

³ The Board notes that following the March 15, 2023 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 her burden of proof to establish disability from work for the period June 24 through August 19, 2022 causally related to her accepted July 27, 2019 employment injury.

FACTUAL HISTORY

On July 27, 2019 appellant, then a 31-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right wrist, right hip, and right ankle when she tripped and fell due to an “uneven sidewalk while walking mail” while in the performance of duty. She stopped work on July 28, 2019. OWCP accepted appellant’s claim for strains/sprain of the right hip, right ankle, and right wrist. It paid wage-loss compensation on the supplemental rolls, effective September 1, 2019. On September 18, 2021 appellant returned to full-duty work. By decision dated April 22, 2022, OWCP expanded the acceptance of her claim to include right trigger thumb and right hip articular cartilage disorder.

In a report dated June 22, 2022, Dr. Thomas Youm, a Board-certified orthopedic surgeon, indicated that appellant was evaluated for continued pain in her right hip and right thumb after she fell down at work. He noted that she was working, but he would need to consider some time off. On physical examination of the right hip, Dr. Youm observed positive impingement and FABER signs. He opined that appellant’s injuries to her right hand and right thumb were a result of her fall at work. Dr. Youm diagnosed right hip other articular cartilage disorder and right trigger thumb. He noted “Yes” indicating that appellant was disabled and recommended surgery for appellant’s right hip and thumb.

On June 28, 2022 appellant underwent right hip arthroscopic surgery with labral repair, hip cam and pincer resection. The operative report noted diagnosis of right hip labral tear. Appellant submitted hospital records dated June 28, 2022.

In a report dated July 6, 2022, Dr. Youm noted a diagnosis of status post right hip arthroscopic labral repair with cam and pincer resection. He described a course of treatment for the next six months.

On July 8, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period June 24 through July 8, 2022. On the reverse side of the claim form, an occupational health specialist for the employing establishment indicated that appellant was no longer employed by the employing establishment.

On July 27 and August 19, 2022 appellant filed additional Form CA-7 claims for disability from work for the period July 9 through August 19, 2022.

In an August 23, 2022 development letter, OWCP informed appellant of the deficiencies of her claim for compensation commencing June 24, 2022. It advised her of the type of additional evidence needed and afforded her 30 days to provide the necessary evidence.

In a treatment note dated August 8, 2022, Dr. Youm indicated that appellant was evaluated for status post right hip arthroscopy with cam and pincer resection. On physical examination, he observed flexion of the hip to 90 degrees, internal and external rotation to 90 degrees, and flexion to 10 degrees. Impingement sign was mildly positive. Dr. Youm reported that appellant still

complained of triggering of the right thumb with tenderness over the A1 pulley and locking. He noted “Yes” indicating that appellant was disabled. Dr. Youm diagnosed right hip articular cartilage disorder and right thumb trigger finger.

By decision dated September 30, 2022, OWCP denied appellant’s claim for disability from work for the period commencing June 24, 2022. It found that the medical evidence of record was insufficient to establish that she was unable to work during the claimed period due to her accepted July 27, 2019 employment injury.

On October 12, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review.

In a report dated October 10, 2022, Dr. Youm indicated that appellant had right hip and right thumb pain since a July 27, 2019 employment injury. He reviewed appellant’s history of injury and provided examination findings. Dr. Youm reported that appellant was totally disabled since her right hip arthroscopic surgery on June 28, 2022. He noted that appellant had been out of work since June 24, 2022, and advised that she would be out of work until her next office visit. Dr. Youm explained that appellant could not work because she was still regaining range of motion and strength back since her right hip surgery. He diagnosed right trigger thumb and right hip other articular cartilage disorder. Dr. Youm responded “Yes” indicating that appellant was disabled and concluded that her diagnoses and conditions were a direct result of the July 27, 2019 employment injury.

In an October 31, 2022 letter, appellant, through counsel, requested expansion of appellant’s claim to include right hip labral tear.

By decision dated November 28, 2022, OWCP expanded the acceptance of appellant’s claim to include right hip labral tear.

