

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

D.A., Appellant)	
)	
and)	Docket No. 22-1174
)	Issued: December 7, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
ALEXANDRIA MEDICAL CENTER,)	
Pineville, LA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 7, 2022 appellant filed a timely appeal from a February 24, 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 February 24, 2022 decision, 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 May 27 through June 9, 2018, causally related to her accepted April 9, 2018 employment injury.

FACTUAL HISTORY

On April 13, 2018 appellant, then a 60-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on April 9, 2018 she experienced pain and stinging in the posterior right upper arm when a coworker forcefully pushed her from behind two times as she carried supplies while in the performance of duty. She did not stop work.

In a report dated April 9, 2018, Dr. Efrain Padilla-Guzman, an employing establishment occupational medicine physician and family medicine specialist, noted that appellant related complaints of burning and throbbing pain in the right upper arm, which she attributed to being pushed twice from behind by a coworker. On examination, he noted a faint oblong bruise measuring four to five centimeters long and two centimeters wide. Dr. Padilla-Guzman diagnosed a bruise and released appellant to return to full-duty work without restrictions.

A report of x-ray of the right humerus of even date was negative for acute fracture.

In a report dated April 12, 2018, Dr. Heather Guillot, a Board-certified family medicine specialist, indicated that appellant related intermittent sharp pain in her arm radiating into the fourth and fifth fingers. She also noted a preexisting history of myasthenia gravis with associated symptoms of blurry vision, body weakness, fatigue, and a weak voice. On examination, Dr. Guillot noted vocal fatigue, slightly slurred speech, and that appellant's right arm was non-tender and the bruise had resolved.

In a note dated April 18, 2018, Dr. Guillot indicated that appellant could return to work on April 30, 2018.

In a medical report dated April 30, 2018, Dr. Guillot noted appellant's complaints, performed a physical examination, and diagnosed pain provoked by altercation following an assault at work and myasthenia gravis without (acute) exacerbation with voice and vision strain and arm pain.

In a letter dated May 1, 2018, the employing establishment controverted further disability based upon a lack of medical evidence to establish causal relationship.

In an employing establishment work capacity evaluation form dated May 11, 2018, Dr. Eric Thomas, a Board-certified internist, advised that appellant was temporarily totally disabled for one month. He recommended a neurological consultation and magnetic resonance imaging (MRI) of the right upper arm.

On May 21, 2018 OWCP accepted the claim for contusion of right upper arm.

By revised decision dated May 30, 2018, OWCP accepted the claim for “contusion of right upper arm, resolved April 30, 2018.” The revised decision noted that on April 30, 2018, her treating physician’s assessment no longer listed signs of a bruise. OWCP further noted that appellant’s claim would be closed as of May 30, 2018 and no further benefits for a contusion of right arm would be covered after May 30, 2018.

OWCP thereafter received a May 11, 2018 medical report by Dr. Kirandeep K. Chahal, a Board-certified internist, who noted that appellant was diagnosed with myasthenia gravis in 1987 and began having worsening symptoms such as speech problems and worsening muscle weakness in 2016. She further noted that after the April 9, 2018 employment injury, she experienced pain in her right arm which progressed to numbness and tingling to her right fingers, followed by muscle spasms and pain in her back, neck, and gluteus. Dr. Chahal performed a physical examination and observed that appellant ambulated via a walker with an antalgic gait favoring the right side, positive straight leg raise, decreased strength to the right upper and lower extremities compared with the left, decreased range of motion of the right arm, and pain on passive and active flexion-extension of the neck. She diagnosed myasthenia gravis, hypertension, and depression/anxiety.

In a May 24, 2018 report, Dr. Guillot noted that Dr. Thomas had taken appellant off of work and that she related a flare up of right arm pain and an inability to move the right arm. She diagnosed cervical spinal stenosis, sciatica, and obesity.

On June 8, 2018 appellant filed a claim for compensation (Form CA-7) for disability from work for the period May 27 through June 9, 2018.

In an employing establishment work capacity evaluation form dated June 11, 2018, Dr. Thomas recommended that appellant remain out of work for one month. He noted worsening myasthenia gravis symptoms, that she used a walker, and that she had reduced range of motion of the neck and right shoulder.

In a June 14, 2018 development letter, OWCP requested that appellant provide additional medical evidence addressing her claimed disability from work for the period May 13 through June 9, 2018. It afforded her 30 days to respond.

