

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

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<b>D.W., Appellant</b>	)	
	)	<b>Docket No. 21-0778</b>
<b>and</b>	)	<b>Issued: February 4, 2022</b>
	)	
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Cleveland, OH,</b>	)	
<b>Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On April 28, 2021 appellant filed a timely appeal from February 11, 2021 merit decisions of the Office of Workers' Compensation Programs (OWCP). 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>

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

<sup>2</sup> The Board notes that, following the issuance of the February 11, 2021 decisions, 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 her burden of proof to establish disability from work during the period January 4 through November 3, 2020, causally related to her accepted September 4, 2014 employment injury.

## FACTUAL HISTORY

This case has previously been before the Board on a different issue.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 4, 2014 appellant, then a 45-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured both knees and arms when she ran to help a coworker who was allegedly having a seizure and tripped and fell from an uneven sidewalk while in the performance of duty. On December 3, 2014 OWCP accepted bilateral knee contusion, bilateral knee sprain, bilateral forearm contusion, and right hip sprain.

On December 28 and 31, 2020 appellant filed claims for compensation (Form CA-7) for intermittent dates of disability during the period January 4 through December 18, 2020.<sup>4</sup>

In development letters dated January 5 and 6, 2021, OWCP informed appellant that the evidence of record was insufficient to establish her claims for compensation for total disability from work during the period January 4 through October 2, 2020 and October 7 through December 18, 2020, respectively. It advised her of the type of medical evidence needed to establish her claims and afforded her 30 days to submit the necessary evidence.

OWCP subsequently received a July 7, 2020 recertification of medical necessity form for a TENS unit by Dr. Louis Keppler, an attending Board-certified orthopedic surgeon, who diagnosed contusion of the left forearm and described equipment prescribed for appellant's electro medical treatment.

By decision dated February 11, 2021, OWCP denied appellant's claim for wage-loss compensation for the period January 4 through October 2, 2020, finding that the medical evidence of record was insufficient to establish intermittent disability from work during the claimed period due to the accepted conditions.<sup>5</sup>

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<sup>3</sup> Docket No. 17-1954 (issued April 18, 2018).

<sup>4</sup> In attached time analysis forms (Form CA-7a) of even dates, she claimed: eight hours of disability on March 12, 26, and 31, April 2, 14, 21, 22, and 30, May 7, 26, and 28, June 2, 4, 10, 20, and 23, July 17 and October 7, 2020; 3.38 hours on February 11, 2020; 3.09 hours on April 9, 2020; 1.6 hours for April 15 through 22, 2020; and 1.73 hours on November 3, 2020.

<sup>5</sup> OWCP, however, found that the evidence of record supported payment of four hours of wage-loss compensation for medical treatment of the accepted conditions on April 14, 2020.

By separate decision of even date, OWCP denied appellant's claim for wage-loss compensation for November 3, 2020, finding that the medical evidence of record was insufficient to establish intermittent disability from work during the claimed period due to the accepted conditions.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim.<sup>7</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>8</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>9</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>10</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 his or her disability and entitlement to compensation.<sup>11</sup>

For a routine medical appointment, a maximum of four hours of compensation for time lost to obtain medical treatment is usually allowed.<sup>12</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work during the period January 4 through November 3, 2020, causally related to her accepted September 4, 2014 employment injury.

Appellant submitted a recertification of medical necessity form for a TENS unit dated July 7, 2020 from Dr. Keppler who diagnosed contusion of the left forearm, but failed to offer an opinion as to whether appellant was disabled from work due to the accepted employment injury.

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<sup>6</sup> *Supra* note 1.

<sup>7</sup> *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

<sup>8</sup> 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

<sup>9</sup> *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

<sup>10</sup> *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>11</sup> *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004).

<sup>12</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19(c) (February 2013); *see also K.A.*, Docket No. 19-0679 (issued April 6, 2020); *William A. Archer, id.*

Therefore, this evidence is of no probative value and insufficient to establish appellant's claim for compensation.<sup>13</sup>

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.<sup>14</sup> Because appellant has not submitted rationalized medical opinion evidence to establish employment-related total disability during the claimed periods due to her accepted conditions, the Board finds that she has not met her burden of proof.

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 her burden of proof to establish intermittent disability from work during the period January 4 through November 3, 2020 causally related to her accepted September 4, 2014 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 11, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 4, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>13</sup> *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>14</sup> *Supra* note 11.