

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

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| <p>S.W., Appellant</p> <p>and</p> <p>DEPARTMENT OF VETERANS AFFAIRS, WASHINGTON VA MEDICAL CENTER, Washington, DC, Employer</p> | <p>)))))))))</p> | <p>Docket No. 21-1171 Issued: February 24, 2022</p> |
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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 July 27, 2021 appellant filed a timely appeal from an April 23, 2021 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish total disability from work from March 11 through 26, 2019 causally related to the April 10, 2018 accepted employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 13, 2018 appellant, then a 49-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 10, 2018 he injured his right thumb, low back, and head when he was assaulted by a patient while in the performance of duty. He stopped work on April 11, 2018 and returned to full duty on May 26, 2018. On September 20, 2018 OWCP accepted the claim for left rib contusion, contusion of the right thumb, lumbar sprain, and closed-head injury.

On March 19, 2019 OWCP referred appellant, a statement of accepted facts (SOAF), and a list of questions for a second opinion examination with Dr. Rafael A. Lopez Steuart, a Board-certified orthopedic surgeon.

In a report dated April 10, 2019, Dr. Steuart noted appellant's history of injury and reviewed the SOAF. He opined that appellant had no disability or medical residuals as a result of his April 10, 2018 employment injuries. Dr. Steuart advised that he was capable of full-duty work without restrictions.

On April 30, 2019 appellant filed a claim for compensation (Form CA-7) for disability from work from March 11 through 26, 2019.

On May 7, 2019 appellant submitted a March 11, 2019 note from Dr. Sevag Bananian, a Board-certified internist, asserting that he provided medical treatment on March 11, 2019 and opined that he was totally disabled from March 11 through 26, 2019.

In a May 8, 2019 development letter addressed to the employing establishment, OWCP requested additional forms and medical evidence addressing appellant's claim for total disability for the period March 11 through 26, 2019 due to the accepted employment injuries.

On May 16, 2019 appellant filed a second Form CA-7, dated April 30, 2019, claiming disability from work for the period March 11 through 26, 2019.

On July 15, 2019 OWCP requested additional information from Dr. Steuart in the form of a rationalized explanation regarding his previous opinion. In a supplemental report dated July 18, 2019, Dr. Steuart reported that appellant had a normal physical examination which established no need for further medical treatment and the capacity to perform full-duty work with no restrictions.

In a follow-up development letter dated July 31, 2019 addressed to the employing establishment, OWCP noted that it had not received the requested information. It afforded an additional 15 days for a response.

On July 17, 2019 appellant filed another Form CA-7 requesting wage-loss compensation disability from work for the period March 11 through 26, 2019. In an accompanying August 8, 2019 narrative statement, he asserted that he initially incorrectly indicated that he was seeking leave buy back, instead of leave without pay compensation. Appellant further noted that he continued to experience pain in his thumb and lower back and continued to seek medical treatment.

By decision dated August 28, 2019, OWCP denied appellant's claim for compensation for the period March 11 through 26, 2019.

On September 17, 2019 appellant requested reconsideration. In a September 12, 2019 narrative statement, he alleged that he continued to experience disability and medical residuals as a result of his accepted employment injury from March 11 through 26, 2019.

By decision dated December 16, 2019, OWCP denied modification of its prior decision.

On January 13, 2020 appellant requested reconsideration. In a January 7, 2020 letter, he alleged that he continued to experience residuals of his April 10, 2018 employment injuries which resulted in chronic pain. Appellant further noted that on October 26, 2019 he was positioning and pulling a patient which aggravated his accepted conditions and required treatment in the emergency room. He reported that he was partially disabled for five days following this additional employment incident. Appellant provided duty status reports dated October 28 and 31, 2019 indicating that he had work restrictions due to lumbar strain.²

By decision dated April 10, 2020, OWCP denied modification.

Subsequently on July 9, 2020 appellant requested reconsideration. No additional evidence was received. By decision dated April 23, 2021, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ 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.⁵ This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁶

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.⁷ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because

² The signatures of the physicians are illegible.

³ *Supra* note 1.

⁴ See *J.W.*, Docket No. 20-0021 (issued September 10, 2021); *D.M.*, Docket No. 18-0527 (issued July 29, 2019); *B.K.*, Docket No, 18-0386 (issued September 14, 2018); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁵ *W.H.*, Docket No. 19-0168 (issued May 10, 2019); see *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

⁶ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); see *C.C.*, Docket No. 18-0719 (issued November 9, 2018).

⁷ 20 C.F.R. § 10.5(x); see *V.H.*, Docket No. 18-0456 (issued August 9, 2019).

of a work-related injury or illness is withdrawn or altered so that the assignment exceeds the employee's physical limitations.⁸

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.⁹

ANALYSIS

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

Appellant filed a Form CA-7 claim for compensation for disability from work during the period March 11 through 26, 2019. OWCP's regulations provide that, if a claimant submits factual evidence, medical evidence, or both, but OWCP determines that this evidence is insufficient to meet their burden of proof, OWCP will inform the claimant of the additional evidence needed. The claimant will be allowed at least 30 days to submit the evidence required.¹⁰ OWCP, however, did not provide appellant with a development letter requesting the specific evidence necessary to establish his claim for disability in accordance with section 10.121 of its regulations.¹¹

The case must therefore be remanded for further development. On remand OWCP shall provide appellant a development letter informing him of the additional evidence needed, and affording him at least 30 days to submit the necessary evidence required. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

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

⁸ *Id.*

⁹ See *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ 20 C.F.R. § 10.121.

¹¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 24, 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