United States Department of Labor
Employees' Compensation Appeals Board

R.F., Appellant	)	
and	)	**Docket No. 24-0816**
	)	**Issued: October 28, 2024**
U.S. POSTAL SERVICE, GREENACRES POST OFFICE, Greenacres, WA, 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:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On August 7, 2024 appellant, through counsel, filed a timely appeal from July 5, 2024 merit decisions 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period April 14, 2020 through April 8, 2022 causally related to his accepted October 16, 2017 employment injury.

[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*.

FACTUAL HISTORY

On January 23, 2018 appellant, then a 58-year-old rural route carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 17, 2017 he developed pain in his right shoulder/arm due to delivering a heavy volume of mail while in the performance of duty. He stopped work that day and did not return.[3] OWCP assigned the claim OWCP File No. xxxxxx807.[4]

On November 15, 2018 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Clarence Fossier, a Board-certified orthopedic surgeon, for a second opinion examination to determine the nature of any employment-related right shoulder diagnoses and appellant's work capacity.

In a January 7, 2019 report, Dr. Fossier reviewed the medical record along with the SOAF and presented examination findings. He diagnosed right shoulder tendinosis due to the October 17, 2017 work event, but found that this would not explain appellant's persistent subjective complaints. Dr. Fossier indicated that the January 11, 2019 magnetic resonance imaging (MRI) scan of the right shoulder showed mild degenerative changes consistent with appellant's age and would not explain why appellant was unable to work. He also indicated that x-rays of record showed calcific tendinopathy, but disagreed that an x-ray would show impingement, subacromial bursitis or biceps tendinitis, as found by another physician. Dr. Fossier therefore found that such conditions would not have a relationship to the "overwork" incident of October 17, 2017. In a January 13, 2019 work capacity evaluation (Form OWCP-5c), he opined that appellant could return to his usual job without restrictions. In a January 31, 2019 report, Dr. Fossier clarified that the right shoulder tendinosis was not caused by the October 17, 2017 work incident. He explained that degeneration of the tendon or tendinosis was a long-term process, and it could not occur secondary to working overtime or overload on October 16, 2017.

In an April 26, 2019 medical report, Dr. Laura S. Fralich, Board-certified in family medicine and sports medicine, reported appellant's date of injury as April 21, 2015 with an exacerbation of right shoulder symptoms on October 17, 2017. She diagnosed tendinopathy of right rotator cuff, tendinopathy of right biceps tendon, and degenerative tear of right glenoid labrum based on an MRI scan of the right shoulder. In a June 28, 2019 letter, Dr. Fralich opined that the diagnosed tendinopathy of right rotator cuff, tendinopathy of right biceps tendon, and tear of right glenoid labrum conditions were caused by repetitive overuse on October 16, 2017 when appellant delivered a significant amount of mail. She also noted that his condition had improved with physical therapy.

In a November 5, 2019 addendum report, Dr. Fossier opined that there was no diagnosis other than right shoulder pain. He noted that appellant related his shoulder complaint to the ongoing problem he had since his 2007 injury, not to the lifting of mail three days prior to the

[3] Effective April 13, 2020, appellant was separated from the employing establishment due to his inability to perform the duties of his position. His last day in pay status was October 17, 2017.

[4] Under OWCP File No. xxxxxx905, appellant has an April 2, 2007 traumatic injury claim which OWCP accepted for right shoulder impingement syndrome. Under OWCP File No. xxxxxx364, appellant has an April 21, 2015 traumatic injury claim accepted by OWCP for lumbar sprain, neck sprain, right shoulder impingement syndrome and an unspecified sprain of right shoulder joint. OWCP File No. xxxxxx364 is designated as the master file and was administratively combined by OWCP with subsidiary claims xxxxxx807 and xxxxxx905.

October 16, 2017 work injury. Dr. Fossier indicated that the MRI scan showed mild infraspinatus and supraspinatus tendinosis, a slight overlying subacromial/subdeltoid bursitis, mild proximal intra-articular bicep tendinosis, and a degenerative free edge tear of the superior labral anchor with extension posteriorly, and moderate acromioclavicular (AC) arthrosis, which were all degenerative processes that took time to develop and would not be explained by an injury lifting heavy mail and then developing complaints three days afterwards. He attributed appellant's complaints after lifting heavy mail to a "very mild exacerbation of his 2007 injury"[5] but found that the degenerative changes were due to age, noting that 10 years had passed.

