

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

C.E., Appellant)	
)	
and)	Docket No. 19-1617
)	Issued: June 3, 2020
U.S. POSTAL SERVICE, CROOKED HILL)	
POST OFFICE, Harrisburg, PA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 25, 2019 appellant filed a timely appeal from an April 2, 2019 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 April 2, 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 his burden of proof to establish disability from work for intermittent periods from July 8, 2017 through June 8, 2018 causally related to his accepted employment condition.

FACTUAL HISTORY

On June 22, 2018 appellant, then a 51-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that he acquired bilateral hand contact dermatitis due to factors of his federal employment. He noted that he first became aware of his claimed condition on June 10, 2017 and that it was caused or aggravated by his federal employment on July 31, 2017. On September 12, 2018 OWCP accepted the claim for dermatitis, bilateral hands.

On February 1, 2019 appellant submitted the first of a series of claims for wage-loss compensation (Form CA-7) for temporary total disability from work covering the period July 8 through 21, 2017. OWCP received additional Form CA-7 claims for wage-loss compensation for intermittent periods through June 8, 2018. In corresponding time analysis forms (Form CA-7a), the employing establishment controverted the claims noting that the medical evidence submitted indicated that appellant could work without restrictions. It further noted that gloves were not required and that appellant instead chose to wear gloves.

In a July 31, 2017 report, Dr. Matthew Helm, a Board-certified dermatologist, indicated that appellant had contact hand dermatitis secondary to nitrite gloves which exacerbated his condition. He indicated that appellant was able to return to work on July 31, 2017 and requested that he be provided with an alternative type of glove.

In school/work excuse notes, Dr. Alexandria Flamm, a Board-certified dermatologist, advised that appellant had contact dermatitis and that he could return to work with no restrictions on December 14 and 26, 2017, and May 10, 19, and 24, 2018.

In a March 12, 2018 work release note, Dr. Flamm indicated that appellant should avoid activities involving bending, lifting, or other exertional activities which caused sweating for the period March 12 through 16, 2018.

In a June 15, 2018 report, Dr. Flamm indicated that she had treated appellant since December 2017 for severe hand dermatitis that had been recalcitrant to multiple oral and topical treatments. She indicated that a flare-up of his condition caused pain and many open areas on his hands and prevented him from working from May 1 through 24, 2018. Dr. Flamm noted that she had evaluated appellant for that flare-up on May 15, 2018.

In a June 22, 2018 report, Dr. Flamm explained that, since appellant's dermatitis condition flared when he was at work and improved when he was not working, she believed that his condition was likely exacerbated by materials he was coming into contact with while working, specifically the gloves he used at work. She added that avoiding use of these gloves would likely greatly improve his condition.

On July 13, 2018 Dr. Flamm indicated that appellant's persistent hand dermatitis flared up only when he was at work. She performed a biopsy to rule out etiology other than eczematous process. The surgical pathology report of July 18, 2018 favored the diagnosis of a chronic spongiotic dermatitis, such as a chronic eczematous process.

In a November 20, 2018 school/work excuse request message, Dr. Helm advised that appellant had severe hand dermatitis from July 10 to August 4, 2017 and was unable to work. He opined that this was likely due to an occupational exposure to nitrite gloves that he was required to wear.

In a report dated November 20, 2018, Dr. Flamm noted that appellant had a flare up of his dermatitis condition in May 2018 and was seen on May 15, 2018. She noted that he had initially indicated that he had missed work from May 1 to 24, 2018 due to this flare, but he had now indicated that he had in fact missed work from May 6 to June 3, 2018.

In a February 19, 2019 memorandum of telephone call (Form CA-110), the employing establishment advised that light duty was available for appellant during the entire claimed period of disability from work.

