

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

E.T., Appellant)	
)	
and)	Docket No. 23-0001
)	Issued: July 12, 2023
U.S. POSTAL SERVICE, BLOOMFIELD HILLS)	
POST OFFICE, Bloomfield Hills, MI, Employer)	
)	

Appearances: *Case Submitted on the Record*
Appellant, pro se
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 2, 2022 appellant filed a timely appeal from July 28 and September 27, 2022 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ 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.³

¹ The Board notes that, during the pendency of this appeal, OWCP issued February 13 and 22, and June 13, 2023 merit decisions which denied appellant's request for a authorization of left shoulder surgery. The Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). Consequently, the February 13 and 22, and June 13, 2023 decisions are set aside as null and void. 20 C.F.R. §§ 501.2(c)(3), 10.626; *see J.W.*, Docket No. 19-1688, n.1 (issued March 18, 2020); *J.A.*, Docket No. 19-0981, n.2 (issued December 30, 2019); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the September 27, 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 caserecord 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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish disability from work on May 28, 2022 causally related to the accepted January 5, 2020 employment injury; and (2) whether OWCP abused its discretion in denying appellant's request for authorization of left shoulder surgery.

FACTUAL HISTORY

On January 7, 2020 appellant, then a 50-year-old city carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on January 5, 2020 she injured her left shoulder when she slipped on black ice walking to her car while in the performance of duty. She did not stop work. OWCP accepted appellant's claim for left shoulder contusion and left shoulder sprain. By decision dated March 13, 2020, it expanded the acceptance of her claim to include left shoulder tendinitis, and partial rotator cuff tear. On July 22, 2020 appellant underwent left shoulder arthroscopic rotator cuff repair, decompression, and distal clavicle resection. On July 23, 2020 she stopped work. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective July 23, 2020.

On May 18, 2021 appellant underwent OWCP-authorized left shoulder rotator cuff revision.

On February 23, 2022 appellant returned to full-time, modified-duty work.

Appellant continued to receive medical treatment. In a report dated May 2, 2022, Dr. Vinay Pampati, a Board-certified orthopedic surgeon, indicated that appellant was evaluated for status-post left shoulder revision arthroscopic rotator cuff repair. He noted appellant's complaints that her shoulder was still very stiff and painful. On physical examination, Dr. Pampati observed no tenderness to palpation about the left shoulder incisions and painful range of motion. He reported that appellant was not making any progress and indicated that "she will need a scope, debridement, new cultures, and capsular release/lysis of adhesions." Dr. Pampati recommended that appellant be "off work tomorrow and then after procedures."

On June 3, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work on May 28, 2022. On the reverse side of the claim form, the employing establishment indicated that appellant was on leave without pay (LWOP) status on May 28, 2022 and returned to work on May 31, 2022.

On June 13, 2022 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, for a second-opinion evaluation regarding the status of her employment-related injuries.

Appellant submitted progress reports and work status notes dated January 19, March 2, April 8, and May 2, 2022 by Dr. Pampati who noted appellant's complaints of worsening left shoulder pain. Dr. Pampati reviewed appellant's history and provided examination findings. He diagnosed left shoulder rotator cuff tear and provided work restrictions.

In a letter dated June 15, 2022, Dr. Pampati opined that appellant should remain off work June 14 and 15, 2022. In a separate letter of even date, he indicated that she was scheduled for surgery on June 21, 2022 and that her last day of work should be June 17, 2022. Dr. Pampati recommended that appellant remain off work until June 27, 2022.

In a June 20, 2022 note, Dr. Pampati reported that appellant should remain out of work.

In a June 23, 2022 development letter, OWCP informed appellant of the deficiencies of her claim for compensation. It advised her of the type of factual and medical evidence required and afforded her 30 days to respond.

In a June 24, 2022 note, Dr. Pampati recommended that appellant remain out of work until her next appointment on July 20, 2022.