In an April 13, 2020 report, Dr. James Hazel, a Board-certified orthopedic surgeon serving as OWCP's second opinion physician, reviewed a statement of accepted facts (SOAF), the medical record, and appellant's medical course and examined appellant. He opined that it was likely that appellant may have had a transient shoulder strain as a result of the October 16, 2017 injury, but there were no lingering objective findings. Dr. Hazel indicated that the employment activity described by appellant and substantiated by a description of work would not create the degenerative findings documented on the MRI scan. Rather, the degenerative findings documented on the MRI scan were age-related conditions that took years to develop, such findings were normal for the age of appellant, and there are no peer reviewed studies which showed an increase in the incidence of degenerative changes in the shoulder joint among postal carriers. Dr. Hazel advised that if appellant had not been able to use his right arm for two and a half years, there would be a meaningful amount of measurable degree of infraspinatus, supraspinatus and deltoid atrophy; however, there was no atrophy, and his right arm and forearm were larger than the left. He also reported that appellant's physical examination demonstrated evidence of pain behavior that was not corroborated by objective findings. Dr. Hazel concluded that the accepted rotator cuff strain had resolved as there were no objective residuals and found appellant was capable of a full return to work. In an April 13, 2020 work capacity evaluation (OWCP-5c), he opined that appellant could perform his usual job without restriction.

In a July 28, 2021 supplemental report, Dr. Hazel indicated that since he examined appellant three years after his employment injury, he could only rely on the medical records to substantiate that there was some objective findings establishing a right shoulder strain. He indicated that it was not medically possible for him to estimate when the shoulder strain resolved, but indicated there were no objective findings on examination and the examination was clouded by non-physiologic behavior and profound pain behavior. Dr. Hazel explained that shoulder strains of that nature typically resolve in a period of three to six months. He further opined that appellant's 2007 and 2015 injuries were so remote that the residuals of those conditions had stabilized long before the October 16, 2017 work injury. Dr. Hazel also opined that the mechanism of the October 16, 2017 work injury would not have caused appellant's 2007 and 2015 injuries to become aggravated or exacerbated.

On November 4, 2021 OWCP accepted the claim for strain of muscle(s) and tendon(s) of the rotator cuff of the right shoulder.

By decision also dated November 4, 2021, OWCP denied appellant's entitlement to continuation of pay (COP) as the injury was not reported within 30 days following the injury.

[5] *Id.*

On November 11, 2021 appellant, through counsel, requested a telephonic hearing by a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on March 10, 2022. By decision dated May 16, 2022, OWCP's hearing representative reversed OWCP's November 4, 2021 decision. The hearing representative found that appellant had established entitlement to COP and that he was totally disabled due to his right shoulder condition during the COP period. The hearing representative directed OWCP to authorize COP and adjudicate the CA-7 forms appellant had filed for the period December 1, 2017 through April 8, 2022.

On April 19, 2022 appellant filed claims for compensation (Form CA-7) for disability from work for the period October 17, 2017 through April 8, 2022. On the April 19, 2022 Form CA-7, the employing establishment noted that appellant had used leave without pay (LWOP) from October 18 through December 1, 2017.

By decision dated November 1, 2022, OWCP denied, in part, appellant's claim for disability for the period December 1, 2017 through April 8, 2022. It indicated that it had paid compensation for the period December 1, 2017 through April 13, 2020[6] but found no medical evidence to support the remaining dates. OWCP accorded the weight of the medical evidence to the second opinion reports of Dr. Hazel, who opined that appellant's accepted condition had resolved.

On November 9, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated March 2, 2023, an OWCP hearing representative set aside OWCP's November 1, 2022 decision, finding that the decision was premature and had deprived appellant of due process as there was no indication that he had been afforded the opportunity to submit additional evidence to support entitlement to wage-loss compensation beyond April 30, 2020. The hearing representative found that there were no contemporaneous medical records in the file for the period of wage-loss claimed from April 14, 2020 to April 8, 2022.[7] OWCP's hearing representative instructed OWCP to issue a *de novo* decision regarding entitlement to wage-loss compensation for the period April 14, 2020 through April 8, 2022 upon completion of the required development.

In a development letter dated July 12, 2023, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation for the period April 14, 2020 through April 8, 2022. It advised him of the type of medical evidence needed and afforded him 30 days to respond. No evidence was submitted.

In an October 18, 2023 *de novo* decision, OWCP denied appellant's claim for wage-loss compensation for disability from work for the period April 14, 2020 through April 8, 2022. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period due to the accepted employment injury.

[6] On July 26, 2022 OWCP issued a payment of compensation for total disability for the period December 1, 2017 through April 13, 2020.

[7] The hearing representative noted that the most current medical evidence dated back to May 2019.

