United States Department of Labor
Employees' Compensation Appeals Board

T.E., Appellant	)	
and	)	**Docket No. 24-0629**
	)	**Issued: September 3, 2024**
U.S. POSTAL SERVICE, MONMOUTH POST OFFICE, Monmouth, ME, Employer	)	

Appearances:
Appellant, pro se
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 May 15, 2024 appellant filed a timely appeal from April 15, 22, and 23, and May 9, 2024 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work commencing February 14, 2024, causally related to her accepted employment injury.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the May 9, 2024 decision, OWCP received additional evidence. 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*.

FACTUAL HISTORY

On January 1, 2024 appellant, then a 57-year-old rural carrier associate (RCA), filed an occupational disease claim (Form CA-2) alleging that she developed a right shoulder strain and de Quervain's tenosynovitis, left side, due to factors of her federal employment, which included driving with her left hand, grabbing or squeezing mail with her left hand, and delivering mail on her right side. She noted that she first became aware of her conditions and that they were causally related to her federal employment on November 12, 2023. Appellant stopped work on November 12, 2023, and returned to work the next day. A Notification of Personnel Action (PS Form 50) indicated that appellant voluntarily resigned from the employing establishment effective December 26, 2023.

In a January 11, 2024 e-mail, Postmaster C.R. indicated that appellant worked two days a week as an RCA, and had package assistants everyday she worked, including when she substituted for other employees. The postmaster stated that appellant never mentioned any pain until she gave her notice the week before Christmas, and that she did not want to file an accident report.

By decision dated February 7, 2024, OWCP accepted the claim for radial styloid tenosynovitis (de Quervain's) left side, and strain of right shoulder. It paid appellant wage-loss benefits on the supplemental rolls from December 27, 2023 until February 9, 2024.

In a February 15, 2024 progress note, Dr. Lisa A. Clarcq, a Board-certified family practitioner, noted appellant's diagnoses of right shoulder strain and left de Quervain's tenosynovitis. She related that physical examination of appellant's right shoulder revealed no swelling, deformity, effusion, bony tenderness, or crepitus, normal range of motion and normal strength. Appellant's left wrist revealed no swelling, deformity, bony tenderness, or snuff box tenderness, normal range of motion. In a state workers' compensation form of even date, Dr. Clarcq opined that appellant's right shoulder strain and left de Quervain's tenosynovitis conditions were work related. She also opined that appellant could perform modified work with restrictions, including no pinching or gripping with left hand, no repetitive use of right shoulder, and no lifting more than five pounds for three months. Dr. Clarcq also indicated that appellant's restrictions were based on her professional recommendation, but that actual functional testing may not have been performed to validate appellant's ability.

In a February 23, 2024 letter, J.P., an occupational health claims processing specialist, advised that appellant had resigned from the employing establishment before it was able to provide her with a job offer. She also described the process by which a limited-duty job offer within appellant's medical restrictions would be found if appellant was still employed. In an attached Form CA1030, J.P. responded "Yes" to the question that a job could have been offered based on the February 15, 2024 restrictions, if appellant had remained employed.

On March 4, 2024 appellant filed a claim for compensation (Form CA-7) for disability from work during the period February 14 through March 2, 2024.

Physical therapy treatment notes dated January 17, 24, and 31, February 7, 13, 23, and 28, and March 6, 2024 included the accepted diagnoses of right shoulder strain and de Quervain's left radial styloid tenosynovitis.

In a development letter dated March 5, 2024, OWCP informed appellant that the evidence submitted was insufficient to establish her disability claim for the period February 14 through March 2, 2024. It indicated that a light/limited-duty assignment was available within her medical restrictions at the employing establishment for the claimed period. OWCP requested that appellant provide evidence to support why she did not work the available light-/limited-duty assignment. It afforded her 30 days to submit the requested evidence.

In a March 12, 2024 memorandum of telephone call (Form CA-110) and March 13, 2024 letter, appellant responded to OWCP's March 5, 2024 development letter. She explained that she had resigned due to her injuries. Appellant related that she would return to work with restrictions, but no one told her that was a possibility before she resigned from the employing establishment.

Appellant continued to file CA-7 forms requesting compensation for disability from work during the periods March 5 through 13, 2024, and March 14 through 21, 2024. She also submitted a December 7, 2023 left wrist x-ray report.

