the accepted June 29, 2019 employment injury.

On May 16, 2024 appellant, through counsel, requested reconsideration of OWCP's March 21, 2024 decision. In support of the request, she submitted paystubs from March 15, 2020 through September 24, 2022 and an itemization of hours and locations where she worked from February 29, 2020 through September 14, 2022.

By decision dated June 13, 2024, OWCP denied modification of its March 21, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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 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.¹²

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

⁷ *S.F.*, Docket No. 20-0347 (issued March 31, 2023); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ 20 C.F.R. § 10.5(f).

⁹ *See H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹⁰ *See H.B., id.*; *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

¹¹ *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹² *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period February 29, 2020 through September 22, 2022, causally related to her accepted June 29, 2019 employment injury.

In support of her claim for compensation, appellant submitted medical reports by Dr. Hahn dated March 12 and September 17, 2020, who released appellant to return to work with lifting no more than 75 pounds. However, he did not provide an opinion specifically addressing whether appellant was disabled from work during the claimed period. 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.¹⁴ As such, these reports are of no probative value with regard to the issue of appellant's disability for the claimed period and are insufficient to establish her claim for wage-loss compensation.

In follow-up reports dated January 28 and March 11, 2021, Dr. Hahn deferred to "the current restrictions as outlined by Dr. Hancock." However, the record does not contain any reports by Dr. Hancock which provide restrictions. Moreover, Dr. Hahn did not indicate that appellant was totally disabled from work due to her June 29, 2019 employment injury for the period February 29, 2020 through September 22, 2022. Accordingly, his January 28 and March 11, 2021 reports are of no probative value on the issue of causal relationship.¹⁵

On April 11, 2022, Dr. Hanh diagnosed cervical radiculopathy and recommended permanent restrictions of no lifting greater than 25 pounds due to the June 29, 2019 MVA. However, he did not explain with rationale how the restrictions were related to the June 29, 2019 employment injury or why appellant could only work with specific restrictions.¹⁶ In addition, although Dr. Hahn outlined work restrictions, he did not indicate that appellant was totally disabled from work due to her June 29, 2019 employment injury for the period February 29, 2020 through September 22, 2022.¹⁷ Accordingly, this report is of diminished probative value, and is insufficient to establish appellant's disability claim.

In reports dated September 8 and 10, 2020, Dr. Yates noted that he performed a C6-7 anesthetic discogram on appellant. In reports dated January 21 through April 22, 2021,

¹³ *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁴ *Id.*

¹⁵ *P.L.*, Docket No. 22-0337 (issued September 9, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *See M.B.*, Docket No. 22-0422 (issued April 3, 2023); *D.V.*, Docket No. 19-0868 (issued March 21, 2022); *M.M.*, Docket No. 18-0817 (issued May 17, 2019).

¹⁷ *Supra* note 13.

Dr. Hancock documented examination findings and administered trigger point injections. Dr. Wilson, in reports dated July 19 through September 13, 2021, noted appellant's subjective complaints throughout her neck and upper extremities, and performed right occipital blocks. However, none of these reports offered an opinion as to whether appellant was disabled from work due to the accepted June 29, 2019 employment injury for the period February 29, 2020 through September 22, 2022. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁸ Therefore, these reports are of no probative value and are insufficient to establish her claim for compensation.

Dr. Avant, in his May 15 and October 9, 2023 reports, noted his treatment of appellant's right wrist and elbow complaints. However, he did not address the specific dates of disability for which compensation is claimed. Consequently, this additional evidence is of no probative value and is also insufficient to establish appellant's disability claim.¹⁹

Appellant also submitted copies of diagnostic tests. However, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship.²⁰ Thus, this evidence is insufficient to establish appellant's disability claim.

The remainder of the medical evidence consists of reports from physical therapists. The Board has held that certain healthcare providers such as physical therapists are not considered physicians as defined under FECA.²¹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Thus, this evidence is also insufficient to establish the disability claim.

As the medical evidence of record is insufficient to establish disability from work for the period February 29, 2020 through September 22, 2022 due to the accepted June 29, 2019 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.

¹⁸ *Supra* note 15.

¹⁹ *Supra* note 15.

²⁰ *K.B.*, Docket No. 22-0842 (issued April 25, 2023); *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

²¹ 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 Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *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 *K.D.*, Docket No. 22-0756 (issued November 2022) (a physical therapist is not considered a physician under FECA).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work for the period February 29, 2020 through September 22, 2022 due to the accepted June 29, 2019 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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