

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

A.M., Appellant	)	
	)	
and	)	Docket No. 22-1324
	)	Issued: January 13, 2023
U.S. POSTAL SERVICE, MILLERSVILLE	)	
POST OFFICE, Baltimore, MD, 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  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On September 6, 2022 appellant filed a timely appeal from a July 20, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

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<sup>1</sup> The Board notes that, following the July 20, 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.*

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish intermittent disability from work for the period May 7 through 20, 2022 causally related to her accepted January 15, 2021 employment injury.

## FACTUAL HISTORY

On January 21, 2021 appellant, then a 48-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on January 15, 2021 she injured her left shoulder and right thumb when a 106-pound box being loaded into a truck slipped during a team lift while in the performance of duty. She stopped work on January 20, 2021 and returned to modified duties on March 20, 2021. OWCP accepted the claim for sprains of the metacarpophalangeal joint of the right thumb, the right wrist, the right hand, and the left rotator cuff capsule. It paid compensation on the supplemental rolls beginning March 13, 2021.

On September 9, 2021 Dr. Russell Bear, an osteopath, performed an OWCP-authorized left shoulder arthroscopy, subacromial decompression with acromioplasty, and distal clavicle resection. On September 8, 2021 OWCP paid compensation on the periodic rolls.

In a note dated January 19, 2022, Dr. Bear released appellant to return to work with a 20-pound lifting restriction. On January 24, 2022 he completed a work capacity evaluation (OWCP-5c) advising that she could not return to full duty, but could return to light duty on February 5, 2022 working eight hours a day, lifting up to 20 pounds and pushing or pulling up to 30 pounds.

On February 7, 2022 appellant returned to full-time light-duty work. In a February 15, 2022 report, Dr. Bear noted that she had been performing light-duty work and was experiencing pain and bruising over the superior left shoulder. He diagnosed left rotator cuff sprain and shoulder impingement and provided additional work restrictions including working no more than eight hours, avoiding overexertion, and no pushing, pulling, or lifting. Dr. Bear completed a February 15, 2022 duty status report (Form CA-17) with identical restrictions. Appellant began a new light-duty position at the employing establishment working in the lobby on February 18, 2022. OWCP paid wage-loss compensation on the supplemental rolls from February 19 through May 6, 2022 based on appellant's actual earnings.

On May 24, 2022 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation from May 7 through 20, 2022. On the attached time analysis form (Form CA-7a) she indicated that she used eight hours of leave without pay (LWOP) on May 7 and 9, 2020 due to a "medical procedure" and "medical," respectively. Appellant used 1.20 hours of LWOP on May 11, 12, and 13, 2022.

In a May 25, 2022 development letter, OWCP informed appellant that the evidence received was insufficient to establish her claim for wage-loss compensation benefits beginning May 7, 2020. It advised her of the type of medical evidence necessary to establish that she was disabled from work beginning May 7, 2020 and afforded her 30 days to submit the necessary evidence.

A memorandum of telephone call (CA-110) dated May 27, 2022 noted that appellant contacted OWCP and asserted that she experienced a “flare up” on May 7 and 9, 2022.

In a June 1, 2022 note, Dr. Bear recounted that appellant reported a “flare up” of her left shoulder pain on or about May 7 through 9, 2022. He observed that this could be expected as she recovered and advanced her activity level.

By decision dated July 20, 2022, OWCP denied appellant’s claim for disability commencing May 7, 2022. It found that the medical evidence of record was insufficient to establish that she was unable to work her limited-duty assignment due to her accepted January 15, 2021 employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>

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

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *B.W.*, Docket No. 21-0785 (issued September 1, 2022); *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).

<sup>5</sup> 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>6</sup> *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

<sup>7</sup> *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

<sup>8</sup> *K.H.*, Docket No. 19-1635 (issued March 5, 2020); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work for the period May 7 through 20, 2022 causally related to her accepted January 15, 2021 employment injury.

In his June 1, 2022 note, Dr. Bear recounted that appellant reported a “flare up” of her left shoulder pain on or about May 7 through 9, 2022. He opined that this could be expected as she recovered and advanced her activity level. Dr. Bear, however, did not otherwise provide an opinion on whether appellant was disabled from work during the claimed period due to her accepted employment injury. Accordingly, this report is of no probative value and is insufficient to establish her claim for compensation.<sup>10</sup> Therefore this report is insufficient to establish appellant’s claim for compensation.

As appellant has not provided rationalized medical opinion evidence sufficient to establish disability during the period May 7 through 20, 2022 causally related to the accepted employment injury, the Board finds that she has not met her 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 her burden of proof to establish disability from work from May 7 through 20, 2022 causally related to her accepted January 15, 2021 employment injury.

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<sup>9</sup> *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 6.

<sup>10</sup> *See M.M.*, Docket No. 18-0817 (issued May 17, 2019); *M.C.*, Docket No. 16-1238 (issued January 26, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 20, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 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