



## ISSUE

The issue is whether appellant has met his burden of proof to establish total disability from work for the period November 24, 2017 through January 19, 2018.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are set forth below.

On August 28, 2017 appellant, then a 46-year-old air conditioning mechanic, filed a traumatic injury claim, (Form CA-1) alleging that, as he was leaving the jobsite after a training session, he rolled his right ankle on an uneven edge of the driveway and fell forward on hard compacted dirt, reinjuring his neck and right shoulder while in the performance of duty. OWCP assigned the case File No. xxxxxx721 and accepted right ankle sprain.<sup>5</sup>

On December 20, 2017 appellant filed a claim for compensation (Form CA-7) for disability during the period November 24 through December 22, 2017. He filed a subsequent Form CA-7 on January 8, 2018 claiming compensation for disability during the period December 23, 2017 through January 5, 2018. On January 16, 2018 appellant filed another Form CA-7 claiming compensation for disability for the period January 6 through 19, 2018.

By decision dated January 30, 2018, OWCP denied appellant's claims for compensation for the period commencing November 24, 2017 and continuing.

On February 6, 2018 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on July 5, 2018.

By decision dated August 28, 2018, OWCP's hearing representative affirmed the January 30, 2018 denial of appellant's claim for disability compensation for the period November 24, 2017 through January 19, 2018. He indicated that he had reviewed OWCP File Nos. xxxxxx721 and xxxxxx230 in rendering his decision and concluded that the medical evidence of record was insufficient to establish that the claimed disability was caused by the August 22, 2017 employment injury.

Appellant, through counsel, filed an appeal with the Board on December 3, 2018. In correspondence dated May 22, 2019, counsel requested that the acceptance of the claim be expanded to include the conditions of cervical spondylosis, and bilateral carpal and cubital tunnel syndrome.

---

<sup>4</sup> *Order Remanding Case*, Docket No. 19-0340 (issued October 22, 2019).

<sup>5</sup> On June 2, 2017 appellant had filed a traumatic injury claim (Form CA-1), alleging that on May 25, 2017 he injured his right shoulder, arm, and neck in the performance of duty. OWCP assigned that claim File No. xxxxxx230 and accepted it for right shoulder joint sprain and cervical disc displacement. Under OWCP File No. xxxxxx230 appellant received intermittent continuation of pay from May 2 through July 20, 2017. On July 27, 2017 he accepted a temporary light-duty job.

By order dated October 22, 2019, the Board set aside the August 28, 2018 decision. The Board noted that the record before the Board did not contain the evidence from the May 25, 2017 traumatic injury claim, OWCP File No. xxxxxx230, which precluded a full and proper adjudication of the claim for disability. The Board remanded the case for OWCP to administratively combine File Nos. xxxxxx230 and xxxxxx721, to be followed by an appropriate decision.<sup>6</sup>

In further support of his claim appellant submitted an October 26, 2017 treatment note in which Dr. Connor Telles, a Board-certified orthopedic surgeon, noted appellant's two employment injuries and recounted his complaint of neck pain with radicular symptoms that radiated into his upper extremities. Dr. Telles described physical examination findings and reviewed diagnostic studies, noting that disc degeneration was shown on both x-ray and magnetic resonance imaging (MRI) scan studies. He diagnosed cervicalgia, cervical radiculopathy, pain in right shoulder, and spinal stenosis of the cervical region. Dr. Telles recommended an upper extremity electromyogram and nerve conduction velocity (EMG/NCV) study and referrals for pain management and evaluation of rotator cuff pathology. On a return to work form, he indicated that appellant was temporarily totally disabled from work, noting that appellant was pending further testing and evaluation.

On a November 29, 2017 return to work statement, Dr. Telles indicated that appellant was seen that day, and studies were pending.

An upper extremity EMG/NCV study was performed on December 11, 2017 by Dr. Jeryl Wiens, a Board-certified physiatrist. Reported findings were consistent with median neuropathy at the wrist bilaterally, consistent with carpal tunnel syndrome, and across the elbows bilaterally, consistent with cubital tunnel syndrome. The study was also suggestive of right C6-7 radiculitis. In a return to work statement of even date, Dr. Wiens advised that appellant was seen that day.

