

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

_____)	
L.R., Appellant)	
)	
and)	Docket No. 22-0879
)	Issued: December 5, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Grand Rapids, MI, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 19, 2022 appellant filed a timely appeal from a May 10, 2022 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 May 10, 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 her burden of proof to establish intermittent disability from work for the period February 26 through March 3, 2022, causally related to her accepted January 6, 2022 employment injury.

FACTUAL HISTORY

On January 20, 2022 appellant, then a 61-year-old postal carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 6, 2022 she broke her right wrist when she slipped and tried to catch herself with her hand while in the performance of duty. She stopped work on January 6, 2022. OWCP accepted her claim for other intra-articular fracture of the lower end of the right radius, subsequent encounter for closed fracture.

In a February 17, 2022 examination report and work status note, Dr. Christine A. Bowman, an orthopedic surgeon, described the January 6, 2022 employment injury and indicated that appellant was treated for follow up of right distal radius fracture. On physical examination she observed mild swelling about appellant's right wrist and no tenderness with palpation over the distal radius region. Dr. Bowman noted that a right wrist x-ray scan showed right extra-articular distal radius fracture, being treated nonoperatively.³ She reported that appellant could return to work with restrictions of no lifting or driving with the right hand and must wear a brace.

In an examination report and work status note dated March 3, 2022, Dr. Bowman indicated that appellant was eight weeks out from her January 6, 2022 employment injury. She noted that appellant still complained of soreness about the wrist. On physical examination Dr. Bowman observed mild swelling of the wrist and mild dorsal deformity at the distal radius. She diagnosed right distal radius fracture. Dr. Bowman authorized appellant to return to work with restrictions of no lifting, pushing, and pulling over five pounds, no working longer than an eight-hour workday, and must wear a brace.

On March 7, 2022 appellant accepted a part-time, city carrier modified-duty position for six to seven hours per day.

Appellant submitted occupational therapy reports dated March 15 through April 21, 2022.

On March 21, 2022 appellant filed a claim for compensation (Form CA-7) for disability for the period February 26 through March 11, 2022. On the reverse side of the claim form the employing establishment noted that appellant was in a leave without pay (LWOP) status from February 26 through March 11, 2022.

In a development letter dated March 22, 2022, OWCP informed appellant that it had not received a Time Analysis Form (Form CA-7a) along with her Form CA-7 for the period February 26 through March 3, 2022. It advised her to submit a Form CA-7a to her employing establishment for the claimed period.

³ A February 17, 2022 right wrist x-ray scan revealed right extra-articular distal radius fracture.

In an examination report and work status note dated March 29, 2022, Dr. Bowman noted the January 6, 2022 date of injury and explained that appellant chose to treat the condition nonoperatively. She provided examination findings and diagnosed right extra-articular distal radius fracture, treated nonoperatively. Dr. Bowman indicated that appellant could return to work with restrictions of lifting up to 10 pounds and work with a brace.

On March 31, 2022 appellant returned to full-time, modified duty.

On April 12, 2022 appellant resubmitted a Form CA-7 for intermittent disability for the period February 26 through March 11, 2022. On the reverse side of the claim form, the employing establishment noted that appellant was on annual leave status from February 26 through March 11, 2022, LWOP status from February 26 through March 11, 2022, and worked from February 26 through March 11, 2022. In an attached Form CA-7a, appellant claimed eight hours of LWOP each on February 26 and 28 and March 1 and 2, 2022. She indicated that her reason for leave use was “unable to return to work.” K.C., an agency official for the employing establishment, indicated that appellant used 8.51 hours of annual leave, 32 hours of LWOP, and worked 31.49 hours.

In an April 13, 2022 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish disability from work, commencing February 26, 2022. It noted that there was conflicting evidence concerning the dates of work stoppage and leave used during the period claimed and that clarification was needed. OWCP afforded appellant 30 days to provide the necessary evidence.

In an April 26, 2022 letter, K.C., appellant’s branch manager, indicated that appellant returned to work on March 4, 2022 and has continued to work with restrictions.

In an examination report and work status note dated April 26, 2022, Dr. Bowman described the history of injury and the medical treatment that appellant had received. She provided examination findings and diagnosed right distal radius fracture. Dr. Bowman returned appellant to work without any restrictions pending surgery.

By decision dated May 10, 2022, OWCP denied appellant’s claim for wage-loss compensation, finding that the medical evidence of record was insufficient to establish intermittent disability from work for the period February 26 through March 3, 2022 due to her accepted January 6, 2022 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 The term disability is

⁴ *Supra* note 2.

⁵ *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁶ 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.⁷

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence.⁸ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the specific employment factors identified by the employee.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 would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work for the period February 26 through March 3, 2022, causally related to her accepted January 6, 2022 employment injury.

Appellant provided a series of reports from Dr. Bowman dated February 17 through April 26, 2022. In a February 17, 2022 report, Dr. Bowman described the January 6, 2022 work injury and provided examination findings. She noted that a right wrist x-ray scan showed right extra-articular distal radius fracture. In work status notes dated February 17 and March 3, 2022, Dr. Bowman authorized appellant to return to work with restrictions. She did not, however, address whether appellant was totally disabled from work on the claimed dates of February 26 and 28, March 1 and 2, 2022. Evidence that does not address appellant's dates of disability is of no probative value and insufficient to establish her claim.¹¹ Thus, these reports are insufficient to establish appellant's disability claim.

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

⁷ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁸ *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

⁹ *V.A.*, Docket No. 19-1123 (issued October 29, 2019); *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

¹⁰ *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ *T.G.*, Docket No. 20-0121 (issued May 17, 2022); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *R.C.*, 59 ECAB 546, 551 (2008).

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work during the claimed period as a result of the accepted employment injury.¹² Because appellant has not submitted rationalized medical opinion evidence to establish employment-related intermittent disability from work for the period February 26 through March 3, 2022 as causally related to her accepted January 6, 2022 employment injury, she has not met her burden of proof to establish her claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work for the period February 26 through March 3, 2022 causally related to her accepted January 6, 2022 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 10, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

¹² *Supra* note 7.