

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

M.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Hartford, CT, Employer**

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) **Docket No. 22-0984**
) **Issued: June 5, 2023**
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 13, 2022 appellant filed a timely appeal from a June 8, 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 June 8, 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 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period November 6, 2021 through February 25, 2022 causally related to her accepted April 1, 2020 employment injury.

FACTUAL HISTORY

On April 8, 2020 appellant, then a 57-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on April 1, 2020 she strained her right bicep and shoulder while pulling a postcon out of a robot in the performance of duty. She also alleged that the tendinitis in her right bicep and shoulder was caused by repetitive pulling, pushing and lifting of heavy mail in the performance of duty. Dr. Sandor A. Nagy, a Board-certified internist, released appellant to light-duty work on April 15, 2020. OWCP accepted the claim for strain of fascia and tendon at right shoulder/upper arm and strain of muscle, fascia, tendon long head of right bicep. Appellant continued to work light duty.³ OWCP paid her wage-loss compensation on the supplemental rolls from March 1 through 26, 2021, October 23 through 31, 2021, and again as of March 14, 2022.

In a November 4, 2021 work excuse note, Dr. Vishal Kochar, a Board-certified family practitioner, related that appellant has not been able to perform her job duties due to her recent shoulder injury. He also noted that appellant was under the care of an orthopedic specialist for management of her shoulder injury.

On November 29, 2021 appellant filed claims for compensation (Form CA-7) with accompanying time analysis forms (Form CA-7a) for disability from work during the period November 6 through December 3, 2021.⁴

OWCP, in a December 6, 2021 development letter, acknowledged receipt of appellant's Form CA-7 claim for wage-loss compensation for disability from work for the period November 6 through December 3, 2021. It informed her of the deficiencies of her claim. OWCP informed appellant of the deficiencies of her claim for compensation and advised her of the type of medical evidence necessary to establish her claim. OWCP afforded appellant 30 days to submit the necessary evidence.

By decision dated February 15, 2022, OWCP denied appellant's claim for wage-loss compensation for the period November 6 through December 3, 2021 because the medical evidence of record was insufficient to establish disability during the claimed period due to a worsening of her accepted employment-related conditions.

³ On November 3, 2020 Dr. Nagy reiterated appellant's light-duty restrictions.

⁴ On November 29, 2021 appellant also filed a claim for compensation (Form CA-7) for disability from work for the period November 1 through 5, 2021. OWCP has not issued a decision concerning appellant's claimed disability for that period.

Appellant submitted additional Forms CA-7 for disability from work for the periods December 4 to 31, 2021 and January 29 through February 11, 2022. The employing establishment indicated that appellant returned to full-time regular duty with no restrictions on January 18, 2022.

In response to appellant's claim for wage-loss compensation for disability for the periods December 4 to 31, 2021, and January 29 through February 11, 2022, OWCP issued development letters dated December 23, 2021 and February 22, 2022. It noted that no evidence was received in support of her wage-loss compensation claims. OWCP advised appellant of the type of medical evidence necessary to establish her disability claim and afforded her 30 days to submit the requested evidence. No additional evidence was received.

By decision dated February 22, 2022, OWCP denied appellant's claim for wage-loss compensation for the periods December 4 through 31, 2021 and January 29 through February 11, 2022, because the medical evidence of record was insufficient to establish disability during the claimed period due to a worsening of her accepted employment-related condition. It also noted that appellant had returned to work full time with no restrictions on January 18, 2022.

Appellant filed additional Form CA-7 claims for wage-loss compensation for disability from work for the period January 15 through February 25, 2022. OWCP advised appellant of the type of medical evidence necessary to establish her disability claims for the respective periods claimed and afforded 30 days to submit the requested evidence.

