

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

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<b>B.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-1200</b>
	)	<b>Issued: May 15, 2020</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, De Pere, WI, Employer</b>	)	
_____	)	

*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 May 24, 2018 appellant filed a timely appeal from a February 5, 2018 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish disability from work for the period January 8 through 19, 2018 causally related to her accepted January 31, 2003 employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the February 5, 2018 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.*

## **FACTUAL HISTORY**

On February 5, 2003 appellant, then a 46-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 31, 2003 she pulled her right shoulder opening a mailbox while in the performance of duty. She stopped work on February 7, 2003 and returned on February 10, 2003. Appellant was released to resume her usual employment on February 19, 2003. On December 8, 2017 OWCP accepted the claim for a bicipital tendon strain of the right shoulder.

On January 8, 2018 Dr. Metz performed a right shoulder synovectomy of the anterior margin of the shoulder joint, a biceps tenotomy and labral debridement, arthroscopic subacromial decompression, a distal clavicle excision, a mini rotator cuff incision, biceps tenodesis, and a rotator cuff repair.

On January 31, 2018 appellant filed a claim for compensation (Form CA-7) for leave without pay for disability from work for the period January 8 through 19, 2018.

By decision dated February 5, 2018, OWCP denied appellant's claim for compensation for disability from January 8 through 19, 2018 causally related to the February 6, 2003 accepted employment injury.<sup>3</sup>

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

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim.<sup>5</sup> Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>6</sup> 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.<sup>7</sup> 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.<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

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<sup>3</sup> On November 14, 2017 appellant filed a notice of recurrence (Form CA-2a) for medical treatment beginning October 27, 2017 causally related to her January 31, 2003 employment injury. In its February 5, 2018 decision, OWCP indicated that she had filed a notice of recurrence of disability claiming wage-loss compensation. As noted, however, appellant filed a notice of recurrence of the need for medical treatment beginning October 27, 2017.

<sup>4</sup> *Supra* note 1.

<sup>5</sup> *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

<sup>6</sup> 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

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

<sup>8</sup> *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>9</sup>

### ANALYSIS

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

OWCP accepted that on January 31, 2003 appellant had sustained a bicipital tendon strain of the right shoulder. Appellant underwent right shoulder surgery on January 8, 2018. On January 31, 2018 she filed a Form CA-7 requesting wage-loss compensation from January 8 through 19, 2018, which OWCP denied by decision dated February 5, 2018.

OWCP's procedures provide that it is responsible for requesting evidence necessary to adjudicate the claim.<sup>10</sup> Its procedures further indicate that it should contact a claimant, in writing, to obtain evidence and should specifically request the information needed, tailored to the specifics of the individual case.<sup>11</sup>

Compensation for wage loss due to disability, according to OWCP's regulations, is available only for periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. OWCP procedures require that it properly develop the claim before payment of wage-loss compensation can be considered, that development may also be needed to obtain the information necessary to make a payment, and that this information should be requested simultaneously with the evidence needed to support the claim so that payment can be made quickly if the compensation claim is ultimately approved.<sup>12</sup> It, however, failed to issue a development letter in response to appellant's claim for compensation from January 8 through 19, 2018.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>13</sup> As OWCP failed to properly develop appellant's claim for compensation in accordance with its procedures the Board finds that the case must be remanded to OWCP to issue a development letter requesting pertinent evidence necessary for the adjudication of the claim.<sup>14</sup> Following this and such further development as may be deemed necessary OWCP shall issue a *de novo* decision.

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<sup>9</sup> See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.4.c(2) (June 2011).

<sup>11</sup> *Id.* at Chapter 2.800.5. See also *V.R.*, Docket No. 16-1167 (issued December 22, 2016).

<sup>12</sup> *Id.* at Chapter 2.901.5.a(4) (February 2013).

<sup>13</sup> See *D.B.*, Docket No. 19-0811 (issued March 9, 2020).

<sup>14</sup> *W.B.*, Docket No. 19-1775 (issued December 18, 2019).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 5, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: May 15, 2020  
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