In a February 19, 2019 development letter, OWCP acknowledged receipt of appellant's claim for wage-loss compensation beginning July 8, 2017 and advised that additional evidence was needed to establish disability from work during the claimed periods. It advised that the evidence indicated that a light-/limited-duty assignment was available within appellant's medical restrictions with the employing establishment for the period of claimed lost time where gloves were not necessary, and requested evidence to support why he did not work the light-/limited-duty assignment. OWCP afforded appellant 30 days to submit the requested medical evidence.

In a February 28, 2019 letter, appellant indicated that since 2017 he had suffered from a severe dermatitis reaction to the gloves that the employing establishment issued and that he had been disciplined for his absences from work, which were mostly due to the reaction from using the gloves while working. He indicated that he was unable to work during flare-ups of his dermatitis condition as his hands were so raw that he was unable to perform simple grasping. Appellant denied knowing that light-duty work was available. He indicated that the medical documentation supported his absences and that he was claiming 304 hours for intermittent periods from July 8, 2017 through June 8, 2018.

By decision dated April 2, 2019, OWCP denied appellant's claim for compensation intermittent disability for the period July 8, 2017 through June 8, 2018. It noted that on February 19, 2019 the employing establishment had advised that there was work available during his claimed periods of disability and found that appellant had not addressed why he had not accepted the light duty that was made available to him.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.³ 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.⁴ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁵

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

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is medical evidence which includes a physician’s detailed medical opinion on the issue of whether there is a causal relationship between the claimant’s claimed disability and the accepted employment injury. 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 period of disability and the accepted employment injury.⁸

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.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

³ See *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

⁴ *Id.*

⁵ 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 3; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁶ *Id.*

⁷ *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

⁸ *R.H.*, Docket No. 18-1382 (issued February 14, 2019).

⁹ 20 C.F.R. § 10.501(a); see *T.A.*, Docket No. 18-0431 (issued November 7, 2018); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005).

would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁰

ANALYSIS

The Board finds the case is not in posture for decision.

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹¹ Its regulations at 20 C.F.R. § 10.126 provides that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons. As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.¹²

On September 12, 2018 OWCP accepted appellant's claim for bilateral hand dermatitis. Appellant has alleged that his accepted condition and periods of disability were due to the nitrate gloves he wore at work, which were furnished by the employing establishment. The employing establishment disputed that appellant was required to wear gloves at work. The issue of whether and why appellant wore employing establishment-furnished gloves at work is central to the issue of whether appellant was disabled from work during the time periods alleged, as appellant has claimed that he was disabled due to wearing gloves at work. However, OWCP did not make any findings of fact regarding this issue.

The Board also notes that the employing establishment indicated that light work was made available to appellant during the relevant time periods and OWCP denied appellant's disability wage-loss claims on this basis. However, OWCP did not make findings as to the nature of the light work offered to appellant, whether or not it required that gloves be worn, or whether it could be performed with appellant's accepted dermatitis condition without gloves. It also did not make findings as to whether any light-duty work was offered to appellant in writing. OWCP merely cited a February 19, 2019 telephone call from the employing establishment wherein it was indicated that light-duty work was available for appellant during the time periods alleged. The Board notes that there is no written evidence of record that the employing establishment offered appellant any light-duty assignment in writing during these periods. 20 C.F.R. § 10.500(a) provides that, in an accepted claim, an employee is not entitled to compensation for any wage loss claimed on a Form CA-7 to the extent that evidence contemporaneous with the period claimed on a Form CA-7 establishes that an employee had medical work restrictions in place, that light duty within those work restrictions was available, and that the employee was previously notified in writing that such duty was available.

On remand OWCP shall further develop the claim to determine whether appellant was furnished gloves by the employing establishment, if so why he was furnished gloves. It shall also

¹⁰ See *V.B.*, Docket No. 18-1273 (issued March 4, 2019); *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹¹ 5 U.S.C. § 8124(a).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

determine the nature of the light-duty work offered to appellant and whether such light-duty work was offered in writing. After this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the April 2, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

Issued: June 3, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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