OWCP subsequently received a December 28, 2021 report, wherein Dr. Belniak reported that appellant had been dealing with the sequelae of a partial thickness injury to her right rotator cuff for nearly a year with no relief from conservative care. He noted that she had been assigned light duty, but had not been working due to worsening pain. Dr. Belniak provided examination findings of positive drop arm sign, significant weakness against resisted abduction, crepitus with overhead motion, a tender AC joint with pain with cross adduction. He noted that she remained at previous light-duty restrictions. Dr. Belniak again recommended surgical intervention, which he opined was related to her work injury and medically necessary given her lack of response to conservative treatment.

In a March 14, 2022 statement, appellant alleged that she had not been released to full duty without restrictions when she returned to work on January 18, 2022, that her torn right rotator cuff was a result of the April 1, 2020 employment injury, and that surgery was needed.

OWCP continued to receive progress reports from Dr. Belniak dated March 14, 2022 onward.

On March 22, 2022 appellant requested reconsideration of the February 15, 2022 decision regarding the denial disability from work for the period November 6 through December 3, 2021.

In a work excuse note and duty status report (Form CA-17), both dated March 14, 2022, Dr. Belniak advised that appellant had partial right shoulder cuff tear and could work full time with restrictions. In an April 20, 2022 report, he noted that her March 2021 MRI scan showed insertional tendinopathy of the right supraspinatus consistent with a partial tear. Dr. Belniak indicated that appellant had a positive impingement sign at 90 degrees abduction, AC joint was tender with pain with cross adduction, bicipital groove was tender with positive Yergason sign,

positive Neer sign, positive Speed test, but negative O'Brian sign. Appellant had weakness against resisted abduction of the right shoulder with overhead rotatory crepitation but negative drop arm sign. Dr. Belniak diagnosed partial-thickness rotator cuff injury, right shoulder, and opined that her current symptoms are directly related to her lifting injury at work. He advised that appellant was cleared for full-duty activity with restrictions on her right arm and indicated that he continued to recommend surgical management.

By decisions dated April 22 and May 24, 2022, OWCP denied appellant's claim for wage-loss compensation for the period January 31 through February 25, 2022, as the medical evidence of record was insufficient to establish disability during the claimed periods due to a worsening of her accepted employment-related condition.

By *de novo* decision dated June 8, 2022, OWCP, on its own motion, determined that review of OWCP decisions dated February 15, February 22, April 22, and May 24, 2022 would be combined in the instant decision to ensure proper adjudication of all compensation periods claimed. It again denied appellant's claims for disability from work for the period November 6, 2021 through February 25, 2022, finding that the medical evidence of record was insufficient to establish disability from work during the claim period due to a worsening of her accepted employment-related condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.⁶ Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ 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.⁸ 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.⁹

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

⁵ *Supra* note 2.

⁶ See *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989); see also *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *Nathaniel Milton*, 37 ECAB 712 (1986).

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

⁸ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁹ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

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.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 her burden of proof to establish disability from work for the period November 6, 2021 through February 25, 2022 causally related to her accepted April 1, 2020 employment injury.

Appellant submitted reports dated December 28, 2021, and March 14 and April 20, 2022, wherein from Dr. Belniak noted the history of injury and that appellant had returned to limited duty. He indicated that appellant had not been working due to worsening pain. However, Dr. Belniak did not specify that appellant was totally disabled from work during the claimed period due to her accepted injury. As previously noted, the Board has held that the medical evidence of record must directly address the specific dates of disability for which compensation is claimed.¹² This evidence is, therefore, of diminished probative value and insufficient to establish appellant's disability claim.

Dr. Kochar's November 4, 2021 work excuse note similarly confirmed that appellant had not been able to perform her job duties due to her recent shoulder injury. However, he did not specify that appellant was totally disabled from work during the claimed period due to her accepted injury. As noted above, the Board has held that the medical evidence of record must directly address the specific dates of disability for which compensation is claimed.¹³ Thus, Dr. Kochar's report is insufficient to establish appellant's disability claim.

As the evidence of record is insufficient to establish employment-related disability during the claimed period due to the accepted injury, the Board finds that appellant 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.

¹⁰ See *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹¹ See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004).

¹² *Id.*

¹³ *Id.*

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work for the period November 6, 2021 through February 25, 2022 causally related to her accepted April 1, 2020 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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