In a March 13, 2024 development letter, OWCP informed appellant of the deficiencies of her disability claim commencing March 5, 2024 and continuing. It again indicated that a light-/limited-duty assignment at the employing establishment was available within her medical restrictions during the claimed period. OWCP also again requested that appellant provide evidence to support why she did not perform the available light-/limited-duty assignment. It afforded her 30 days to respond.

In a March 20, 2024 response letter, appellant reiterated that she had resigned due to her injuries and that she would return to work with restrictions. She contended that no special accommodations were made for her after her employment injury. Additionally, appellant denied being offered any light-duty or restricted-duty work before her resignation.

Appellant filed additional CA-7 forms requesting compensation for disability from work for the periods March 14 through 21, 2024, and March 22 through 29, 2024.

In development letters dated March 21 and April 5, 2024, OWCP informed appellant of the deficiencies of her disability claim commencing March 14, 2024. It continued to note that the evidence of record indicated that she had not returned to work despite the availability of a light-/limited-duty assignment within her medical restrictions for the claimed period. OWCP also continued to request that appellant provide evidence to support why she did not perform the light-/limited-duty assignment. It afforded her 30 days to submit the requested evidence.

In a March 27, 2024 letter, appellant stated that her supervisor, Postmaster C.R., had not accurately related the circumstances surrounding her resignation. She referenced accompanying copies of text messages in support of her contention. Appellant related that she provided more than two weeks' notice of her resignation, and she worked the best that she could with a wrist brace during that time. She reiterated that she was never given an opportunity to perform restricted duty, and was willing to work within her restrictions. Text messages dated December 13 (no end year provided) and other undated text messages from "C" provided instructions as to how to file a workers' compensation claim.

By decision dated April 8, 2024, OWCP denied appellant's claim for wage-loss compensation for disability from work commencing February 14, 2024. It found that her

resignation on December 26, 2023 prevented the employing establishment from providing a position within Dr. Clarcq's February 15, 2024 medical restrictions.

In an April 10, 2024 report, Dr. Lauren Adey, a Board-certified orthopedic hand surgeon, related that appellant was seen for pain in her left wrist and the base of her thumb. She noted that appellant was seen years ago for tendinitis, but that this was a new issue. Dr. Adey noted that appellant had been working for the employing establishment, and in November 2023 she developed pain at the base of her thumb doing deliveries. She reported that appellant had been wearing a thumb brace. Dr. Adey diagnosed the accepted condition of de Quervain's tenosynovitis, and related that she had explained to appellant the pathology and natural history of progression of left wrist de Quervain's tendinitis. She also diagnosed arthritis of carpometacarpal (CMC) joint of left thumb. In an April 10, 2024 diagnostic report, Dr. Adey reiterated her prior diagnoses of de Quervain's tenosynovitis and arthritis of the left thumb. She opined that repetitive motion caused the accepted employment injury and provided work restrictions, which included no lifting, gripping, or pulling more than five pounds with the left hand.

On April 14, 2024 appellant requested reconsideration of OWCP's April 8, 2024 decision. In an April 14, 2024 statement, she restated her allegation that Postmaster C.R. "lied" about how she handled the reporting of her injuries, and when and why she resigned from the employing establishment.

By decision dated April 15, 2024, OWCP denied appellant's claim for compensation for disability from work commencing March 5, 2024 causally related to her accepted employment injury. It found that her December 26, 2023 resignation had not allowed the employing establishment an opportunity to offer her a position, and that the medical evidence of record failed to establish that she was totally disabled as a result of her accepted work-related conditions.

By decision dated April 22, 2024, OWCP denied modification of its April 8, 2024 decision. It found that the medical evidence of record did not contain a reasoned medical opinion on disability for the period commencing February 14, 2024, and continuing, that was causally related to the accepted employment-related conditions.

By decisions dated April 23 and May 9, 2024, OWCP denied appellant's claim for compensation for disability from work commencing March 14, 2024 and commencing March 22, 2024, respectively.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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.[4]

[3] *Supra* note 1.

[4] *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).

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.[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 an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.[7] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.[8]

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.[9]

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.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing February 14, 2024, causally related to her accepted employment injury.

Voluntary retirement/resignation does not, by itself, raise an issue of disability.[11] In order to be entitled to compensation for disability from employment, appellant must establish that she was disabled from performing the duties she was performing at the time of her voluntary retirement/resignation due to her accepted work injury.[12] The evidence of record establishes that prior to appellant's resignation on December 26, 2023, the employing establishment had not

[5] *Id.*; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[6] 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020).

