United States Department of Labor
Employees' Compensation Appeals Board

B.M., Appellant	)	
and	)	**Docket No. 19-1075**
	)	**Issued: February 10, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Bell, CA, 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:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 16, 2019 appellant filed a timely appeal from a March 12, 2019 merit decision 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.[3]

[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.*

[3] The Board notes that, following the March 12, 2019 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 disability from work for the period October 16, 2017 through July 10, 2018 causally related to her accepted January 27, 2017 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.[4] The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 27, 2017 appellant, then a 59-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging an injury on that date when a box fell on her back while she was in the performance of duty. On March 10, 2017 OWCP accepted her claim for strain of muscle, fascia, and tendon at the neck level, and strain of muscle, fascia, and tendon at the right shoulder/upper arm level. Appellant did not stop work, but she began working in a full-time modified position without wage loss.[5]

In August 24, 2017 reports, Dr. Aaron Coppelson, a Board-certified orthopedic surgeon, diagnosed several cervical and left shoulder conditions and indicated that appellant could perform modified work with limited use of her left upper extremity, no overhead work, and lifting, pushing, or pulling no more than 10 pounds. In October 5, 2017 reports, he advised that she was able to maintain the same work status as delineated in his August 24, 2017 report.

On October 16, 2017 appellant began working in a modified mail handler position with the employing establishment for four hours per day. The position involved walking around the workplace to count mail and check mail quality. Appellant was restricted from lifting, pushing, or pulling more than 10 pounds and from performing overhead work. She was allowed to sit and prop up her arm under a pillow as needed.

On October 19, 2017 Dr. Coppelson advised that appellant's work status should remain the same.

On October 30, 2017 appellant filed a claim for compensation (Form CA-7) claiming wage-loss compensation benefits for four hours each workday for the period October 16 through 27, 2017 due to disability caused by her January 27, 2017 employment injury.[6]

In support of her disability claim, appellant subsequently submitted November 16 and December 14, 2017 reports from Dr. Coppelson, who continued to indicate that her work status should remain the same. In November 20, 2017 reports, Dr. David Barba, a Board-certified

[4] Docket No. 18-0672 (issued August 7, 2018).

[5] OWCP initially administratively handled appellant's claim to allow for payment of a limited amount of medical expenses and it did not formally consider her claim until it issued its March 10, 2017 decision.

[6] Appellant later filed additional claims for wage-loss compensation benefits, which collectively covered the period October 28, 2017 through July 10, 2018.

orthopedic surgeon, advised that she was restricted from lifting, pushing, or pulling more than 10 pounds and from engaging in overhead work. In December 11, 2017 reports, he indicated that appellant could perform limited overhead work.

By decision dated December 27, 2017, OWCP found that appellant had not met her burden of proof to establish disability from work commencing October 16, 2017, causally related to her accepted January 27, 2017 employment injury. Appellant appealed to the Board and, by decision dated August 7, 2018,[7] the Board affirmed the December 27, 2017 decision.

In a December 17, 2018 letter received by OWCP on December 20, 2018 appellant, through counsel, requested reconsideration of OWCP's denial of her claim for disability.

Appellant subsequently submitted January 22, 2018 form reports from Dr. Barba who diagnosed cervicalgia and advised that she could return to work without restrictions. Dr. Barba noted that appellant's medical condition had improved since her last examination and indicated that he was referring her for pain management to address her neck pain.

