

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

L.K., Appellant	)	
	)	
and	)	Docket No. 22-0873
	)	Issued: October 20, 2023
U.S. POSTAL SERVICE, POST OFFICE,	)	
LaSalle, IL, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On May 19, 2022 appellant, through counsel, filed a timely appeal from an April 4, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

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

<sup>3</sup> The Board notes that, following the April 4, 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.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period June 25 through November 6, 2020 causally related to her accepted January 22, 2019 employment injury.

## FACTUAL HISTORY

On January 29, 2019 appellant, then a 59-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 22, 2019 she sustained a contusion to her left knee and pain in her left thumb and elbow when she slipped and fell on ice while in the performance of duty. She stopped work on the date of injury.

In a January 22, 2019 emergency room report, Dr. Rushdi Alul, a Board-certified internal medicine specialist, noted that appellant related complaints of left knee and left-hand pain due to slipping and falling on ice at work that day. He performed a physical examination and diagnosed contusions of the left knee and left hand.

In a report dated January 28, 2019, Dr. Dexter Angeles, a Board-certified internal medicine specialist, recommended magnetic resonance imaging (MRI) scan of the left knee.

A report of MRI scan of the left knee dated February 11, 2019 revealed a bone contusion with trabecular microfractures involving the anteromedial tibia.

On March 20, 2019 OWCP accepted the claim for a left tibia fracture. It paid appellant wage-loss compensation on the supplemental rolls, effective March 9, 2019.

On June 26, 2019 OWCP referred appellant, the medical record, a statement of accepted facts, and a series of questions to Dr. Allan Brecher, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a July 31, 2019 report, Dr. Brecher noted his physical examination findings, recommended an updated MRI scan of the left knee, and opined that she sustained a bone contusion and microfracture of the anterior left tibia as a result of the January 22, 2019 employment incident. In a work capacity evaluation (Form OWCP-5c) of even date, he diagnosed left tibial contusion, and recommended work restrictions of walking and standing up to four hours per day and no lifting, pushing, or pulling greater than 20 pounds.

A report of MRI scan of the left knee dated August 26, 2019 revealed minimal prepatellar bursitis.

OWCP thereafter paid appellant wage-loss compensation for total disability on the periodic rolls, effective August 31, 2019.

In a note dated October 23, 2019, Dr. Michael Shin, a Board-certified orthopedic surgeon, released appellant to return to work for three hours per day with restrictions of no climbing, bending, twisting, or kneeling and no lifting greater than five pounds. He diagnosed left tibial bone bruise and left knee pain and swelling due to the January 22, 2019 employment incident.

In a report dated December 2, 2019, Dr. Shin continued to diagnose left lower leg pain and left anterior tibial bone bruise.

On January 3, 2020 appellant returned to work in a modified position as a rural carrier, casing routes for three hours per day with no grasping or lifting greater than five pounds, based upon the October 23, 2019 release by Dr. Shin.

OWCP thereafter paid appellant wage-loss compensation on the supplemental rolls for partial disability, effective January 5, 2020.

In a follow-up report dated January 6, 2020, Dr. Shin noted ongoing left knee and leg pain due to the left tibia injury. He recommended that appellant participate in a work-conditioning program. In a duty status report (Form CA-17) of even date, Dr. Shin released her to return to work four hours per day with restrictions of no lifting greater than 10 pounds and limited pushing, pulling, and overhead reaching.

In a note dated February 18, 2020, Dr. Shin released appellant to return to modified work for eight hours per day with restrictions of no more than four hours kneeling, standing, twisting, and climbing and no lifting greater than 10 pounds. He diagnosed left anterior tibial bone bruise and left knee pain.

In a narrative report dated April 20, 2020, Dr. Shin diagnosed a healed left anterior tibial bone bruise with persistent left knee pain. He indicated that he had released appellant from his care, and noted that she had been referred for treatment to Dr. Lisa Snyder, a physiatrist. Dr. Shin noted that appellant had remained under light-duty restrictions eight hours per day since February 18, 2020 in anticipation of her appointment with Dr. Snyder.