By decision dated August 15, 2018, OWCP denied appellant’s claim for compensation, finding that the medical evidence was insufficient to establish disability from work during the period May 27 through June 9, 2018 causally related to the accepted employment injury.

OWCP continued to receive evidence, including a June 13, 2018 report by Dr. Thomas, who performed a physical examination and diagnosed worsening myasthenia gravis symptoms, right-side sciatica, numbness and tingling of the right arm and leg, antalgic gait, hypertension, recurrent major depressive disorder, and an anxiety disorder.

In a narrative letter dated October 31, 2018, Dr. Guillot indicated that appellant was diagnosed with myasthenia gravis in 1987 and had been under her care for the condition since May 2016. She explained that the condition was a neuromuscular disease, which typically flared with physical or emotional stress. Dr. Guillot noted that over the past six months stemming from the April 9, 2018 employment incident, appellant had experienced a protracted flare-up of her

myasthenia gravis and new symptoms of neck and lower back pain. She recommended a period of rest and work leave to treat her symptoms.

In reports dated October 11, 2018 through August 19, 2019, Dr. Ariel Antezana, a Board-certified neurologist, noted appellant's history, his examination findings and diagnosed lumbalgia, myasthenia gravis disorder without (acute) exacerbation, spinal stenosis in the cervical region, and cervical spondylosis with radiculopathy.

In a narrative medical report dated January 24, 2019, Dr. Robert K. Rush, Board-certified in occupational medicine, noted appellant's history of myasthenia gravis since 1985 and diagnosed lumbar strain, left sacroiliac strain, left piriformis syndrome, and bilateral knee injuries.

On February 8, 2019 OWCP routed Dr. Guillot's April 12, 2018 report, a statement of accepted facts (SOAF), and the case record to Dr. Todd Fellars, a Board-certified orthopedic surgeon, serving as a district medical adviser (DMA), for review and a determination of causal relationship of Dr. Guillot's diagnosis of "acute exacerbation of myasthenia gravis with voice and vision strain" as a consequence of the accepted April 9, 2018 employment injury. In a February 20, 2019 report, Dr. Fellars indicated that the medical evidence of record supported a finding that appellant had experienced an exacerbation of myasthenia gravis due to the stress associated with the April 9, 2018 employment incident.

On June 13, 2019 OWCP accepted the claim for contusion of right upper arm and myasthenia gravis without (acute) exacerbation.

On July 9, 2019 OWCP referred appellant, along with a SOAF, a copy of the case record, and a series of questions, to Dr. Fabian Lugo, a Board-certified neurologist, for a second opinion evaluation regarding the status of her employment-related conditions. In a July 30, 2019 report, Dr. Lugo reviewed appellant's history, the SOAF, and the medical record. He documented physical examination findings and diagnosed preexisting myasthenia gravis aggravated by emotional stress associated with work and right upper arm contusion. Dr. Lugo noted that appellant stopped work on April 13, 2018 and did not return, and that her job was terminated as she could not return to work. He found that the contusion and aggravation of myasthenia gravis had resolved as she was now 16 months post-injury, and that her ongoing symptoms were part of the natural course of the disease. Dr. Lugo opined that appellant required restrictions at work due to back and leg pain. In a work capacity evaluation (Form OWCP-5c) of even date, he released appellant to return to work eight hours per day with up to two hours per day walking and standing, no repetitive use of the right wrist or elbow, and pushing and pulling no more than 10 pounds up to two hours per day.

On August 15, 2019 appellant, through her then counsel, requested reconsideration of OWCP's August 15, 2018 decision. In support of the request, counsel submitted the May 11 and June 11, 2018 out of work notes by Dr. Thomas, which were previously of record.

In a narrative letter dated September 9, 2019, Dr. Guillot placed appellant on continued medical leave. She opined that appellant experienced a protracted flare-up of her preexisting myasthenia gravis with vocal weakness, muscle pain and weakness, and use of a walker and

continued symptoms of neck and lower back pain diagnosed as cervical spinal stenosis and sciatica.

OWCP also received medical reports by Dr. Vanda L. Davidson, a Board-certified orthopedic surgeon, who diagnosed arthropathy of the knees, right greater than left, recommended a motorized wheelchair, and released appellant to return to sedentary-duty work as of October 28, 2019 due to pain and weakness in the lower extremities.

