

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

M.T., Appellant)	
)	
and)	Docket No. 21-0783
)	Issued: December 27, 2021
DEPARTMENT OF VETERANS AFFAIRS,)	
JESSE BROWN VA MEDICAL CENTER,)	
Chicago, IL, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 10, 2021 appellant filed a timely appeal from an October 8, 2020 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 8, 2020 decision and on appeal, appellant submitted 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 disability from work for the period June 29 through August 14, 2020 causally related to her accepted May 10, 2019 employment injury.

FACTUAL HISTORY

On May 13, 2019 appellant, then a 42-year-old housekeeping aide supervisor, filed a traumatic injury claim (Form CA-1) alleging that on May 10, 2019 she injured her right ankle, right knee, and left arm when she was pinned to the wall while in the performance of duty. She stopped work on May 13, 2019.³ OWCP subsequently accepted appellant's claim for right ankle sprain.

Appellant thereafter filed several claims for compensation (Form CA-7) for disability from work for the period June 25 through November 22, 2019. OWCP paid appellant wage-loss compensation on the supplemental rolls for the period June 25 through November 22, 2019.

On an undated Form CA-3 the employing establishment indicated that appellant returned to full-time modified-duty work with restrictions on November 25, 2019.

In a June 25, 2020 medical report, Dr. Michael Oster, a podiatrist, noted that appellant was seen that day for chronic right ankle sprain/pain/ligament injury. He also found that appellant was unable to work until July 27, 2020.

On June 29, 2020 appellant filed a Form CA-7 claim for wage-loss compensation for the period June 25 through July 27, 2020.

In a development letter dated July 1, 2020, OWCP indicated that it was in receipt of appellant's Form CA-7 and that it appeared that she was claiming disability due to a material change or worsening of her accepted work-related conditions. It noted that she had returned to work in a full-time, limited-duty capacity on November 25, 2019 and until June 24, 2020 when she stopped work completely. OWCP informed appellant that no evidence had been submitted with her claim for disability during the claimed time period. It provided appellant with the definition of a recurrence and advised her of the type of evidence required to establish such a claim. OWCP afforded appellant 30 days to provide the necessary evidence.

In a July 24, 2020 work excuse note, Dr. Kristopher M. Lopez, Board-certified in podiatric orthopedics and primary podiatric medicine, noted that appellant was seen that day for foot/ankle/back pain and indicated that she was unable to work until August 24, 2020.

In an August 10, 2020 response to OWCP's development questionnaire, appellant asserted that her foot and ankle never fully healed and that she was suffering from ongoing symptoms consistently following the May 10, 2019 date of injury. She alleged that she had not been actually working in a limited-duty capacity, as she had been performing all of her normal work duties since

³ While the reverse side of the clam form indicated appellant had not stopped work, an undated report of work status (Form CA-3) noted that appellant stopped work on May 13, 2019, the date of injury.

she returned to work, with the exception of less walking. Appellant contended that her symptoms were worsened when she walked more. She indicated that she sustained no other injuries and that her condition was now affecting her back and sciatic nerves.

On August 17, 2020 appellant filed a Form CA-7 claim for wage-loss compensation for the period June 29 through August 14, 2020.

In an August 31, 2020 development letter, OWCP advised appellant that it had not received any evidence to support her claim for wage-loss compensation for the period June 29 through August 14, 2020. It informed her of the type of evidence needed to establish her wage-loss compensation claim and afforded her 30 days to submit the necessary evidence.⁴

In a December 23, 2019 work excuse note, an unidentifiable healthcare provider noted that appellant could return to work on December 24, 2019.

In a February 3, 2020 work excuse note, Dr. Bishoy Botros, a podiatric surgery specialist, noted that appellant could return to work with restrictions.

Appellant underwent physical therapy on September 8 and 26, 2020.

In a September 10, 2020 letter, Dr. Lopez noted that appellant's magnetic resonance imaging (MRI) scan of the right ankle showed improvement in the ankle.

In a September 24, 2020 work excuse note, Dr. Botros noted that appellant was seen that day for right foot posterior tibial tendinitis, peroneal tendinitis, chronic ankle instability, and lumbar radiculopathy. He indicated that she was unable to work until November 24, 2020.

By decision dated October 8, 2020, OWCP denied appellant's claim for wage-loss compensation for the period June 29 through August 14, 2020, finding that the medical evidence of record was insufficient to establish disability during the claimed period.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.⁶ 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.⁷ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues

⁴ In a September 2, 2020 letter, OWCP advised appellant that it was in receipt of the second page of a notice of recurrence (Form CA-2a) and attached a copy of her August 10, 2020 development questionnaire response. It informed her that because the first page of the form was missing, it could not process her recurrence claim.

⁵ *Supra* note 1.

⁶ See *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).

⁷ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

that must be proven by a preponderance of the reliable, probative, and substantial medical opinion evidence.⁸ Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.⁹

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.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

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.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period June 29 through August 14, 2020 causally related to her accepted May 10, 2019 employment injury.

In a June 25, 2020 work excuse note, Dr. Oster noted that appellant was seen that day for chronic right ankle sprain/pain/ligament injury. He indicated that she was unable to work until July 27, 2020. Similarly, Dr. Lopez, in his July 24, 2020 work excuse note, noted that appellant presented with foot/ankle/back pain and indicated that she was unable to work until August 24, 2020. Drs. Oster and Lopez did not provide an opinion that she was disabled from work during the claimed period due to the accepted injury. 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.¹⁴ Therefore, these work excuse notes are insufficient to establish appellant's claim.

⁸ *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 (2001).

⁹ *C.S.*, Docket No. 20-1621 (issued June 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹⁰ 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).

¹¹ *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

¹² *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹³ *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).

¹⁴ *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Dr. Lopez, in his September 10, 2020 letter, noted that appellant's MRI scan of the right ankle showed improvement in the ankle. However, he did not provide an opinion on the issue of whether appellant was disabled from employment on the claimed dates due to her accepted May 10, 2019 employment injury.¹⁵ As previously noted, 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.¹⁶ Therefore, this letter is insufficient to meet appellant's burden of proof.

OWCP also received February 3 and September 24, 2020 work excuse notes from Dr. Botros. However, these notes fail to establish disability as none of the notes address appellant's disability from work for the period June 29 through August 14, 2020.¹⁷

Appellant also submitted records from her physical therapists. These reports, however, do not constitute competent medical evidence because physical therapists are not considered physicians as defined under FECA.¹⁸ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.¹⁹

Lastly, appellant submitted a December 23, 2019 work excuse note from a physician with an illegible signature. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.²⁰ Accordingly, this report is also insufficient to establish appellant's claim.

As the medical evidence of record does not contain rationale to establish disability during the claimed periods, 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.

¹⁵ *Id.*

¹⁶ *Supra* note 13.

¹⁷ *See supra* note 14.

¹⁸ 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *R.L.*, Docket No. 19-0440 (issued July 8, 2019); *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).

¹⁹ *Id.*

²⁰ *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work for the period June 29 through August 14, 2020 causally related to her accepted May 10, 2019 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 27, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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