In e-mail correspondence dated May 19, 2020, OWCP requested that the employing establishment provide appellant with an updated job offer based on the restrictions of Dr. Shin and confirm whether she was working for eight hours per day. It noted that she had been working three hours per day and was claiming leave without pay (LWOP).

On June 1, 2020 Dr. Shin again indicated that appellant had transferred her care to Dr. Snyder, and that she was able to work eight hours per day with no kneeling, twisting, or climbing, no standing longer than four hours, and no lifting greater than 10 pounds. He diagnosed left knee pain and left anterior tibial bone bruise.

OWCP, in a letter dated June 11, 2020, again requested that the employing establishment offer appellant a job eight hours per day within Dr. Shin's restrictions.

On June 16, 2020 the employing establishment advised OWCP that appellant was off from work due to a nonwork-related injury.

OWCP ceased payment of wage-loss compensation effective June 20, 2020.

In a report dated June 25, 2020, Dr. Snyder noted that appellant related complaints of left tibial pain, which she attributed to the January 22, 2019 employment incident. She noted an interim history that appellant had undergone unrelated nerve release surgery to the left ankle by

Dr. Douglas Pacaccio, a Board-certified podiatrist, on June 17, 2020. Dr. Snyder performed an examination, which revealed discomfort to palpation along the medial left knee. She diagnosed left knee pain and bone bruise.

In a follow-up report dated September 29, 2020, Dr. Snyder indicated that appellant related complaints of left knee pain. She noted an interim history of an unrelated left ankle reconstruction by Dr. Pacaccio on July 17, 2020. Dr. Snyder performed a physical examination and diagnosed chronic pain of the left knee.

In a follow-up report dated November 16, 2020, Dr. Snyder noted that Dr. Pacaccio had released appellant to return to work as it related to appellant's left ankle for four hours per day with no lifting greater than 10 pounds. She performed a physical examination and documented ongoing left tibial pain. Dr. Snyder diagnosed left leg pain and peroneal neuropathy at the left knee. In a Form CA-17 of even date, she released appellant to return to work up to four hours per day, with no lifting greater than 10 pounds.

In a report dated December 3, 2020, Dr. Veronikis Dionysios, a Board-certified gynecologist, recommended that appellant remain out of work until February 1, 2021 due to surgical recovery.

On December 22, 2020 appellant filed multiple claims for compensation (Form CA-7) for intermittent disability from work, commencing November 23, 2020.

In a report dated January 6, 2021, Dr. Snyder indicated that appellant had missed time from work for the period June 25 through December 2, 2020 due solely to the January 22, 2019 left tibial injury. She further indicated that she had released appellant to return to work four hours per day with restrictions effective December 2, 2020.

On February 1, 2021 Dr. Snyder released appellant to return to full-duty work.

In e-mail correspondence dated February 22, 2021, the employing establishment advised OWCP that no work was available for appellant between November 9 and December 1, 2020.

By decision dated March 29, 2021, OWCP denied appellant's claim for wage-loss compensation due to disability from work commencing November 23, 2020.

On April 5, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on July 7, 2021.

By decision dated August 30, 2021, OWCP's hearing representative vacated the March 29, 2021 decision, noting that, for the period December 3, 2020 through February 1, 2021, the medical evidence of record supported appellant's ability to work only four hours per day due to the accepted employment injury while also being totally disabled due to nonwork-related conditions. Based on that finding, OWCP paid her wage-loss compensation for partial disability on the supplemental rolls from November 7, 2020 through February 1, 2021.

On February 1, 2022 appellant filed a Form CA-7 for disability from work for the period June 25 through November 6, 2020.

By decision dated April 4, 2022, OWCP denied appellant's claim for compensation due to disability from work for the period June 25 through November 6, 2020.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</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>5</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 probative and reliable medical opinion evidence.<sup>6</sup>

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. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. 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.<sup>7</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>8</sup> Rationalized medical evidence is medical evidence, which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's claimed disability and the accepted employment injury. 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 period of disability and the accepted employment injury.<sup>9</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>10</sup> The Board

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<sup>4</sup> See *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 4; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>7</sup> *Id.*

<sup>8</sup> *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

<sup>9</sup> *R.H.*, Docket No. 18-1382 (issued February 14, 2019).

