

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

_____)	
A.G., Appellant)	
)	
and)	Docket No. 22-0469
)	Issued: October 28, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Duluth, GA, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 9, 2022 appellant filed a timely appeal from a February 7, 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

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period July 31, 2020 through January 22, 2022 causally related to the accepted April 29, 2020 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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.*

FACTUAL HISTORY

On October 25, 2021 appellant, then a 38-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she sustained back, shoulders, arms, and neck conditions as a result of factors of her federal employment, including repetitive duties of bending, lifting, reaching, twisting, and carrying heavy loads. She noted that she first became aware of her condition and realized its relation to her federal employment on April 29, 2020. Appellant did not stop work. OWCP accepted the claim for rotator cuff tear of the right shoulder.

On July 30, 2020 appellant was involved in a nonwork-related motor vehicle accident (MVA).

In a June 24, 2021 report, Dr. Ralph D'Auria, a Board-certified internist, noted that appellant was seen for an initial evaluation regarding complaints of right shoulder pain. He explained that appellant attributed the onset of pain to activities performed while working as a mail carrier with the employing establishment, including repetitive pulling, pushing, lifting, carrying heavy packages, lifting overhead, and reaching overhead. Dr. D'Auria noted that on April 29, 2020 appellant had been delivering packages for approximately four hours when she pulled a package from her truck and felt a sharp pain in the right shoulder, followed by the right arm going numb. He also noted that on July 30, 2020 appellant was involved in an MVA where she was hit on the driver's side, resulting in an aggravation of her right shoulder pain. Dr. D'Auria related that she was seen by an emergency room physician. X-rays were taken of the right shoulder and compared to x-rays from June 15, 2020, and revealed calcific tendinitis, but no evidence of fracture, dislocation, or degenerative joint disease. Dr. D'Auria also noted that an August 15, 2020 magnetic resonance imaging (MRI) scan of the right shoulder read by Dr. James R. Goss, an osteopath specializing in orthopedic surgery, revealed a tear of the supraspinatus tendon, joint effusion, and bursitis. He explained that Dr. Goss indicated that appellant's shoulder condition was more likely due to work-related wear and tear, than from the MVA. Dr. D'Auria examined appellant and found subjective complaints to include constant centralized pain at the anterior and posterior aspects of the right shoulder. He opined that "the prolonged and repetitive activities with her right arm required to perform her job as a mail carrier caused inflammation and weakening of the muscles and tendons of the right shoulder over time, which ultimately resulted in a tear of the supraspinatus tendon as she handled a heavy package on April 29, 2020." Dr. D'Auria concluded that appellant had work restrictions of no lifting or carrying over 10 pounds, no lifting or reaching overhead, no pulling or pushing above shoulder level, and no pushing or pulling over 20 pounds.

On December 13, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work from July 31 through December 6, 2021. She noted on the form that she had worked from September 1, 2020 until October 31, 2021 performing food delivery services.

In a development letter dated December 14, 2021, OWCP informed appellant of the deficiencies of her claim for compensation. It advised her of the type of medical evidence needed and afforded her 30 days to submit additional evidence.

On January 23, 2022 appellant filed Form CA-7 claims for compensation for disability from work for the periods June 24 through December 7, 2021 and December 8, 2021 through January 22, 2022.

In an August 21, 2020 patient care summary, Dr. Goss noted that appellant was seen for neck pain and right shoulder pain following an MVA. He diagnosed spondylosis without myelopathy, shoulder pain, shoulder strain, strain of neck muscle, and partial thickness rotator cuff tear. Dr. Goss provided a series of work excuse notes, including those dated August 10, September 17, and October 10, 2020, and January 18 and March 8, 2021. In a January 18, 2021 patient care summary, he diagnosed spondylosis without myelopathy, shoulder pain, shoulder strain, strain of neck muscle, and partial thickness rotator cuff tear.

In a January 10, 2022 report, Dr. D’Auria noted that he was providing an opinion on appellant’s disability status related to her April 29, 2020 on-the-job injury, which resulted in a rotator cuff tear of the right shoulder due to repetitive trauma. He noted appellant’s work restrictions of no lifting or carrying over 10 pounds, no pushing or pulling over 20 pounds, and no lifting, reaching, pulling or pushing above shoulder level. Dr. D’Auria opined that appellant was considered to have been medically disabled since her work restrictions were no longer accepted after her MVA on July 30, 2020. He further opined that appellant’s right shoulder condition was causally related to repetitive use of the right upper extremity while working as a mail carrier and that “[g]iven the findings on the MRI scan, findings on physical examination, and the history given by the patient, the right shoulder rotator cuff tear cannot be attributed to the MVA on July 31, 2020.”

