



## ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period June 27, 2016 through August 17, 2018 causally related to her accepted March 30, 2016 employment injury.

## FACTUAL HISTORY

On April 11, 2016 appellant, then a 40-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on March 30, 2016 she inhaled fumes from foaming bleach causing her to experience incontinence, shortness of breath, watery eyes, hoarseness, itchiness, and nausea while in the performance of duty.

In a report dated June 23, 2016, Dr. Fitzpatrick C. Wilson, a Board-certified physiatrist, evaluated appellant for injuries to her larynx sustained on March 30, 2016. He discussed her continued complaints of shortness of breath when talking, hoarseness, and a cough. Dr. Wilson diagnosed dysphonia, toxic gas exposure, and a persistent cough. In a disability form of even date, he found that appellant was unable to work from June 23 to July 26, 2016.

On July 21, 2016 Dr. Shaum Sridharan, a Board-certified otolaryngologist, discussed appellant's history of coughing, gagging, and throwing up after pouring bleach in a bucket. He indicated that she had lost her voice and experienced shortness of breath and chest pain. Dr. Sridharan diagnosed hoarseness, noting that appellant had "a great deal of muscle tension dysphonia and laryngeal hypersensitivity after her exposure at work." He recommended voice therapy and acid suppression.

In a July 26, 2016 progress report, Dr. Wilson advised that appellant should avoid chemicals at work and be in a well-ventilated room. He noted that the employing establishment had told her that she would not be exposed to chemicals, but she was not sure if this was accurate. In a disability form, Dr. Wilson found that appellant was unable to work until August 30, 2016. He submitted a similar progress report and disability form on August 30, 2016.

Dr. Sridharan, on September 22, 2016, diagnosed hoarseness and noted that appellant was status post a "caustic injury to the larynx with resultant hoarseness. I believe that she may have hypersensitivity of the larynx and possible mucosal injury to the true vocal folds." He recommended possible steroid injections. Dr. Sridharan indicated that appellant was "considering returning to work with a specialized mask if possible."

On September 27, 2016 Dr. Wilson discussed appellant's complaints of continued hoarseness that had improved somewhat. He noted that her otolaryngologist had recommended surgery and found that she could return to work if she had a special mask. Dr. Wilson diagnosed dysphonia, a burn of the larynx and trachea, the toxic effect of chlorine gas resulting from the above-mentioned burns, and dysphasia. He opined that appellant should remain off work.

In a report dated November 3, 2016, Dr. Nazaneen Grant, a Board-certified otolaryngologist and laryngeal specialist, discussed appellant's history of an inhalation burn causing a severe cough and dyspnea on March 30, 2016 when she poured bleach into a bucket and

it reacted with another chemical. She noted her condition had improved on steroids, but that she had to “chew food well” and that swallowing occasionally hurt. Dr. Grant diagnosed other diseases of the larynx not otherwise classified. On examination she found a lesion on the vocal fold and severe muscle tension. Dr. Grant advised that appellant had a pronounced raspy voice that affected her quality of life and recommended surgery to assess scarring and remove a lesion. She also diagnosed hoarseness.

Dr. Wilson, on December 20, 2016, released appellant to return to work without restrictions except for wearing a mask “at all times while at work,” and not using or being around cleaning chemicals. He noted that she could drink without difficulty, but still had to cut her food into “small pieces to avoid dysphagia.” Dr. Wilson advised that appellant had decided against surgery.

On March 23, 2017 Dr. Sridharan discussed appellant’s symptoms of mild dysphagia and noted that she was “still battling work regarding finding [a] proper job without exposure to chemicals.” He indicated that she was receiving voice therapy. A stroboscopy showed no lesions except for a possible small left subepithelial lesion on the posterior vocal fold.

In a report dated July 5, 2017, Dr. Stephen Bane, a Board-certified otolaryngologist and OWCP referral physician, diagnosed hoarseness due to the employment injury as a result of muscle tension without physical pathology. He found that appellant could resume her usual employment. In an addendum dated August 11, 2017, Dr. Bane advised that appellant’s hoarseness was unrelated to the accepted employment injury.