[7] *Id.* at § 10.5(f); *see J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[8] *J.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

[9] *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

[10] *D.M.*, Docket No. 21-0930 (issued February 8, 2023); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Fereidoon Kharabi, supra* note 5.

[11] *H.H.*, Docket No. 16-1213 (issued September 11, 2017); *V.C.*, Docket No. 14-1252 (issued March 11, 2015); *J.H.*, Docket No. 14-540 (issued July 1, 2014).

[12] *H.H., id.*; *Terry R. Hedman*, 38 ECAB 222 (1986).

offered appellant a modified assignment. Prior to resigning, appellant had performed her regular-duty work as an RCA with package assistants. OWCP paid appellant FECA wage-loss compensation from December 27, 2023 until February 9, 2024.

In a February 15, 2024 progress note, Dr. Clarcq diagnosed the accepted conditions of right shoulder strain and left de Quervain's tenosynovitis. However, she related that appellant's physical examination was essentially normal. Dr. Clarcq related that physical examination of appellant's right shoulder revealed no swelling, deformity, effusion, bony tenderness, or crepitus, normal range of motion and normal strength. Appellant's left wrist revealed no swelling, deformity, bony tenderness, or snuff box tenderness, normal range of motion. While in a state workers' compensation form of even date, Dr. Clarcq opined that appellant could perform modified work with restrictions, including no pinching or gripping with left hand, no repetitive use of right shoulder, and no lifting more than five pounds for three months, she also indicated that appellant's restrictions were based on her professional recommendation, but that actual functional testing may not have been performed to validate appellant's ability. The Board has explained that to establish a period of disability a medical report must provide medical rationale, based on objective findings, supporting disability from work during the claimed period causally related to the accepted employment injury.[13] The Board has held that a mere conclusion without the necessary rationale as to whether a medical condition or disability is due to an accepted employment condition is insufficient to meet a claimant's burden of proof.[14] As Dr. Clarcq did not provide a rationalized medical opinion, based on objective medical findings, to support a finding of disability, the Board finds that her reports were not sufficient to establish appellant's claim.

OWCP also received April 10, 2024 reports from Dr. Adey. Dr. Adey related that appellant was seen for pain in her left wrist and the base of her thumb, while appellant had been seen years ago for tendinitis, this was a new issue. She diagnosed the accepted condition of de Quervain's tenosynovitis, and related that she had explained to appellant the pathology and natural history of progression of left wrist de Quervain's tendinitis. Dr. Adey also diagnosed arthritis of carpometacarpal (CMC) joint of left thumb. She opined that repetitive motion caused the accepted employment injury and provided work restrictions, which included no lifting, gripping, or pulling more than five pounds with the left hand. In a case in which a preexisting condition involving the same part of the body is present, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[15] As Dr. Adey did not provide a rationalized medical opinion explaining why appellant required work restrictions due to objective findings related to the accepted employment-related conditions, her reports were insufficient to establish appellant's disability claim.

Appellant also submitted results from a December 7, 2023 left wrist x-ray. However, the Board has long held that diagnostic studies, standing alone, are of limited probative value, because

[13] *S.G.*, Docket No. 23-1181 (issued March 28, 2024); *B.L.*, Docket No. 23-0551 (issued September 21, 2023).

[14] *J.M.*, Docket No. 21-1261 (issued September 11, 2023).

[15] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *J.L.*, Docket No. 20-0717 (issued October 15, 2020).

they do not address whether the employment injury caused any of the diagnosed conditions or associated disability.[16] This evidence is therefore insufficient to establish appellant's claim.

Additionally, appellant submitted physical therapy reports. The Board has held, however, that certain healthcare providers such as physical therapists are not considered physicians as defined under FECA consequently their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. .[17] Thus, these reports are insufficient to establish the disability claim.

The Board, therefore, finds that appellant has not met her burden of proof to establish disability from work for the period commencing February 14, 2024 causally related to her accepted employment injury.

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 commencing February 14, 2024, causally related to her accepted employment injury.

[16] *See L.B.*, Docket No. 24-0381 (issued May 20, 2024); *T.V.*, Docket No. 23-0803 (issued December 22, 2023); *V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[17] Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable 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) (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 R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the April 15, 22, and 23, and May 9, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 3, 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