In a report dated July 15, 2022, Dr. Obianwu reviewed appellant's history and described the January 5, 2020 employment injury. He noted that appellant's claim was accepted for left shoulder contusion, left shoulder sprain, left shoulder rotator cuff tear or rupture, left shoulder calcified tendinitis, left shoulder capsulitis, and left shoulder arthritis. Dr. Obianwu indicated that appellant complained of pain in her left shoulder radiating all the way to her left hand. On examination of appellant's left shoulder, he observed tenderness elicited in the area of insertion of the rotator cuff into the left proximal bilaterally. Range of motion testing revealed abduction to 70 degrees, forward flexion to 80 degrees, internal rotation to 30 degrees, external rotation to 30 to 40 degrees, extension to 40 degrees, and adduction to 40 degrees. Dr. Obianwu diagnosed traumatic incomplete tear of the left rotator cuff, left shoulder arthroscopy, rotator cuff repair, decompression and distal clavicle resection, postoperative adhesive capsulitis of the left shoulder, manipulation under anesthesia with corticosteroid injection, left shoulder failed rotator cuff repair, bicipital tenosynovitis, and bursitis, left shoulder revision arthroscopic rotator cuff repair, biceps tenotomy, and removal of deep orthopedic implant, and persistent left shoulder adhesive capsulitis. He opined that appellant's work-related condition of adhesive capsulitis had not yet resolved. Dr. Obianwu also reported that there were no imaging studies to verify if the second left shoulder surgery was successful. He recommended that appellant go through with the second manipulation under anesthesia, to be followed by an intra-articular injection. Dr. Obianwu completed a work capacity evaluation form (Form OWCP-5c), which indicated that appellant could work with restrictions.

In a July 20, 2022 report, Dr. Pampati conducted an examination and diagnosed adhesive capsulitis of the left shoulder and status-post left shoulder rotator cuff repair. He reported that appellant continued to have "issues and had a relatively complex course." Dr. Pampati indicated that appellant was not making any progress and had failed all conservative treatment options. He explained that appellant was a good candidate for surgery due to the nature, activity level, acuity, and functional disability. Dr. Pampati noted that appellant would be scheduled for a left shoulder arthroscopy and lysis of adhesions/capsular release.

By decision dated July 28, 2022, OWCP denied appellant's claim for compensation for disability from work on May 28, 2022. It found that the medical evidence of record was insufficient to establish disability from work on the claimed date due to her employment-related injuries or to establish time lost from work to obtain medical treatment for her employment-related injuries.

In a letter dated August 4, 2022, OWCP requested that Dr. Obianwu provided a supplemental report and opine as to the necessity of the requested left shoulder arthroscopic surgery to treat appellant's January 5, 2020 employment injury.

In an August 12, 2022 report, Dr. Pampati conducted an examination and diagnosed adhesive capsulitis of the left shoulder and status-post left shoulder rotator cuff repair. He reported that appellant continued to have issues and noted that she would be scheduled for a left shoulder arthroscopy and lysis of adhesions/capsular release.

In an August 30, 2022 report, Dr. Obianwu indicated that he had reviewed Dr. Pampati's recent medical reports and discussed appellant's previous examination findings following her multiple left shoulder surgeries. He opined that appellant did not need another arthroscopy of the left shoulder. Dr. Obianwu explained that she already had two arthroscopies, but on his July 15, 2022 examination appellant could only raise her arm through 70 to 80 degrees. He further noted that the absence of intraarticular pathology in the left shoulder in the April 29, 2022 ultrasonography scan made him feel that invasion of the joint with arthroscopy would not be beneficial. Dr. Obianwu also reported that he would recommend manipulation under anesthesia.

In a September 14, 2022 note, Dr. Pampati indicated that appellant could return to work on September 19, 2022 with restrictions of lifting up to five pounds per day and no more than nine hours daily.