In a September 28, 2017 report, Dr. Sridharan diagnosed hoarseness after inhalation exposure and a vocal cord scar. He related that appellant “has a component of muscle tension dysphonia, but she also has some evidence of [a] possible vocal fold scar [left] worse than right.”

On December 18, 2017 Dr. Grant noted that appellant’s workplace was unable to “provide her a job where she is not exposed to chemicals.” She diagnosed hoarseness and opined that in view of the “temporal relationship to work exposure, and evidence of scar/lesion on vocal folds, there is nothing else to explain the change in her voice.” Dr. Grant advised that the scar could be better characterized during an operation, but that a steroid injection should be the initial treatment.

On March 22, 2018 OWCP accepted the claim for the accidental (unintentional) toxic effect of chlorine gas and dysphonia. On March 30, 2018 it paid appellant wage-loss compensation from May 15 to June 26, 2016.

In an e-mail dated April 5, 2018, the employing establishment advised that appellant had not returned to work. It asserted that it had attempted to accommodate her restrictions, but that the medical evidence indicated that she was unable to work around chemicals.

On August 24, 2018 appellant filed a claim for compensation (Form CA-7) for disability for the period from June 27, 2016 through August 17, 2018.

In a report dated August 28, 2018, Dr. Grant noted that appellant had a history of inhaling chemicals at work resulting in hoarseness, muscle tension dysphonia, and likely scarring of the vocal fold. She advised that she should “be away from chemicals and gases which may worsen her symptoms” and required a 15-minute break from talking every three hours.

In a development letter dated August 31, 2018, OWCP requested that appellant submit medical evidence supporting that she was disabled from work as a result of her accepted employment injury from June 27, 2016 to August 17, 2018. It afforded her 30 days to submit the requested information. No response was received.

By decision dated October 30, 2018, OWCP denied appellant's claim for disability from work for the period June 27, 2016 through August 17, 2018.

On November 7, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on March 4, 2019. Appellant testified that she provided medical evidence to the employing establishment regarding medical restrictions but was told that there was no position available for her that did not require working with chemicals. She did her own search for a new position in a different craft and located a position as a clerk.

By decision dated May 8, 2019, OWCP's hearing representative vacated the October 30, 2018 decision. He noted that Dr. Sridharan, Dr. Wilson, and Dr. Grant had found that appellant had continued residuals of her hoarseness and dysphonia and could not be exposed to chemicals and gases at work. The hearing representative indicated that Dr. Bane had found that her hoarseness was unrelated to her injury, but had failed to address the accepted condition of dysphonia and the toxic effect of chlorine gases or whether she had sustained any periods of disability. He remanded the case for a supplemental opinion from Dr. Bane, including whether appellant had sustained scarring of the vocal cords from her work injury.

Dr. Bane subsequently advised OWCP that he was not scheduling appointments. On June 21, 2019 OWCP referred appellant to Dr. Douglas McCorkle, a Board-certified otolaryngologist, for a second opinion examination.

In a report dated July 10, 2019, Dr. McCorkle discussed appellant's complaints of continued hoarseness after she "apparently breathed some fumes" on March 30, 2016. He noted that she had not worked for three years to avoid fumes, but was currently employed as a clerk. Dr. McCorkle found no lesions, nodules, polyps, scarring, or inflammation on endoscopy. He opined that appellant's employment injury had not caused vocal cord scarring and that her hoarseness resulted from muscle tension dysphonia. Dr. McCorkle related, "Both toxic effects of bleach and dysphonia are no longer present. I cannot state with a reasonable degree of medical certainty that any toxic effects of bleach would cause chronic problems or dysphonia and lead to a disability from June 27, 2016 through August 17, 2018." In a supplemental report dated August 23, 2019, he indicated that appellant's dysphonia had not resolved, but was unrelated to the accepted work exposure.

By decision dated August 29, 2019, OWCP denied appellant's claim for disability from work for the period June 27, 2016 through August 17, 2018.

