

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

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V.S., Appellant))	
and))	Docket No. 24-0759
DEPARTMENT OF HOMELAND SECURITY,))	Issued: September 12, 2024
U.S. CITIZENSHIP AND IMMIGRATION))	
SERVICES, Houston, TX, Employer))	
_____))	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On July 15, 2024 appellant filed a timely appeal from a June 10, 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the June 10, 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish the remaining claimed intermittent disability from work during the period December 18, 2023 through January 5, 2024 causally related to her accepted July 20, 2023 employment injury.

FACTUAL HISTORY

On July 21, 2023 appellant, then a 63-year-old supervisory immigration services officer, filed a traumatic injury claim (Form CA-1) alleging that on July 20, 2023 she injured her left knee, left foot, left thigh, and lower back when she tripped and fell in an employing establishment hallway while in the performance of duty. She stopped work on July 20, 2023. OWCP initially accepted appellant's claim for left foot contusion and left knee sprain. It subsequently expanded the acceptance of her claim to include temporary aggravation of lumbar spine sprain and permanent aggravation of lower lumbar spondylosis with radiculitis. OWCP paid appellant intermittent wage-loss compensation on its supplemental rolls, effective September 5, 2023.

In a November 14, 2023 work capacity evaluation (Form OWCP-5c), Dr. Louis Varela, a family medicine physician, opined that appellant was able to work four hours sedentary duty per workday with restrictions on walking, standing, pulling, lifting and climbing. On November 21, 2023 OWCP's field nurse confirmed that, as of November 20, 2023, appellant was working four hours a day, continuing with physical therapy and following up with medical providers as scheduled.

In a December 5, 2023 Form OWCP-5c, Dr. Varela opined that appellant was able to work eight hours of sedentary work with restrictions, remotely from home.³ In December 12, 2023 and January 9, 2024 OWCP-5c forms, he continued to opine she could work an 8-hour sedentary-duty workday with 30-minute breaks every 2 hours. Dr. Varela noted that appellant attended physical therapy twice a week and attended follow-up appointments with multiple specialists.

OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record to Dr. Charles F. Xeller, a Board-certified orthopedic surgeon, for a second opinion.

In a December 15, 2023 report, Dr. Xeller noted his review of the SOAF and the medical record, and provided examination findings. He diagnosed aggravation of lower lumbar spondylosis with radiculitis, resolved left knee sprain/strain, and resolved foot contusion. Dr. Xeller agreed that spinal injection treatment was indicated, and that appellant was not a good surgical candidate due to multiple nonwork-related medical problems. He further opined that she was able to work remotely from her home, as she was doing, with alternate sit and stand option, in a sedentary role. In an accompanying December 15, 2023 Form OWCP-5c, Dr. Xeller opined that appellant's medical restrictions were permanent.

On January 3 and February 1, 2024 appellant filed claims for compensation (Forms CA-7) for intermittent disability from work during the period November 19, 2023 through

³ The case record indicates that appellant worked remotely, effective November 20, 2023.

January 26, 2024. Medical evidence was submitted which did not address the claimed period of disability.

In a February 9, 2024 letter, OWCP advised that it had authorized payment for a total of 38.5 hours of claimed disability from December 5, 2023 to January 25, 2024. However, the evidence was insufficient to support the remaining claimed intermittent disability. OWCP advised appellant of the type of additional evidence needed to establish disability for work during the period claimed. It afforded her 30 days to submit the requested information.

In a February 12, 2024 statement, appellant indicated that on November 20, 21, 24, 30, December 4, 18, 19, 21, 2023, and January 4, 2024, she was restricted to no more than four hours per day per (Form OWCP-5c) dated November 14, 2023 and that she had to attend orientation. She also advised that she was working a maxi-flex variable daily hour, not a fixed eight-hour schedule.

In a February 22, 2024 letter, the employing establishment advised that appellant was scheduled to work for eight hours on December 21, 2023 and for four hours on January 5, 2024.

In a development letter dated February 29, 2024, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation and advised her of the type of medical evidence needed. It found that the medical evidence submitted was sufficient to authorize payment for 17 hours on dates from November 20, 21, through December 4, 2023. However, additional evidence was needed to establish the remaining claimed intermittent disability. OWCP afforded appellant 30 days to respond.

In response, appellant submitted a January 2, 2024 anesthesia record and additional medical evidence which postdated the claimed dates of disability.

By decision dated April 25, 2024, OWCP denied appellant's remaining claimed intermittent disability from work during the period December 18, 2023 through January 5, 2024 as the medical evidence of record was insufficient to establish causal relationship between the disability and the accepted employment injury.

OWCP continued to receive medical evidence postdating the dates of disability claimed.

On May 22, 2024 appellant requested reconsideration. She reiterated that she worked maxi-flex variable daily hours and did not work a fixed eight-hour schedule. Appellant indicated that for the dates December 18 and 19, 2023, and January 4, 2024 she was claiming therapy hours.

OWCP continued to receive evidence postdating the dates of disability at issue.

In a May 7, 2024 report, Dr. Phong Le, a Board-certified foot and ankle surgeon, indicated that on December 22, 2023 appellant was scheduled for a transforaminal lumbar epidural steroid injection bilateral at L4-5 which was cancelled that day due to a high blood pressure reading. He advised that appellant was unable to return to work on the same day.

In a May 15, 2024 note, Dr. Rodney Laningham, a family medicine physician, indicated that appellant was under his medical care and was seen on January 5, 2024.

By decision dated June 10, 2024, OWCP denied modification of its prior 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.⁴

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.⁵ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁶ 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.⁷ 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.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

⁴ See *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).

⁵ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁶ See *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁷ See *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

⁸ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

⁹ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹⁰ *K.A.*, Docket No. 19-1564 (issued June 3, 2020); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish the remaining claimed intermittent disability from work during the period December 18, 2023 through January 5, 2024 causally related to her accepted July 20, 2023 employment injury.

In a May 7, 2024 report, Dr. Le indicated that on December 22, 2023 appellant's scheduled transforaminal lumbar epidural steroid injection bilateral at L4-5 was cancelled due to a high blood pressure reading. While he advised that she was unable to return to work that day, Dr. Le failed to provide a rationalized medical opinion explaining why she was unable to perform the duties of her position that day. The evidence reflects that appellant was working remotely from home within her prescribed sedentary position at that time and works a maxi-flex schedule which allows flexibility in her work hours and day. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/period of disability has an employment-related cause.¹¹ This evidence is therefore insufficient to establish appellant's disability claim.

In a May 15, 2024 work excuse note, Dr. Laningham indicated that appellant was under their medical care and was seen on January 5, 2024. However, he did not state why she was seen or what treatment she received. As noted, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/period of disability has an employment-related cause.¹² This evidence is therefore insufficient to establish appellant's disability claim.

The remainder of the evidence appellant submitted either predates or postdates the dates claimed. Therefore, this evidence is not relevant to appellant's disability claim.

As the medical evidence of record is insufficient to establish the remaining claimed intermittent disability from work during the period December 18, 2023 through January 5, 2024 causally related to the accepted July 20, 2023 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 the remaining claimed intermittent disability from work during the period December 18, 2023 through January 5, 2024 causally related to her accepted July 20, 2023 employment injury.

¹¹ See *R.H.*, Docket No. 22-0140 (issued August 12, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *S.K.*, Docket No. 19-0272 (issued July 21, 2020); *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹² See *J.M.*, Docket No. 23-0960 (issued March 12, 2024).

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 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