

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

_____)	
B.C., Appellant)	
)	
and)	Docket No. 22-0940
)	Issued: January 4, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Vero Beach, FL, Employer)	
_____)	

Appearances:
*Alan J. Shapiro, Esq., for the appellant*¹
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 June 3, 2022 appellant, through counsel, filed a timely appeal from a March 25, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period July 3 through 16, 2021 causally related to the accepted February 26, 2020 employment injury.

FACTUAL HISTORY

On February 26, 2020 appellant, then a 40-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he sustained a right shoulder sprain when he lifted a mail package from the back of his vehicle while in the performance of duty. He stopped work on the date of the claimed injury. OWCP accepted appellant's claim for sprain of other specified parts of the right shoulder girdle on March 18, 2020. In March 2020, appellant began working in a limited-duty position, which restricted him from lifting more than five pounds.

In a March 13, 2020 report, Dr. William A. Elman, a Board-certified internist and specialist in emergency and family medicine, diagnosed sprain of the right shoulder, unspecified shoulder sprain type, and right shoulder pain. In a March 28, 2020 duty status report (Form CA-17), a provider with an illegible signature indicated that appellant could intermittently lift five pounds and continuously lift two pounds for up to six hours per day.

The case record contains a December 18, 2020 job offer from the employing establishment for a limited-duty position as a modified rural carrier associate. The position required intermittently lifting five pounds and continuously lifting two pounds. Appellant accepted the position on December 18, 2020. He stopped work on May 22, 2021.

Between June 28 and July 15, 2021, appellant filed claims for compensation (Form CA-7) for disability from work for the period June 5 through July 16, 2021 due to his accepted February 26, 2020 employment injury.

Appellant submitted an unsigned February 28, 2020 state workers' compensation form report, which indicated that he had sustained an employment injury. In a March 13, 2020 Form CA-17, Dr. Elman detailed work restrictions. A March 24, 2020 magnetic resonance imaging (MRI) scan of the right shoulder contained an impression, which listed several conditions, including mild fibrous hypertrophy of the right acromioclavicular joint, early marginal osteophytes indenting the fat over the musculotendinous junction of the supraspinatus tendon, thickened right supraspinatus tendon suggesting partial thickness tear, and trace fluid along the tendon of long head of biceps suggesting tenosynovitis.

Appellant submitted several documents from March 28, 2020, including an unsigned work status report; state workers' compensation form reports, and Form CA-17 reports from Dr. Edward Katz, a Board-certified anesthesiologist, who noted that appellant could lift, push, or pull five pounds. He also submitted a note from Dr. Katz indicating a diagnosis of right shoulder internal derangement.

By decision dated September 2, 2021, OWCP denied appellant's disability claim, finding that he had not submitted sufficient medical evidence to establish disability from work for the

period July 3 through 16, 2021 causally related to the accepted February 26, 2020 employment injury.

On October 1, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding OWCP's September 2, 2021 decision.

Appellant resubmitted copies of the March 24, 2020 MRI scan and the December 18, 2020 job offer.

By decision dated March 25, 2022, OWCP's hearing representative affirmed OWCP's September 2, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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.³

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.⁴ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁵ 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.⁶ 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.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 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.⁸

Disability may also occur when there is an inability to work because a limited-duty assignment made specifically to accommodate an employee's physical limitations, and which is

³ *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).

⁴ 20 C.F.R. § 10.5(f).

⁵ *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁶ *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

⁷ *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

⁸ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations.⁹ Disability is not established when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.¹⁰

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.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period July 3 through 16, 2021 causally related to his accepted February 26, 2020 employment injury.

In support of his claim, appellant submitted medical reports for treatment in February and March 2020. However, as noted above, 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.¹² As the reports submitted by appellant predate the claimed period of disability, they are of no probative value and are insufficient to establish the claim.¹³

As the medical evidence of record is insufficient to establish disability from work for the period July 3 through 16, 2021, causally related to the accepted February 26, 2020 employment injury, the Board finds that appellant has not met his 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 his burden of proof to establish disability from work for the period July 3 through 16, 2021 causally related to his accepted February 26, 2020 employment injury.

⁹ 20 C.F.R. § 10.5(x); *see J.D.*, Docket No. 18-1533 (issued February 27, 2019).

¹⁰ *Id.*

¹¹ *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

¹² *Id.*

¹³ *See V.N.*, Docket No. 16-1427 (issued December 13, 2016).

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 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