On October 27, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated December 4, 2023, an OWCP hearing representative set aside OWCP's October 18, 2023 decision, finding that OWCP's July 12, 2023 development letter was not tailored to the specific circumstances of the instant case. The hearing representative remanded the case to OWCP with instructions to complete the development directed in the prior hearing representative's decision of March 2, 2023, including requesting that appellant submit medical evidence supporting that he had received treatment after May 2019. The hearing representative further directed OWCP, upon completion of the required development, to issue a *de novo* decision regarding appellant's entitlement to wage-loss benefits for the period April 14, 2020 through April 8, 2022.

In a December 11, 2023 development letter, OWCP informed appellant of the specific deficiencies of his claim for wage-loss compensation for the period April 14, 2020 through April 8, 2022. It advised him of the type of medical evidence needed and requested that he provide medical evidence bridging the gap from 2019 to the present in support of his claim for disability compensation. OWCP afforded appellant 30 days to respond. No additional evidence was provided.

By *de novo* decision dated March 12, 2024, OWCP denied appellant's claim for wage-loss compensation for disability from work for the period April 14, 2020 through April 8, 2022. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period due to the accepted employment injury.

On March 21, 2024 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing took place on June 3, 2024. Appellant testified that he saw Dr. Timothy B. Price, a chiropractor, from 2020 to 2022 but he was unable to supply records as Dr. Price's office had abruptly closed, and his license had been suspended. Counsel submitted a copy of an insurance ledger supporting that appellant had seen Dr. Price during the period in question.

In an April 27, 2022 unsigned after-visit summary, Dr. Fralich reviewed a January 10, 2019 MRI scan of right shoulder. She opined that "history and examination findings" were consistent with right shoulder labrum tear, rotator cuff tendinopathy, subacromial/subdeltoid bursitis and acromioclavicular (AC) joint osteoarthritis.

In an August 9, 2023 report, Michael W. Schucker, a physician assistant, noted the history of the work injury and provided an assessment of right shoulder pain, unspecified chronicity and right shoulder impingement and tendinitis.

By decision dated July 5, 2024, an OWCP hearing representative affirmed the March 12, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[8] 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.[9] 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.[10] 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 the reliable, probative, and substantial medical opinion evidence.[11] Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.[12]

The term "disability" is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.[13] Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[14] 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.[15]

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.[16]

[8] *Supra* note 2.

[9] *See M.T.*, Docket No. 21-0783 (December 27, 2021); *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

[11] *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[12] *C.S.*, Docket No. 20-1621 (issued June 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

[13] 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[14] *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

[15] *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

[16] *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, supra* note 11.

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period April 14, 2020 through April 8, 2022 causally related to his accepted October 16, 2017 employment injury.

OWCP's second opinion physicians Dr. Fossier and Dr. Hazel opined in 2019 and 2020, respectively, that appellant could return to his usual job without restrictions and that he had no current right shoulder conditions causally related to the October 16, 2017 employment injury.

Dr. Fralich provided reports dated April 26 and June 28, 2019 in which she noted appellant's medical history, the history of injury, reviewed a January 10, 2019 right shoulder MRI scan and provided several diagnoses regarding the right shoulder, which included tendinopathy of right rotator cuff, tendinopathy of right biceps tendon, and tear of right glenoid labrum. These reports, however, are of no probative value as Dr. Fralich failed to provide an opinion or address appellant's disability status during the specific dates of disability from work during the claimed period causally related to the accepted employment injury.[17] Therefore, this evidence is insufficient to establish appellant's disability claim.

Appellant submitted an unsigned after visit summary indicating that he received treatment from Dr. Fralich on April 27, 2022. The Board has long held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence because the author cannot be identified as a physician.[18] Therefore this evidence is also insufficient to establish the claim.

Appellant also submitted an August 9, 2023 report from Mr. Schucker, a physician assistant. However, the Board has held that medical reports signed solely by a physician assistant are of no probative value as such healthcare providers are not considered physicians as defined under FECA, and are therefore, not competent to provide medical opinions.[19] Consequently, their medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits. This report is therefore insufficient to establish the claim.

As appellant has not submitted rationalized medical opinion evidence to establish employment-related disability from April 14, 2020 through April 8, 2022, as a result of his accepted October 16, 2017 employment-related injury, the Board finds that he has not met his burden of proof to establish his claim.

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[17] *A.M.*, Docket No 24-0413 (issued July 31, 2024).

[18] *L.W.*, Docket No. 23-0682 (issued September 28, 2023); *L.B.*, Docket No. 21-0353 (issued May 23, 2022); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[19] 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) (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 J.D.*, Docket No. 23-0993 (issued January 3, 2024) (physician assistants and medical assistants are not considered physicians as defined by FECA).

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 disability from work for the period April 14, 2020 through April 8, 2022 causally related to his accepted October 16, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 5, 2024 decisions of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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