In January 25, 2018 reports, Dr. Coppelson diagnosed neck pain, cervical strain with spasm, and left C5-6 radiculopathy, and noted that appellant was restricted from lifting, pushing, or pulling more than 20 pounds. In a February 22, 2018 narrative report, he provided the additional diagnoses of left supraspinatus tendinitis/subacromial bursitis and left shoulder pain/strain with partial tear, and restricted appellant from lifting, pushing, or pulling more than 20 pounds. In the portion of the report entitled "Causation," Dr. Coppelson opined that, based on his history and current examination findings, appellant's cervical spine and left shoulder conditions were secondary to a specific trauma suffered at work on January 27, 2017. In the portion of the report entitled "Apportionment," he indicated, "As there is no history of previous injury or disability to the cervical spine and left shoulder, apportionment is not indicated. In my opinion, 100 percent of the patient's present disability has been caused by the industrial injury of [January 27, 2017], and 0 percent has been caused by other factors."[8]

In a May 9, 2018 work status form report, Dr. Arash Yaghoobian, a Board-certified orthopedic surgeon, diagnosed cervical disc degeneration and indicated that appellant could return to work with restrictions from lifting, pushing, or pulling more than 10 pounds. In a June 6, 2018 work status form report, he listed the diagnosis of cervical spondylosis with radiculopathy and noted that her work restrictions remained the same as delineated in his May 9, 2018 report.

In a July 16, 2018 narrative report, Dr. Barba diagnosed cervicalgia with left-sided C6 radiculopathy (per electromyogram (EMG) testing, but without objective clinical findings) and noted that appellant had a permanent restriction of lifting, pushing, and pulling no more than 40 pounds. In the portion of the report entitled "Causation," he indicated, "In reviewing [appellant's] history and medical records and examination today, it appears that the patient did sustain an injury

[7] *Supra* note 4.

[8] In a work status form report of even date, Dr. Coppelson also restricted appellant from lifting, pushing, or pulling more than 20 pounds. In a May 31, 2018 narrative report, he indicated that appellant suffered the accepted condition of cervical strain (*i.e.*, strain of the muscle at the neck level), a condition "which was one in the same with cervicalgia." Dr. Coppelson noted, "Cervicalgia, cervical strain, cervical pain, and strain of the neck muscle are all the same."

to the neck arising out of and caused by the industrial exposure of [January 27, 2017]." In the portion of the report entitled "Disability status," Dr. Barba noted, "[Appellant] has reached maximum medical improvement and is permanent and stationary."[9]

In a July 18, 2018 narrative report, Dr. Yaghoobian diagnosed cervical multilevel disc disease with upper extremity radiculitis, history of cervical disc protrusions/herniations, and left shoulder internal derangement with impingement syndrome. He indicated that appellant had not received authorization for a steroid injection and had not undergone pain intervention, and advised that pain intervention was a reasonable next step for treatment. Dr. Yaghoobian noted, "I will retain [appellant's] at current work status, and allow her to finish any remaining therapy." In a July 18, 2018 work status form report, he diagnosed cervical spondylosis with radiculopathy and indicated that appellant was restricted from lifting, pushing, or pulling more than 20 pounds.

In an August 13, 2018 narrative report, Dr. Barba diagnosed "neck strain, also known as cervicalgia" and advised that appellant's work status had been changed to "no restrictions." In a form report of even date, he noted that appellant could perform full-duty work.

In August 15 and September 12, 2018 narrative and work status form reports, Dr. Yaghoobian indicated that appellant could perform full-duty work without restrictions.[10]

In a September 27, 2018 narrative report, Dr. Richard Feldman, a Board-certified orthopedic surgeon, referenced appellant's January 27, 2017 injury and diagnosed cervical radiculopathy documented by EMG testing and left shoulder arthritis/impingement. In the section of the report entitled "Causation," he noted, "In reviewing [appellant's] history and medical records and examination today, it appears that the patient did sustain an injury to the cervical spine and bilateral shoulders arising out of and caused by the industrial exposure of [January 27, 2017]." In the section of the report entitled "Work status," Dr. Feldman indicated that he concurred with the recommendations of Dr. Yaghoobian. In a September 27, 2018 work status form report, he noted, "Work status per [primary treating physician]."

By decision dated March 12, 2019, OWCP found that appellant had not met her burden of proof to establish disability from work for the period October 16, 2017 through July 10, 2018 causally related to her accepted January 27, 2017 employment injury.