On September 11, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated December 6, 2019, OWCP's hearing representative vacated the August 29, 2019 decision. The hearing representative found that Dr. McCorkle had based his conclusion that appellant's dysphonia was unrelated to the employment injury on an inaccurate background and that he had not provided a detailed record review. The hearing representative advised that he should provide a reasoned opinion addressing whether appellant was totally disabled during the period claimed and whether she had residuals of dysphonia. Additionally, the hearing representative found that OWCP should ask the employing establishment whether limited-duty employment was available within any work restrictions.

On December 12, 2019 OWCP requested that Dr. McCorkle advise whether appellant had residuals of dysphonia and, if so, whether she was totally disabled from all employment from June 27, 2016 through August 17, 2018.

In a separate letter dated December 12, 2019, OWCP requested that the employing establishment advise whether it had received medical evidence from appellant regarding her work restrictions, whether it had limited-duty available within those restrictions, and to describe the actions that "transpired attempting to return the claimant to work." No response was received.

In a supplemental report dated January 29, 2020, Dr. McCorkle opined that the findings on physical examination were "relatively unremarkable for any significant vocal cord injury." He advised that appellant had no residuals of dysphonia and the toxic effects of chlorine gas, and noted that smoke and acid reflux may have affected the inhalation injury. Dr. McCorkle found that she could resume her usual employment without restriction.

OWCP sent a second request for information to the employing establishment on February 4, 2020. No response was received.

By decision dated March 3, 2020, OWCP denied appellant's claim for disability from work for the period June 27, 2016 through August 17, 2018.

On March 10, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated May 13, 2020, following a preliminary review, OWCP's hearing representative vacated the March 3, 2020 decision. The hearing representative found that Dr. McCorkle had not provided rationale supporting that appellant was not totally disabled during the claimed period, and indicated that OWCP should have asked whether she had any disability, partial or total, for the period in question. OWCP's hearing representative noted that the statement of accepted facts did not set out her job duties. The hearing representative found that the employing establishment had not responded to its request for information about the availability of limited-duty positions and thus determined that OWCP could accept that limited-duty work was not available during the claimed period.

In an addendum report dated June 3, 2020, Dr. McCorkle advised that appellant was not disabled from June 27, 2016 through August 17, 2018 because her physical examination had yielded unremarkable findings and as her voice had been raspy on one occasion, but not another. He noted that she had previously smoked which could have contributed to dysphonia and that a

voice impairment would not result in total disability given her job. Dr. McCorkle opined that appellant had no disability, partial or total, from June 27, 2016 through August 17, 2018.

By decision dated June 5, 2020, OWCP denied appellant's claim for disability from work for the period June 27, 2016 through August 17, 2018.

On June 9, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on September 16, 2020. Appellant testified that she was off work from the date of injury until August 17, 2018, and she subsequently changed positions from a custodian to a clerk so that she would not be exposed to chemicals. She advised that prior to that time, the employing establishment had not allowed her to resume work.

By decision dated December 1, 2020, OWCP's hearing representative affirmed the June 5, 2020 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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.<sup>4</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>5</sup> Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>6</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>7</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>8</sup> An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>9</sup>

---

<sup>3</sup> *Supra* note 2.

<sup>4</sup> *See 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).

<sup>5</sup> *M.C.*, Docket No. 18-0919 (issued October 18, 2018).

<sup>6</sup> *See K.C.*, Docket No. 17-1612 (issued October 16, 2018).

<sup>7</sup> 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018).

<sup>8</sup> *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>9</sup> *See M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

Section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, OWCP shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.<sup>10</sup> This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>11</sup>

### ANALYSIS

The Board finds that the case is not in posture for decision regarding whether appellant was disabled from work for the period June 27, 2016 through August 17, 2018 causally related to her accepted March 30, 2016 employment injury.