By decision dated November 13, 2019, OWCP denied modification of its August 15, 2018 decision. It noted that appellant had been released to full-duty work effective April 9, 2018 and that the evidence submitted was insufficient to establish that she was totally disabled from all work for the period May 27 through June 6, 2018 causally related to her accepted employment injury.

OWCP continued to receive evidence, including reports of magnetic resonance imaging (MRI) scans of the lumbar spine and left knee dated November 14, 2019 and reports dated November 26, 2019 and February 20, 2020 by Dr. Davidson for treatment to the lower back and knees. It also received reports by Dr. Fayez Shamieh, a neurologist, dated January 15 through October 1, 2020, who performed lower extremity electromyography and nerve conduction studies (EMG/NCV), prescribed medications, and diagnosed history of myasthenia gravis in exacerbation, soft tissue disorder, preexisting lumbar radiculopathy, and polyneuropathy.

In a note dated June 19, 2020, Dr. Davidson indicated that appellant had been under her care since July 2019 and opined that, per appellant's history, she had been unable to work during the 16 months prior to July 2019 and continuing to the present day.³ On June 23 and September 29, 2020 he performed left knee injections.

On November 13, 2020 appellant, through her then counsel, requested reconsideration of OWCP's November 13, 2019 decision. In support of the request, she submitted an October 19, 2020 narrative report by Dr. Shamieh, who opined that the employment injury exacerbated appellant's myasthenia gravis which had been in remission and also caused soft tissue disorder, polyneuropathy, and lumbar radiculopathy. Dr. Shamieh found that she was disabled "whether temporally or permanently," and that she was unable to perform gainful employment. OWCP also received reports of Dr. Shamieh dated November 16, 2020 and January 25, 2021.

³ Appellant also filed CA-7 forms for disability from work from June 10, 2018 and continuing. (R.D. 6/25/2018). By decision dated December 18, 2018, OWCP denied appellant's claim for compensation, finding that the medical evidence was insufficient to establish disability from work effective June 10, 2018 and continuing causally related to the accepted employment injury.

By decision dated February 11, 2021, OWCP denied modification of its November 13, 2019 decision.⁴

On November 29, 2021 appellant requested reconsideration of OWCP's February 11, 2021 decision. In support of the request, she submitted a narrative letter dated March 8, 2021 by Dr. Shamieh, who opined that the April 9, 2018 employment injury caused exacerbation of myasthenia gravis and a contusion. He further opined that "in brief, the temporal disability began on May 27, 2018 and lasted until June 11, 2018" was "most likely caused by the trauma she incurred on April 9, 2018."

OWCP also received a notification of personnel action (Standard Form (SF) 50) dated March 27, 2019, which indicated that appellant would be removed from federal service effective April 3, 2019 due to unauthorized personal absences.

By decision dated February 24, 2022, OWCP denied modification of the February 11, 2021 decision, finding that the evidence submitted was insufficient to establish that appellant was totally disabled from all work for the period May 27 through June 6, 2018 causally related to her accepted employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.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 wages.⁸ 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

⁴ On June 14, 2018, and April 21 and December 9, 2020 appellant requested that the acceptance of her claim be expanded to include diagnoses of lumbar radiculopathy, arthropathy in both knees, lumbago with bilateral sciatica, chondromalacia with joint effusion, nonspecific prepatellar pretibial subcutaneous edema, neck pain radiating to her hands. By decision dated May 26, 2021, OWCP denied expansion of the acceptance of the claim to include additional conditions, which was affirmed upon review of the written record by a representative of OWCP's Branch of Hearings and Review on August 24, 2021. On September 8, 2021 OWCP administratively combined the present claim, which it assigned File No. xxxxxx572, with two prior denied claims, OWCP File Nos. xxxxxx596 and xxxxxx020, involving allegations of worsening of appellant's myasthenia gravis, with OWCP File No. xxxxxx572 serving as the master file.

⁵ *Supra* note 1.

⁶ *J.R.*, Docket No. 23-0215 (issued July 28, 2023); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ 20 C.F.R. § 10.5(f).

⁸ *See H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

that term is used in FECA.⁹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.¹⁰

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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

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.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work during the period May 27 through June 9, 2018, causally related to her accepted April 9, 2018 employment injury.