[9] In form reports of even date, Dr. Barba advised that appellant was restricted from lifting, pushing, or pulling more than 40 pounds.

[10] Dr. Yaghoobian further examined appellant on October 10 and November 7, 2018, and January 2 and 30, 2019. He produced both narrative and work status form reports for each of these dates in which he advised that she could perform full-duty work without restrictions. Dr. Yaghoobian also produced a December 5, 2018 work status form report in which he reported that appellant had no disability from work.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[11]

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.[12] Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[13] 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.[14] 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.[15]

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 specific employment factors identified by the claimant.[16]

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.[17]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period October 16, 2017 through July 10, 2018 causally related to her accepted January 27, 2017 employment injury.

As noted, the Board previously affirmed OWCP's December 27, 2017 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section

[11] *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[12] 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018).

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

[14] *See D.G.*, Docket No. 18-0597 (issued October 3, 2018).

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

[16] *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

[17] *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

8128 of FECA.[18] Accordingly, the current analysis is limited to the relevant medical evidence received since OWCP's December 27, 2017 merit decision, which is the evidence that was not before the Board when it last reviewed appellant's claim on August 7, 2018.

In support of her claim for employment-related disability for the period October 16, 2017 through July 10, 2018, appellant submitted a February 22, 2018 narrative report from Dr. Coppelson who diagnosed neck pain, cervical strain with spasm, left C5-6 radiculopathy, left supraspinatus tendinitis/subacromial bursitis, and left shoulder pain/strain with partial tear. He restricted her from lifting, pushing, or pulling more than 20 pounds, and opined that her cervical spine and left shoulder conditions were secondary to the trauma she suffered at work on January 27, 2017. In the portion of the report entitled "Apportionment," Dr. Coppelson indicated, "As there is no history of previous injury or disability to the cervical spine and left shoulder, apportionment is not indicated. In my opinion, 100 percent of [appellant] present disability has been caused by the industrial injury of [January 27, 2017], and 0 percent has been caused by other factors."

The Board finds that this report is of limited probative value with respect to appellant's claim for disability from work for the period October 16, 2017 through July 10, 2018 because Dr. Coppelson's opinion is vague with respect to the period of disability and he did not provide medical rationale in support of his opinion on causal relationship. 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.[19] Dr. Coppelson only provided a mere conclusory opinion on causal relationship and the Board has held that such an opinion is insufficient to meet a claimant's burden of proof to establish a claim.[20] He referenced conditions (*e.g.*, left C5-6 radiculopathy and left supraspinatus tendinitis/subacromial bursitis) as being due to the January 27, 2017 employment incident, but these conditions have not been accepted as employment related and it is unclear to what extent Dr. Coppelson has implicated these nonwork-related conditions as causing disability. For these reasons, Dr. Coppelson's February 22, 2018 report is insufficient to establish appellant's disability claim.

In January 25, 2018 narrative and form reports, Dr. Coppelson diagnosed neck pain, cervical strain with spasm, and left C5-6 radiculopathy, and noted that appellant was restricted from lifting, pushing, or pulling more than 20 pounds. In a February 22, 2018 form report, he restricted her from lifting, pushing, or pulling more than 20 pounds. In a May 31, 2018 narrative report, Dr. Coppelson indicated that appellant's accepted cervical strain was the same condition as cervicalgia. However, the Board finds that these reports are of no probative value on the underlying issue of this case because he did not provide an opinion that she had disability from work for the period October 16, 2017 through July 10, 2018 causally related to her accepted January 27, 2017 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's disability is of no probative value on the issue of

[18] *See B.R.*, Docket No. 17-0294 (issued May 11, 2018).

[19] *See T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[20] *C.E.*, Docket No. 19-0192 (issued July 16, 2019); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

causal relationship.[21] Therefore, these reports are insufficient to establish appellant's disability claim.