A December 20, 2017 MRI scan of the cervical spine demonstrated a disc herniation at C5-6 and evidence of a perineural root sleeve cyst at C6-7 and C7-T1.

On December 21, 2017 Dr. Telles, advised that appellant was pending surgical consult regarding his carpal and cubital tunnel pathology, and pending consults for pain management and his right shoulder. She opined that appellant had difficulty with lifting and repetitive activities.

On a return to work form dated January 9, 2018, Dr. Julia Lee, Board-certified in orthopedic surgery advised that, if no modified work was available, appellant was totally disabled. She indicated that appellant could not lift greater than 10 pounds with his right arm, with no forceful pushing, pulling, gripping, or twisting with the right arm.

Upon return of the case record OWCP administratively combined OWCP File Nos. xxxxxx721 and xxxxxx230, with the former serving as the master file number. By decision dated November 22, 2019, OWCP's hearing representative affirmed the January 30, 2018 decision, finding that the medical evidence in both case files was insufficient to establish that appellant was disabled from work during the period November 24, 2017 through January 19, 2018 causally related to his accepted employment injuries.

---

<sup>6</sup> *Supra* note 4.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>7</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>8</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>9</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>10</sup> 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.<sup>11</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>12</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 reliable, probative and substantial medical opinion evidence.<sup>13</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 essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>14</sup>

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish total disability from work for the period November 24, 2017 through January 19, 2018.

---

<sup>7</sup> *Supra* note 2.

<sup>8</sup> *A.B.*, Docket No. 18-0834 (issued June 11, 2020); *N.S.*, 59 ECAB 422 (2008).

<sup>9</sup> *Id.*

<sup>10</sup> 20 C.F.R. § 10.5(f); *see J.M.*, Docket No. 18-0763 (issued April 29, 2020); *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

<sup>11</sup> *See B.C.*, Docket No. 18-0692 (issued June 5, 2020).

<sup>12</sup> *See C.E.*, Docket No. 19-1617 (issued June 3, 2020).

<sup>13</sup> 20 C.F.R. § 10.5(f); *see W.C.*, Docket No. 19-1740 (issued June 4, 2020); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>14</sup> *J.K.*, Docket No. 19-0488 (issued June 5, 2020); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

In reports dated October 26, November 29, and December 21, 2017, Dr. Telles diagnosed cervicgia, cervical radiculopathy, pain in right shoulder, and spinal stenosis of the cervical region. He indicated that appellant was temporarily totally disabled and advised that further studies and evaluations were needed. Dr. Telles offered no opinion as to whether appellant's accepted conditions were the cause of his disability. The Board has held that medical evidence that does not provide an opinion regarding whether a period of disability is due to an accepted employment condition is insufficient to establish a claim.<sup>15</sup> Dr. Telles did not provide rationale explaining how or why he was disabled from work. Consequently, his report is insufficient to meet appellant's burden of proof.<sup>16</sup>

The record also contains a December 11, 2017 upper extremity EMG/NCV study and a December 20, 2017 MRI scan of the cervical spine. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in appellant's period of disability on specific dates.<sup>17</sup>

As noted, appellant did not provide medical evidence containing a rationalized opinion establishing that he was disabled from work from November 24, 2017 through January 19, 2018 causally related to either the May 25 or August 22, employment injuries. Appellant thus has not met his burden of proof.<sup>18</sup>

On appeal counsel disagreed with OWCP's decision arguing that the "claim was accepted for cervical disc displacement." As explained above, appellant has not met his burden of proof to establish that he was disabled from November 24, 2017 through January 19, 2018 causally related to any of his employment injuries.

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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish total disability from work for the period November 24, 2017 through January 19, 2018.

---

<sup>15</sup> *L.L.*, Docket No. 19-1794 (issued October 2, 2020); *C.R.*, Docket No. 19-1427 (issued January 3, 2020).

<sup>16</sup> *Id.*

<sup>17</sup> *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

<sup>18</sup> *L.L.*, *supra* note 15; *E.M.*, Docket No. 18-0454 (issued February 20, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 25, 2020  
Washington, DC

Alec J. Koromilas, 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