United States Department of Labor
Employees' Compensation Appeals Board

P.C., Appellant	)	
and	)	**Docket No. 22-0635**
	)	**Issued: May 15, 2023**
U.S. POSTAL SERVICE, CINCINNATI POST OFFICE, Cincinnati, OH, Employer	)	

Appearances:
Michael D. Overman, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On March 17, 2022 appellant, through counsel, filed a timely appeal from a February 23, 2022 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 February 23, 2022 decision, appellant submitted additional evidence to OWCP. 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 his burden of proof to establish the remaining six hours of claimed disability from work on December 22, 2020 causally related to his accepted December 10, 2019 employment injury.

FACTUAL HISTORY

On June 23, 2020 appellant, then a 37-year-old custodial laborer, filed a traumatic injury claim (Form CA-1) alleging that on December 10, 2019 he sustained an injury to his back when removing a trash bag from a full dumpster while in the performance of duty. OWCP accepted the claim for aggravation of lumbar disc disease with radiculopathy. Appellant stopped work on December 13, 2019 and returned on December 16, 2019. OWCP paid him wage-loss compensation on the supplemental rolls effective August 29, 2020 through October 9, 2021 and February 27 through September 23, 2022, and on the periodic rolls effective October 10, 2021 through February 26, 2022.

On August 16, 2020 appellant accepted a modified position with the employing establishment as a laborer custodian working six hours per day with Friday and Saturday as his scheduled days off. The duties of the position included cleaning restrooms up to four hours a day, cleaning workroom floors up to six hours a day, mopping floors up to one hour a day, and cleaning the administrative offices for four hours a day. The physical requirements were no lifting over 20 pounds intermittently and five pounds continuously up to three hours, 10-minute break every hour, and no reaching above the shoulders or bending/stooping more than 4 hours a day.

Appellant underwent a functional capacity evaluation on September 9, 2020 which demonstrated that he had the ability to function in the heavy physical demand category for an eight-hour day. It noted that appellant was able to occasionally lift up to 60 pounds floor to waist, 50 pounds floor to shoulder, and 50 pounds waist to shoulder, carry up to 40 pounds bilaterally, push 73 pounds of force, and pull 69 pounds of force.

Dr. Charles J. Manfresca, an osteopath and specialist in family medicine, treated appellant on December 23, 2020 for low back, right groin, and left leg pain. He noted that on December 10, 2019, while performing his job duties, appellant lifted trash out of a bin manually, and experienced low back pain radiating into his left leg. Dr. Manfresca indicated that appellant attended physical therapy and underwent a series of intra-articular injections, which provided significant improvement. He noted mild tenderness to palpation of lumbar paraspinals, intact motor strength and motor function, and intact sensation. Dr. Manfresca diagnosed herniated nucleus pulposus with radiculopathy, and lumbosacral spondylosis with radiculopathy. In a duty status report (Form CA-17) of even date, he diagnosed herniated nucleus pulposus with radiculopathy, and retumed appellant to full-duty work eight hours a day with restrictions. Dr. Manfresca recommended that appellant avoid carrying items on his back and take a 10-minute break when his back is painful.

On January 25, 2021 Dr. Manfresca treated appellant in follow up for low back, right groin, and left leg pain. He indicated that appellant's condition regressed, and he lost all the gains that he had made. Dr. Manfresca diagnosed herniated nucleus pulposus with radiculopathy, and lumbosacral spondylosis with radiculopathy. He noted markedly worse symptomatology, and took appellant off work for two weeks to titrate his medication. In a duty status report of even date,

Dr. Manfresca noted clinical findings of decreased range of motion, and diagnosed herniated nucleus pulposus and radiculopathy. He advised that appellant was totally disabled for two weeks.

OWCP subsequently expanded the acceptance of appellant's claim to include aggravation of lumbar disc disease with radiculopathy, and lumbosacral spondylosis with radiculopathy.

On June 17, 2021 appellant filed a claim for compensation (Form CA-7) for intermittent disability from work during the period November 21, 2020 through February 12, 2021. Accompanying time analysis forms (Form CA-7a), noting the hours of wage-loss claimed for each date, including for eight hours of leave without pay (LWOP) on December 22, 2020 because his injury flared up, and eight hours of LWOP on both January 23 and 24, 2021 because he was taken off work.