By decision dated September 27, 2022, OWCP denied appellant's request for authorization of left shoulder arthroscopic surgery and included a copy of Dr. Obianwu's July 15 and August 30, 2022 reports. It referred to an "enclosed Notice of Decision" explaining its denial of medical authorization. However, there was no formal notice of decision attached to the September 27, 2022 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ 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.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

⁴ *Supra* note 1.

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); *Kathryn Haggerty*, 45 ECAB 383 (1994); *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).

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

OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.¹¹ A claimant who has returned to work following an accepted injury or illness may need to undergo examination, testing, or treatment and such employee may be paid compensation for wage loss while obtaining medical services or treatment, including a reasonable time spent traveling to and from the medical provider's location.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability from work on May 28, 2022 causally related to the accepted January 5, 2020 employment injury.

Appellant submitted a series of progress reports and letters by Dr. Pampati dated May 2 through September 14, 2022. In a May 2, 2022 report and letter, Dr. Pampati noted appellant's complaints of left shoulder pain and stiffness. He conducted an examination and recommended a "scope." Dr. Pampati also noted that appellant should be off work on May 3 and then after procedures. While he provided a general opinion that appellant should be off work after medical procedures, he did not specifically address the claimed date of disability on May 28, 2022 nor attribute appellant's inability to work to her accepted January 5, 2020 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹³

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*, 55 ECAB 674 (2004).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013).

¹² *Id.* at Chapter 2.901.19a; *M.B.*, Docket No. 19-1049 (issued October 21, 2019).

¹³ *L.S.*, Docket No. 19-1231 (issued March 30, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Accordingly, Dr. Pampati's report is of no probative value and is insufficient to establish the claim.

Dr. Pampati's additional reports postdate the claimed date of disability and did not otherwise address the relevant issue of whether appellant was disabled from employment on May 28, 2022 due to her accepted January 5, 2020 employment injury.¹⁴ Furthermore, the evidence of record does not contain any medical reports which establish that appellant received medical treatment on May 28, 2022 due to her accepted left shoulder injury.

As the medical evidence or record is insufficient to establish disability from work on May 28, 2022 causally related to the accepted January 5, 2020 employment injury, the Board finds that she has not met her burden of proof to establish her claim.

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 and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹⁵ Section 10.126 of Title 20 of the Code of Federal Regulations provides that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.¹⁶ OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.¹⁷

ANALYSIS -- ISSUE 2

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

As noted above, section 8124(a) of FECA¹⁸ and section 10.126¹⁹ of its implementing regulations require that final decisions of OWCP contain findings of fact and a statement of reasons. As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.²⁰ The Board finds that OWCP's September 27, 2022 decision did not provide a statement of reasons as to why it determined that the evidence of

¹⁴ See *K.E.*, Docket No. 19-1922 (issued July 10, 2020); *F.S.*, Docket No. 18-0098 (issued August 13, 2018); *P.W.*, Docket No. 17-0514 (issued June 9, 2017).

¹⁵ 5 U.S.C. § 8124(a).

¹⁶ 20 C.F.R. § 10.126.

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

¹⁸ *Supra* note 3.

¹⁹ *Supra* note 4.

²⁰ *Supra* note 5.

record was insufficient to support authorization for left shoulder arthroscopic surgery as a formal decision was not attached. The Board has found that a decision denying a claim should contain a correct description of the basis for the denial in order that the parties of interest have a clear understanding of the precise defect and the kind of evidence which would overcome it.²¹ For this reason, the case must be remanded to OWCP for a proper formal decision, which includes findings of fact and a clear and precise statement regarding appellant's request for authorization for left shoulder arthroscopic surgery. Following further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work on May 28, 2022 causally related to the accepted January 5, 2020 employment injury. The Board further finds that the case is not in posture for decision regarding whether OWCP abused its discretion in denying appellant's request for authorization of left shoulder surgery.

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2022 merit decision of the Office of Workers' Compensation Programs is affirmed. The September 27, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 12, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²¹ *J.W.*, Docket No. 19-1547 (issued October 26, 2020); *R.M.*, Docket No. 19-0163 (issued July 17, 2019).