

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

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**S.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Hamilton, MT, Employer**

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**Docket No. 17-0828  
Issued: December 20, 2017**

*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  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 27, 2017 appellant filed a timely appeal from an October 12, 2016 merit decision and a February 15, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has established that she was disabled from work as of July 9, 2016 causally related to her accepted employment injury; and (2) whether OWCP properly denied appellant's request for a review of the written record as untimely filed.

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<sup>1</sup> The Board notes that appellant submitted new evidence on appeal. However, the Board's jurisdiction is limited to evidence that was in the record at the time OWCP issued its final decision. Thus, the Board is precluded from reviewing this new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 27, 2017 appellant, then a 60-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on February 8, 2016, she injured her right upper arm while lifting a tub in the performance of duty. She did not indicate on the claim form whether she had stopped work. On May 13, 2016 OWCP accepted appellant's claim for right triceps strain. Appellant received wage-loss compensation on the supplemental rolls from April 16 through June 24, 2016.

In a report dated May 26, 2016, Dr. Michael Dolecki, a Board-certified orthopedic surgeon, examined appellant and diagnosed mild right elbow ulnar neuropathy. He found a positive Tinel's test and cubital tunnel on the right side. Dr. Dolecki recommended a nerve block, and stated, "I think if she has a block she will be able to return to full-duty work. Follow back after the block for full work release."

On July 7, 2016 Dr. Glenn Heyman, an osteopathic physician, diagnosed appellant with right ulnar mononeuropathy at the elbow and performed a right ulnar nerve block.

By letter dated July 21, 2016, the employing establishment requested that OWCP obtain a second opinion regarding the status of appellant's right triceps claim, noting that she had not worked since March 12, 2016.

On July 26, 2016 appellant filed a claim for compensation (Form CA-7) for disability for the period from July 9 through 28, 2016.

In a statement of accepted facts dated July 27, 2016, OWCP noted that appellant had stopped work on March 12, 2016 and had not returned.

By letter dated August 1, 2016, OWCP informed appellant that the evidence of record was insufficient to support a claim for disability for the period July 9, 2016 and continuing. It noted that the report of Dr. Dolecki of May 26, 2016 did not relate her diagnosed mild right elbow ulnar neuropathy to her accepted injury. Appellant was afforded 30 days to submit additional evidence in support of her claim.

On September 9, 2016 Dr. Spencer D. Greendyke, a Board-certified orthopedic surgeon and second opinion physician, responded to OWCP's inquiries regarding appellant's accepted injury. He noted that appellant had been examined on that day and he provided an extensive summary of appellant's prior medical treatment and examination findings. Dr. Greendyke explained that appellant had a history of repeat right shoulder surgery with findings of complete tear of the rotator cuff, which was not employment related. He further explained that appellant's work-related diagnosis was strain to the previously scarred biceps long head muscle belly. Dr. Greendyke opined that she continued to have residuals from her accepted work-related condition, along with temporary work restrictions of lifting no more than 10 pounds with her right arm. He related that this restriction would be lifted after eight weeks of physical therapy, following which appellant could perform full duty.

By decision dated October 12, 2016, OWCP denied appellant's claim for disability for the period commencing July 9, 2016. It found that she had not submitted the necessary medical evidence to establish that she was disabled from work due to the accepted employment injury.

On January 17, 2017 appellant requested a review of the written record before an OWCP hearing representative. The certified mail tracking number indicated that appellant sent the letter on January 17, 2017 and it was received by OWCP's Branch of Hearings and Review on January 24, 2017.

By decision dated February 15, 2017, OWCP's hearing representative denied appellant's request for a review of the written record as untimely filed. She noted that OWCP had issued its decision on October 12, 2016, while appellant's request for a review of the written record was "postmarked" on January 17, 2017. Consequently, the hearing representative found that appellant was not entitled to a review of the written record as a matter of right, as the request was submitted more than 30 days after issuance of OWCP's decision. She also considered whether to grant appellant a discretionary hearing, but determined that the issue in appellant's case could equally well be addressed by her requesting reconsideration before OWCP.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> Whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>6</sup> Whether a particular injury causes an employee to be disabled from work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative, and substantial medical evidence.<sup>7</sup>

For each period of disability claimed, the employee has the burden of proof to establish that she was disabled from work as a result of the accepted employment injury.<sup>8</sup> 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

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<sup>3</sup> *Id.*

<sup>4</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>6</sup> *Donald E. Ewals*, 51 ECAB 428 (2000).

<sup>7</sup> *Tammy L. Medley*, 55 ECAB 182 (2003); *see id.*

<sup>8</sup> *See David H. Goss*, 32 ECAB 24, 27 (1980).

essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>9</sup>

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.<sup>10</sup> Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>11</sup> The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship.

### **ANALYSIS -- ISSUE 1**

Appellant's February 8, 2016 traumatic claim was accepted for right triceps strain. She bears the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that she was disabled from work for the period commencing July 9, 2016 due to her accepted injuries.<sup>12</sup>

The Board finds that appellant has failed to establish that she was disabled from work commencing July 9, 2016 causally related to the accepted employment injury.