On June 23, 2016 Dr. Wilson, a treating physician, diagnosed dysphonia, toxic gas exposure, and a persistent cough, noting that appellant had injured her larynx on March 30, 2016. He opined that she was totally disabled for work from that date until July 26, 2016. On July 26, 2016 Dr. Wilson found that appellant could not work around chemicals and required a room that was well ventilated. He indicated that she was disabled from work until August 30, 2016. In a report dated September 27, 2016, Dr. Wilson related that appellant's otolaryngologist had recommended surgery and found that she could resume work with a special mask. He diagnosed dysphonia, a burn of the larynx and trachea, the toxic effect of chlorine gas resulting the above-mentioned burns, and dysphasia and opined that she should remain off work. On December 20, 2016 Dr. Wilson indicated that appellant could work if she was not around chemicals, noting that she had decided against surgery. On August 28, 2018 Dr. Grant advised that she could not work around chemicals or gases and could not talk more than three hours without a 15-minute break.

On July 10, 2019 Dr. McCorkle, an OWCP referral physician, diagnosed hoarseness from muscle tension dysphonia and found that appellant was not disabled from June 27, 2016 through August 17, 2018. In a January 29, 2020 report, he found no residuals of the diagnosed dysphonia and toxic effects of chlorine gas. On June 3, 2020 Dr. McCorkle reiterated that appellant was not partially or totally disabled from work during the period June 27, 2016 through August 17, 2018, noting that he had found unremarkable findings on examination.

As noted above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint an impartial medical specialist who shall make an examination.<sup>12</sup> The Board therefore finds that a conflict in medical opinion exists between Dr. Wilson and Dr. Grant, appellant's physicians, and Dr. McCorkle, OWCP's referral physician, regarding whether she had any disability from employment, either total or partial, during the period June 27, 2016 through August 17, 2018 causally related to her accepted employment injury.

---

<sup>10</sup> 5 U.S.C. § 8123(a); *L.S.*, Docket No. 19-1730 (issued August 26, 2020); *M.S.*, 58 ECAB 328 (2007).

<sup>11</sup> 20 C.F.R. § 10.321; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *R.C.*, 58 ECAB 238 (2006).

<sup>12</sup> *See S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.S.*, Docket No. 19-0731 (issued August 22, 2019).

The case must therefore be remanded to OWCP for referral of appellant to an impartial medical specialist for resolution of the conflict in medical opinion evidence regarding whether appellant sustained any period of partial or total disability from June 27, 2016 through August 17, 2018 in accordance with 5 U.S.C. § 8123(a).<sup>13</sup>

The Board further finds that the case is not in posture for decision regarding whether limited-duty work was available to appellant within her restrictions during the claimed period of disability.

On April 5, 2018 the employing establishment asserted that it had attempted to accommodate appellant's restrictions but that the medical evidence indicated that she was unable to work around chemicals. During the hearing held on March 4, 2019, appellant testified that she provided medical evidence to the employing establishment but was told that there was no position available for her within her restrictions. OWCP, on December 12, 2019, requested that the employing establishment advise whether it had limited-duty work available during the claimed period of disability, June 27, 2016 through August 17, 2018. No response was received. OWCP sent a second request for information to the employing establishment on February 4, 2020. The employing establishment still did not respond to its request for information. The hearing representative, by decision dated May 13, 2020, remanded the case, noting that OWCP had not responded to the request for information. However, no further evidence was received from the employing establishment regarding the availability of limited-duty work.

While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the factual evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.<sup>14</sup> Therefore, the case shall be remanded for OWCP to obtain information from the employing establishment regarding whether it had light-duty work available for appellant as of June 27, 2016, which was within the restrictions necessitated by her accepted March 30, 2016 employment injury. If the employing establishment does not sufficiently respond to the request for information about the availability of limited-duty positions OWCP shall accept that limited-duty work was not available during the claimed period. After this and other such further development as deemed necessary, it shall issue a *de novo* decision on appellant's disability claim.

### CONCLUSION

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

---

<sup>13</sup> See *V.B.*, Docket No. 19-1745 (issued February 25, 2021).

<sup>14</sup> See *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *L.L.*, Docket No. 12-194 (issued June 5, 2012); *N.S.*, 59 ECAB 422 (2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 1, 2020 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: June 23, 2022  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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