By decision dated August 2, 2021, OWCP authorized payment of wage-loss compensation for disability on the following claimed dates: November 21 through December 21, 2020, December 26, 2020 through January 20, 2021, January 25 through February 7, 2021, and February 8 through 10, 2021. However, it denied appellant's claim for compensation for the remaining claimed dates of disability, which were December 22, 2020 and January 23 and 24, 2021.

Appellant subsequently submitted a January 6, 2021 report from Dr. Christina Prabhu, a Board-certified family practitioner, who performed an evaluation, and diagnosed headache syndrome and COVID-19. Dr. Prabhu noted that appellant was totally disabled from work from December 22 through 25, 2020 due to COVID-19.

On January 21, 2021 Dr. Holly Thompson, an osteopath and specialist in family medicine, treated appellant, for a flare up of herniated disc pain. Appellant reported left low back pain radiating down the back of the calf for three weeks but worse over the last five days. Dr. Thompson indicated that he was unable to perform his job due to pain the last few days. She diagnosed radicular low back pain and herniated lumbar disc without myelopathy. Dr. Thompson prescribed a steroid taper for temporary relief of the acute exacerbation. She provided a work excuse, noting no bending, twisting, or lifting over 15 pounds.

By decision dated February 23, 2022, OWCP modified the August 2, 2021 decision to find that appellant had established two hours of disability from work on December 22, 2020 and total disability from work on January 23 and 24, 2021 due to the accepted employment injury. However, the remaining six hours of claimed disability from work on December 22, 2020 remained denied.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[5] For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled

[4] 5 U.S.C. § 8101 *et seq*.

[5] *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

from work as a result of the accepted employment injury.[6] Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues, which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.[7] Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.[8]

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.[9] Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.[10] 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.[11]

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence 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.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish the remaining six hours of claimed disability from work on December 22, 2020, causally related to his accepted December 10, 2019 employment injury.

In a December 23, 2020 narrative report and accompanying duty status report, Dr. Manfresca diagnosed herniated nucleus pulposus with radiculopathy, and lumbosacral spondylosis with radiculopathy. He recommended that appellant avoid carrying items on his back and take a 10-minute break when his back is painful. On January 25, 2021 Dr. Manfresca noted markedly worse symptomatology, and held appellant off work for two weeks. In a duty status report of even date, Dr. Manfresca advised that appellant was totally disabled for two weeks. However, none of Dr. Manfresca's reports include an opinion specifically addressing causal relationship between the remaining six hours of claimed disability on December 22, 2020 and the accepted employment 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 on

[6] *Id*.; *William A. Archer*, 55 ECAB 674 (2004).

[7] *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

[8] *X.M.*, Docket No. 22-0271 (issued February 28, 2023); *Dean E. Pierce*, 40 ECAB 1249 (1989).

[9] 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

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

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

[12] *See B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, *supra* note 8; *see also C.S.*, Docket No. 17-1686 (issued February 5, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

the issue of causal relationship.[13] These reports, therefore, are insufficient to establish appellant's claim. In reports dated January 6, 2021, Dr. Prabhu noted that appellant was totally disabled from work from December 22 through 25, 2020 due to COVID-19. However, this report is of no probative value, because she did not provide an opinion that appellant was disabled from work on December 22, 2020 due to the accepted December 10, 2019 lumbar condition.[14] Similarly, in a December 23, 2020 report, Dr. Manfresca treated appellant, and returned him to full-time duty eight hours a day with restrictions. However, he did not opine that appellant was disabled from work on December 22, 2020 due to his accepted conditions. As noted, the Board has held that reports that do not provide an opinion on disability are of no probative value.[15] Therefore, these reports are insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish the remaining six hours of claimed disability from work on December 22, 2020, the Board finds that appellant has not met his 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.

[13] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *Id.*; *see also William A. Archer*, 55 ECAB 674 (2004) (the Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of claimed disability).

[15] *Id.*

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish the remaining six hours of claimed disability from work on December 22, 2020, causally related to his accepted December 10, 2019 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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