Appellant submitted several reports from Dr. Barba, including January 22, 2018 form reports in which he diagnosed cervicalgia and advised that she could return to work without restrictions. In a July 16, 2018 narrative report, Dr. Barba diagnosed cervicalgia with left-sided C6 radiculopathy and noted that she had a permanent restriction of lifting, pushing, and pulling no more than 40 pounds. He advised that appellant sustained a neck injury on January 27, 2017 and maintained, in a section of the report entitled, "Disability status," that she had reached maximum medical improvement and that her condition was permanent and stationary. In form reports of even date, Dr. Barba noted that she was restricted from lifting, pushing, and pulling more than 40 pounds. In an August 13, 2018 narrative report, he diagnosed "neck strain, also known as cervicalgia" and advised that appellant's work status had been changed to "no restrictions." In a form report of even date, Dr. Barba noted that she could perform full-duty work. The Board finds that these reports are of no probative value regarding appellant's disability claim because Dr. Barba did not provide an opinion that she had disability from work for the period October 16, 2017 through July 10, 2018 causally related to her accepted January 27, 2017 employment injury.[22] For this reason, his reports are insufficient to establish her disability claim.

Appellant also submitted reports from Dr. Yaghoobian, including a May 9, 2018 form report in which he diagnosed cervical disc degeneration and indicated that she could return to work with restrictions from lifting, pushing, or pulling more than 10 pounds. In a June 6, 2018 form report, Dr. Yaghoobian diagnosed cervical spondylosis with radiculopathy and noted that her work restrictions remained the same as delineated in his May 9, 2018 report. In a July 18, 2018 narrative report, he diagnosed additional cervical and left shoulder conditions and indicated, "I will retain [appellant] at current work status…." In a July 18, 2018 form report, Dr. Yaghoobian indicated that she was restricted from lifting, pushing, and pulling more than 20 pounds. In reports dated August 15, September 12, October 10, November 7, and December 5, 2018, and January 2 and 30, 2019, he advised that appellant could perform full-duty work without restrictions. However, the Board finds that all of Dr. Yaghoobian's reports are of no probative value regarding her disability claim because they do not contain an opinion that she had employment-related disability during the claimed period of disability, *i.e.*, October 16, 2017 through July 10, 2018.[23] Therefore, Dr. Yaghoobian's reports are insufficient to establish appellant's disability claim.

In a September 27, 2018 narrative report, Dr. Feldman diagnosed cervical radiculopathy and left shoulder arthritis/impingement, and asserted that appellant sustained injury to her cervical spine and bilateral shoulders on January 27, 2017. He indicated regarding her work status that he concurred with the recommendations of Dr. Yaghoobian. Dr. Feldman did not provide any further details of this aspect of his report, but the Board notes that Dr. Yaghoobian indicated that around this time that appellant could perform full-duty work. In a September 27, 2018 work status form report, Dr. Feldman noted, "Work status per [primary treating physician]," but he did not provide any additional details regarding this comment. The Board finds that Dr. Feldman's reports are of

[21] *See H.J.*, Docket No. 20-0282 (issued July 21, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

[22] *Id*.

[23] *See D.K.*, Docket No. 17-1549 (issued July 6, 2018).

no probative value regarding the underlying issue of this case because Dr. Feldman did not provide a clear opinion that appellant had employment-related disability for the period October 16, 2017 through July 10, 2018.[24] Thus, Dr. Feldman's reports do not establish her disability claim for this period.

As appellant has not submitted rationalized medical evidence establishing causal relationship between her claimed period of disability and the accepted January 27, 2017 employment injury, the Board finds that she 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 disability from work for the period October 16, 2017 through July 10, 2018 causally related to her accepted January 27, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 12, 2019 decision of the Office of Workers' Compensation Programs is affirmed.[25]

Issued: February 10, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

[24] *Id*.

[25] Christopher J. Godfrey, Deputy Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after January 20, 2021.