

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

_____)	
D.S., Appellant)	
)	
and)	Docket No. 23-0414
)	Issued: December 4, 2023
U.S. POSTAL SERVICE, DETROIT POST OFFICE, Detroit, MI, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 5, 2023 appellant filed a timely appeal from an October 28, 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 his burden of proof to establish disability from work for the period June 11 through August 12, 2022 causally related to his accepted April 18, 2022 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the October 28, 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.*

FACTUAL HISTORY

On May 7, 2022 appellant, then a 63-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 18, 2022 he injured his left shoulder when he lifted a heavy parcel while in the performance duty. He did not stop work.

Beginning July 1, 2022, appellant filed claims for wage-loss compensation (Form CA-7) for disability from work for the period June 11 through August 12, 2022.³

On July 28, 2022 Dr. Robert B. Kohen, a Board-certified orthopedic surgeon, administered an injection into the left subacromial bursa and diagnosed left shoulder pain and rotator cuff disorder.

OWCP accepted the claim for contusion of left shoulder, strain of left deltoid, and left rotator cuff tendinopathy.

In a development letter dated September 14, 2022, OWCP informed appellant that the evidence submitted was insufficient to establish disability from work for the period June 11 through August 12, 2022. It advised him of the type of additional evidence needed and afforded him 30 days to provide the necessary evidence.

OWCP thereafter received an unsigned May 3, 2022 work status form, which contained diagnoses of disorder of the rotator cuff and left shoulder pain, contusion, and injury. The form further indicated that appellant was totally disabled from work for three months and would be capable of returning to unrestricted work, effective August 18, 2022.

By decision dated October 28, 2022, OWCP denied appellant's claim for compensation, finding that he had not submitted sufficient medical evidence to establish disability from work for the period June 11 through August 12, 2022, causally related to his accepted April 18, 2022 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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.⁵ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁶ An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has

³ On the reverse side of the claim form, the employing establishment noted that appellant had received continuation of pay (COP) for the period April 27 through June 10, 2022.

⁴ *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).

⁵ 20 C.F.R. § 10.5(f).

⁶ *See H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

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.⁷ 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.⁸

The medical evidence required to establish causal relationship between a claimed period of disability and an accepted 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.⁹

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.¹⁰

ANALYSIS

The Board finds that appellant has not established disability from work for the period June 11 through August 12, 2022 causally related to his accepted April 18, 2022 employment injury.

In a report dated July 28, 2022, Dr. Kohen diagnosed left shoulder pain and disorder of the rotator cuff. However, he did not offer an opinion as to whether appellant was disabled from work due to the accepted employment injuries. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹¹ This evidence is, therefore, of no probative value and is insufficient to establish appellant's claim for compensation.

Appellant also submitted an unsigned May 3, 2022 work status note, which indicated that he would be totally disabled for three months. Reports that are unsigned or that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification¹² as the author cannot be identified as a physician.¹³

⁷ See *H.B., id.; K.H.*, Docket No. 19-1635 (issued March 5, 2020).

⁸ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

⁹ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹⁰ *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹¹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *W.L.*, Docket No. 19-1581 (issued August 5, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹³ *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills, id.*

As the medical evidence of record is insufficient to establish causal relationship between the claimed disability and the accepted employment injury, the Board finds that appellant has not met his burden of proof.¹⁴

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 his burden of proof to establish disability from work for the period June 11 through August 12, 2022, causally related to his accepted April 18, 2022 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2023
Washington, DC

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

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

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

¹⁴ *M.N.*, Docket No. 18-0741 (issued April 2, 2020); *J.W.*, Docket No. 19-1688 (issued March 18, 2020).