On September 9, 2016 Dr. Greendyke responded to OWCP's inquiries regarding her accepted injury. He opined that appellant continued to have residuals from her accepted work-related condition, along with temporary work restrictions of lifting no more than 10 pounds with her right arm, which would be lifted after eight weeks of physical therapy.

The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>13</sup> The Board finds that the weight of medical evidence rests with Dr. Greendyke, as he examined appellant on September 9, 2016 and provided extensive review of the medical record and examination findings. Dr. Greendyke explained that appellant still had residuals of the strain of the previously scarred biceps muscle; however, he explained that she was not totally disabled from work at that time, and could work in a light-duty position with a 10-pound lifting restriction. He also noted that appellant could return to full duty after six additional weeks of physical therapy. As such, Dr. Greendyke's report establishes that appellant was not totally disabled from work for the claimed time period. As he carefully reviewed the medical evidence of record, his opinion reflected sufficient reliability, probative value, care of analysis, and medical rationale and is entitled to the weight of the medical evidence.<sup>14</sup>

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<sup>9</sup> See *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>10</sup> *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

<sup>11</sup> *Elizabeth Stanislaw*, 49 ECAB 540 (1998).

<sup>12</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>13</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

<sup>14</sup> See *id.*; *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>15</sup>

Appellant submitted no probative evidence contemporaneous to the alleged dates of disability that would indicate she was disabled from work either directly due to her accepted injuries or due to a medical appointment.<sup>16</sup>

In a report dated May 26, 2016, Dr. Dolecki examined appellant and diagnosed her with mild right elbow ulnar neuropathy. He found a positive Tinel's test and cubital tunnel on the right side. Dr. Dolecki recommended a nerve block, and stated, "I think if she has a block she will be able to return to full-duty work. Follow back after the block for full work release." While Dr. Dolecki stated that appellant would be capable of returning to full-duty work after a nerve block, he did not address the accepted condition of right triceps strain and explain why this accepted condition caused any specific dates of disability. As such, this report does not establish that appellant was totally disabled from work for the claimed time period.<sup>17</sup>

On July 7, 2016 Dr. Heyman diagnosed appellant with right ulnar mononeuropathy at the elbow and performed a right ulnar nerve block. Again, he did not address appellant's accepted condition nor did he offer an opinion regarding appellant's ability to work on the specific dates of disability. As such, this report also does not establish that appellant was totally disabled from work for the claimed time period.<sup>18</sup>

As appellant has not submitted medical evidence containing medical rationale relating her claimed dates of disability to her accepted conditions, she has not met her burden of proof to establish disability for the period beginning July 9, 2016.<sup>19</sup>

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.

### **LEGAL PRECEDENT -- ISSUE 2**

A claimant injured on or after July 4, 1966, who has received a final adverse decision by OWCP, may obtain a hearing by writing to the address specified in the decision.<sup>20</sup> The hearing

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<sup>15</sup> *N.G.*, Docket No. 16-1421 (issued December 12, 2016).

<sup>16</sup> An injured employee may be entitled to compensation for lost wages incurred while obtaining authorized medical services. See 5 U.S.C. § 8103(a); *Gayle L. Jackson*, 57 ECAB 546 (2006).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Supra* note 8.

<sup>20</sup> 20 C.F.R. § 10.616(a).

request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought. The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision. If the request is not made within 30 days, a claimant is not entitled to a hearing as a matter of right. However, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing.<sup>21</sup>

### **ANALYSIS -- ISSUE 2**

Appellant's request for a review of the written record was sent, according to the certified mail tracking number, on January 17, 2017. OWCP issued its last merit decision on October 12, 2016. The regulations provide that "[t]he hearing request must be sent within 30 days [...] of the date of the decision for which a hearing is sought." Because appellant's request sent on January 17, 2017 was untimely filed, she was not entitled to a review of the written record as a matter of right. A representative of OWCP's Branch of Hearings and Review also denied appellant's request because it found that the issue of her claimed dates of disability could be equally well addressed by requesting reconsideration before OWCP. The Board finds that the hearing representative properly exercised her discretionary authority in denying appellant's request for a hearing.<sup>22</sup>

### **CONCLUSION**

The Board finds that appellant has not established that she was disabled from work as of July 9, 2016 causally related to her accepted employment injury. The Board also finds that OWCP did not abuse its discretion by denying appellant's request for review of the written record as untimely filed.

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<sup>21</sup> 5 U.S.C. §§ 8124(b)(1) and 8128(a); *Hubert Jones Jr.*, 57 ECAB 467, 472-73 (2006); *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>22</sup> *Mary B. Moss*, 40 ECAB 640, 647 (1989). Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts. See *André Thyrastron*, 54 ECAB 257, 261 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 17, 2017 and October 12, 2016 are affirmed.

Issued: December 20, 2017  
Washington, DC

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

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

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