In support of her claim for compensation, appellant submitted employing establishment work capacity evaluation forms dated May 11 and June 11, 2018 by Dr. Thomas, which each indicated that appellant was temporarily totally disabled for one month. In a May 24, 2018 report, Dr. Guillot noted that Dr. Thomas had held appellant off work and diagnosed cervical spinal stenosis, sciatica, and obesity. In a narrative letter dated March 8, 2021, Dr. Shamieh indicated that appellant had a history of myasthenia gravis which was exacerbated by a traumatic injury and that her disability from May 27, 2018 through June 11, 2018 was “most likely caused by the trauma she incurred on April 9, 2018.” Although these physicians opined that appellant was unable to work during the claimed period of disability, neither Dr. Thomas, Dr. Guillot, nor Dr. Shamieh provided medical reasoning explaining the nature of the relationship between the claimed disability and the accepted employment injuries.¹³ Therefore, their reports are insufficient to meet her burden of proof.¹⁴

⁹ See *H.B., id.; K.H.*, Docket No. 19-1635 (issued March 5, 2020).

¹⁰ See *B.L.*, Docket No. 22-0998 (issued July 10, 2023); *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹¹ *A.S.*, Docket No. 21-1263 (issued July 24, 2023); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹² *J.E.*, Docket No. 23-0140 (issued July 19, 2023); *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

¹³ *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *R.C.*, Docket No. 17-0748 (issued July 10, 2018); *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹⁴ *Supra* note 11.

In a May 11, 2018 medical report, Dr. Chahal noted that appellant related that she had not been able to return to work due to pain and disability in her right arm and leg. Similarly, in a note dated June 19, 2020, Dr. Davidson indicated that she had been under her care since July 2019 and opined that, per her history, she had been unable to work during the 16 months prior to July 2019 and continuing to the present day. However, neither Dr. Davidson nor Dr. Chahal provided reasoning explaining the nature of the relationship between the claimed disability and the accepted employment injuries.¹⁵ Rather, they merely communicated appellant's belief that she had been disabled due to the April 9, 2018 employment injury.¹⁶ A physician's report is of little probative value when it is based on a claimant's belief rather than a physician's independent judgment.¹⁷ Therefore, Dr. Chahal's May 11, 2018 report and Dr. Davidson's June 19, 2020 note are also insufficient to meet appellant's burden of proof.

OWCP also received the medical reports of Dr. Guillot dated April 12, 2018 through September 9, 2019, Dr. Thomas dated June 13, 2018, Dr. Antezana dated October 11, 2018 through August 19, 2019, Dr. Rush dated January 24, 2019, Dr. Davidson dated June 23, 2019 through February 20, 2020, and Dr. Shamieh dated January 15 through November 16, 2020. None of these reports offered an opinion as to whether appellant was disabled from work due to the accepted conditions during the claimed period. Therefore, they are of no probative value and are insufficient to establish appellant's claim for compensation.¹⁸

In his April 9, 2018 report, Dr. Padilla-Guzman opined that appellant could return to full, unrestricted duties as a rural letter carrier. The Board finds that the opinion of Dr. Padilla-Guzman negates disability as he returned her to full-duty work.¹⁹ Therefore, this report is insufficient to establish the claim.

The remaining medical evidence of record includes reports of diagnostic studies. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship.²⁰ Therefore, the Board finds that this evidence is insufficient to establish appellant's claim.

As the medical evidence of record lacks rationale establishing that appellant was disabled from work for the period May 27 through June 9, 2018 due to the accepted April 9, 2018 employment injury, the Board finds that she has not met her burden of proof.

¹⁵ *Id.*

¹⁶ *See O.E.*, Docket No. 20-0554 (issued October 16, 2020).

¹⁷ *See D.R.*, Docket No. 21-1056 (issued April 13, 2023); *K.B.*, Docket No. 17-0682 (issued July 24, 2017); *B.S.*, Docket No. 15-0002 (issued February 27, 2015); *Earl David Seale*, 49 ECAB 152 (1997).

¹⁸ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁹ *See S.H.*, Docket No. 21-0640 (February 2, 2023); *K.S.*, Docket No. 20-0304 (December 1, 2022).

²⁰ *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

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 establish disability from work during the period May 27 through June 9, 2018, causally related to her accepted April 9, 2018 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2023
Washington, DC

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

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

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