

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

T.V., Appellant)	
)	
and)	Docket No. 23-0803
)	Issued: December 22, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Melville, NY, 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 8, 2023 appellant filed a timely appeal from a December 23, 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 December 23, 2022 decision, appellant submitted additional evidence to OWCP. 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 his burden of proof to establish total disability from work for the period September 26 through October 7, 2022 causally related to his accepted August 11, 2022 employment injury.

FACTUAL HISTORY

On August 18, 2022 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 11, 2022 he was injured when he was struck by a vehicle in a crosswalk while in the performance of duty. He stopped work on that date. OWCP accepted the claim for a contusion of the right hip and unspecified multiple injuries.

On November 4, 2022 appellant filed a claim for wage-loss compensation (Form CA-7) for leave without pay (LWOP) for the period September 26 through October 7, 2022.

In a development letter dated November 14, 2022, OWCP informed appellant of the deficiencies of his disability claim. It advised him of the type of evidence necessary to establish his claim and afforded him 30 days to respond.

Thereafter, appellant submitted August 11, 2022 x-ray reports of his left ankle, tibia and fibula, right hip and hand, feet, and pelvis, which noted no acute abnormalities or acute fractures.

An August 11, 2022 police accident report noted that appellant was injured while crossing the street when a vehicle failed to stop at a stop sign, struck him, and fled the scene.

OWCP also received an August 23, 2022 magnetic resonance imaging (MRI) scan report of appellant's right hip. An MRI scan report of his right hand of even date noted an impression of (1) intact osseous structures, ligaments, and tendons, and (2) minimal circumferential soft tissue edema of the thumb, no organized collections.

A December 10, 2022 report of work status (Form CA-3) noted that appellant stopped work on August 11, 2022, and returned to work full time without restrictions on October 8, 2022.

By decision dated December 23, 2022, OWCP denied appellant's claim for compensation for disability from work for the period September 26 through October 7, 2022, finding that the medical evidence of record was insufficient to establish disability from work for the claimed period causally related to his accepted August 11, 2022 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.⁴ Under FECA the term disability means incapacity, because

³ *Supra* note 1.

⁴ *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ 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.⁶ 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.⁷

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 appellant, 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.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 appellant has not met his burden of proof to establish total disability from work for the period September 26 through October 7, 2022 causally related to the accepted August 11, 2022 employment injury.

In support of his claim, appellant submitted August 11, 2022 x-ray reports and August 23, 2022 MRI scan reports. However, the Board has long held that diagnostic studies, standing alone, lack probative value, because they do not address whether the employment injury caused any of the diagnosed conditions or associated disability.¹⁰ For this reason, the diagnostic reports of record are insufficient to establish appellant's disability claim.

As appellant has not submitted medical evidence sufficient to establish disability from work during the claimed period due to his accepted injury, the Board finds that he has not met his burden of proof.¹¹

⁵ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁶ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁷ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *See D.W.*, Docket No. 20-1363 (issued September 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

⁹ *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004).

¹⁰ *See T.W.*, Docket No. 20-1669 (issued May 6, 2021); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹¹ *K.A.*, Docket No. 17-1718 (issued February 12, 2018).

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 total disability from work for the period September 26 through October 7, 2022, causally related to his accepted August 11, 2022 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 23, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2023
Washington, DC

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

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

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