By decision dated February 7, 2022, OWCP denied appellant’s claim for disability from work for the period July 31, 2020 through January 22, 2022 causally related to the accepted April 29, 2020 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.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 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.⁶

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.⁷ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn

³ *Supra* note 1.

⁴ *See C.B.*, Docket No. 20-0629 (issued May 26, 2021); *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); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

⁵ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

⁶ 20 C.F.R. § 10.5(f); *B.O., id.*; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁷ *Id.* at § 10.5(f); *see B.K.*, Docket No. 18-0386 (issued September 14, 2018).

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.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 their disability and entitlement to compensation.⁹

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.¹⁰ The opinion of the physician 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 accepted employment injury.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period July 31, 2020 through January 22, 2022 causally related to the accepted April 29, 2020 employment injury.

In August 21, 2020 and January 18, 2021 patient care summaries, Dr. Goss noted appellant was seen for neck pain and right shoulder pain following an MVA. He also provided a series of work excuse notes, including those dated August 10, September 17, and October 10, 2020 and January 18, March 8, 2021. None of these reports, however, provide an opinion on causal relationship between the claimed disability and the accepted employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹² Therefore, these reports are insufficient to establish appellant's disability claim.

In his June 24, 2021 report, Dr. D'Auria noted that on April 29, 2020 appellant had been delivering packages for approximately four hours when she pulled a package from her truck and felt a sharp pain in the right shoulder, followed by the right arm going numb. He also noted that on July 30, 2020 appellant was involved in a MVA where she was hit on the driver's side, resulting in an aggravation of her right shoulder pain. Dr. D'Auria opined that the repetitive activities of the right upper extremity required to perform her job as a mail carrier were the cause of appellant's right rotator cuff tear. He noted appellant's work restrictions, but he did not provide an opinion on causal relationship between the claimed disability and the accepted employment injury. As

⁸ *Id.*

⁹ A.W., Docket No. 18-0589 (issued May 14, 2019).

¹⁰ See S.J., Docket No. 17-0828 (issued December 20, 2017); Kathryn E. DeMarsh, 56 ECAB 677 (2005).

¹¹ *Id.*

¹² See L.K., Docket No. 21-1155 (issued March 23, 2022); T.S., Docket No. 20-1229 (issued August 6, 2021); J.M., Docket No. 19-1169 (issued February 7, 2020); A.L., 19-0285 (issued September 24, 2019); L.B., Docket No. 18-0533 (issued August 27, 2018); D.K., Docket No. 17-1549 (issued July 6, 2018).

noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹³ Therefore, this evidence is insufficient to establish appellant's disability claim.

In his January 10, 2022 report, Dr. D'Auria noted that he was providing an opinion regarding appellant's disability status related to her April 29, 2020 on-the-job injury. He explained that appellant was kept off work for one week after her April 29, 2020 on-the-job injury, and that she then worked with restrictions from May 2020 until July 30, 2020, when she was involved in an MVA. Dr. D'Auria noted that, after the July 30, 2020 MVA, her work restrictions were no longer accepted. The Board finds that the January 10, 2022 report from Dr. D'Auria is conclusory and fails to establish that the accepted work injury on April 29, 2020 caused appellant's disability from work from July 31, 2020, the day after the July 30, 2020 MVA, until January 22, 2022. To establish a period of disability, the medical evidence must provide a discussion of how objective medical findings attributable to the accepted conditions support a finding that appellant could not perform her job duties.¹⁴ A medical opinion is of limited probative value if it is conclusory in nature.¹⁵ Therefore, this report is also insufficient to establish appellant's disability claim.

As the medical evidence submitted is insufficient to establish disability from work for the period July 31, 2020 through January 22, 2022, causally related to the accepted April 29, 2020 employment injury, the Board finds that appellant 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(a) 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 disability from work for the period July 31, 2020 through January 22, 2022 causally related to the accepted April 29, 2020 employment injury.

¹³ *Id.*

¹⁴ See *M.M.*, Docket No. 19-0061 (issued November 21, 2019); *W.E.*, Docket No. 17-0451 (issued November 20, 2017).

¹⁵ See *R.B.*, Docket No. 19-1527 (issued July 20, 2020); *R.S.*, Docket No. 19-1774 (issued April 3, 2020).

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 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