By decision dated February 2, 2023, OWCP’s hearing representative set aside the September 30, 2022 decision, finding that OWCP must resolve whether appellant’s right hip surgery was medically necessary to treat appellant’s July 27, 2019 employment injury, before adjudicating appellant’s claim for wage-loss compensation. Appellant’s claim was remanded for further development of the medical evidence.

OWCP subsequently referred appellant, along with the medical record, and a statement of accepted facts (SOAF), to Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as the district medical adviser (DMA), to determine whether appellant’s right hip surgery on June 28, 2022 was medically necessary, and causally related to appellant’s July 27, 2019 employment injury. In a February 17, 2023 report, Dr. Fellars noted that he had reviewed the medical evidence of record, and indicated that appellant’s claim was accepted for right hand and wrist sprain, right hip sprain and strain, and right ankle sprain and strain. He reported that the June 28, 2022 right hip arthroscopic surgery was causally related to appellant’s accepted right hip conditions. However, Dr. Fellars also opined that the surgery was not medically necessary to treat appellant’s employment injury. He noted that appellant’s initial hip examination showed full range of motion, and diagnostic imaging demonstrated no evidence of a cam deformity and small punctate labral lesions. Dr. Fellars reported that the surgery would not be considered medically necessary because the punctate labral tears would unlikely be clinically significant, and unlikely to contribute to any type of pain.

By *de novo* decision dated March 15, 2023, OWCP denied appellant's claim for disability commencing June 24, 2022 and continuing. It noted that Dr. Fellars, the DMA, had determined that the June 28, 2022 right hip surgery was not medically necessary to treat appellant's July 27, 2019 employment injury. Thus, OWCP determined that the medical evidence of record was insufficient to establish that appellant was unable to work during the claimed period due to her accepted July 27, 2019 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁶ 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.⁷ 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 the reliable, probative, and substantial medical evidence.⁸

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 specific employment factors identified by the claimant.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

⁴ *Supra* note 2.

⁵ *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

⁶ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁷ *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

⁸ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁹ *K.H.*, Docket No. 19-1635 (issued March 5, 2020); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

¹⁰ *K.A.*, Docket No. 19-1564 (issued June 3, 2020); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *William A. Archer*, *supra* note 7.

ANALYSIS

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

OWCP referred appellant, along with the medical record and a SOAF, to Dr. Fellars, serving as the DMA, to determine whether appellant's right hip surgery was medically necessary or causally related to appellant's July 27, 2019 employment injury. In a February 17, 2023 report, Dr. Fellars noted in response to OWCP's question that the right hip arthroscopic surgery was causally related to the accepted conditions of right hip strain. He also reported that the right hip surgery was not medically necessary to treat appellant's employment injury, as appellant's initial hip examination and diagnostic imaging were clinically insignificant.

The Board finds that OWCP failed to properly develop appellant's claim for compensation for disability during the period June 24 through August 19, 2022. When OWCP referred the case to a DMA, it should have also inquired as to whether appellant's disability from work for the period June 24 through August 19, 2022 was causally related to any employment-related conditions.¹¹ In addition, while Dr. Fellars noted appellant's accepted conditions for right hand and wrist sprain, right hip sprain, and right ankle sprain, he did not report the accepted condition of right hip labral tear even though it was noted on the SOAF. OWCP's procedures dictate that when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹² In this case, it is unclear whether Dr. Fellars was aware that appellant's condition was accepted for right hip labral tear, which was the basis for the June 28, 2022 right hip surgery and subsequent alleged disability.

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹³ OWCP has an obligation to see that justice is done.¹⁴ Thus, the Board will remand the case to OWCP for further development of the medical evidence in order to determine whether appellant's disability from work for the period June 24 through August 19, 2022 was causally related to her accepted July 27, 2019 employment injury. On remand, OWCP shall request a supplement report from Dr. Fellars specifically addressing whether appellant's disability from work for the period June 24 through August 19, 2022 was causally related to any employment-related conditions. Following this, and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.

¹¹ See *V.K.*, Docket No. 20-0989 (issued January 25, 2022).

¹² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); see also *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

¹³ See e.g., *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Funding, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹⁴ See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2023 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: December 20, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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