<sup>10</sup> 20 C.F.R. § 10.501(a); *V.P.*, Docket No. 21-1111 (issued May 23, 2022); *C.E.*, Docket No. 19-1617 (issued June 3, 2020); *M.M.*, Docket No. 18-0817 (issued May 17, 2019); see *T.A.*, Docket No. 18-0431 (issued November 7, 2018); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005).

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.<sup>11</sup>

### ANALYSIS

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

OWCP accepted appellant's claim for a left tibia injury and paid her wage-loss compensation for total disability until January 4, 2020. Thereafter, it paid her wage-loss compensation for partial disability on the supplemental rolls based upon three hours of work, effective January 5, 2020, when she returned to work in a modified job with the employing establishment within the October 23, 2019 restrictions by Dr. Shin.

In his January 6, 2020 report, Dr. Shin released appellant to return to work four hours per day with restrictions of no lifting greater than 10 pounds and limited pushing, pulling, and overhead reaching due to the accepted employment incident. In a note dated February 18, 2020, he released her to return to modified work for eight hours per day with restrictions of no more than four hours per day kneeling, standing, twisting, and climbing, and no lifting greater than 10 pounds due to the accepted employment incident.

On May 19 and June 11, 2020 OWCP contacted the employing establishment to inquire whether it could offer appellant a position eight hours per day within the restrictions of Dr. Shin, noting that appellant had been working three hours per day, limited duty. On June 16, 2020 the employing establishment advised that she was out of work due to a nonwork-related injury. OWCP then ceased payment of wage-loss compensation effective June 20, 2020. Thereafter, Dr. Snyder, in a narrative report dated January 6, 2021, indicated that appellant missed time from work between June 25 and November 6, 2020 due to the January 22, 2019 left tibia injury.

As noted above, for each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work during the claimed period as a result of the accepted employment injury.<sup>12</sup> OWCP procedures provide that, to be eligible for compensation, the medical evidence should support that the claimant is disabled as a result of the accepted work injury, and should either establish that the claimant is precluded from performing any type of work, or that the claimant has work restrictions due to the injury that the employing establishment is not able to accommodate.<sup>13</sup>

Although the employing establishment indicated on June 16, 2020 that appellant was out of work due to a nonwork-related injury, the Board finds that the record was insufficiently

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<sup>11</sup> *C.E., id.; M.M., id.; see V.B.*, Docket No. 18-1273 (issued March 4, 2019); *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>12</sup> *See D.W.*, Docket No. 21-0778 (issued February 4, 2022); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer, id.*

<sup>13</sup> *R.C.*, Docket No. 18-1812 (issued June 14, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.5a(2)(a) (September 2020).

developed regarding, whether and to what extent, work was available to appellant within the restrictions of Dr. Shin during the claimed period of disability.

It is well established that, proceedings under FECA are not adversarial in nature, it has an obligation to see that justice is done.<sup>14</sup> While appellant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence,<sup>15</sup> particularly when such evidence is of the character normally obtained from the employing establishment or other governmental source.<sup>16</sup>

In this case, the evidence of record suggested that, immediately prior to the claimed period of disability, appellant was performing modified work, three hours per day. OWCP requested that the employing establishment submit a job offer for eight hours per day based upon the February 18, 2020 restrictions of Dr. Shin. On June 16, 2020 the employing establishment indicated that appellant had stopped working due to a nonwork-related injury. However, it did not provide a response as to, whether and to what extent, it had provided ongoing modified work to her during the claimed period of disability.

Once OWCP undertook development of the evidence including contacting the employing establishment regarding available work, it had an obligation to do a complete job and obtain a response that would resolve the issue in this case.<sup>17</sup> The Board will, therefore, set aside OWCP's April 4, 2022 decision, and remand the case for OWCP to request that a knowledgeable employing establishment official clarify whether it offered appellant modified work eight hours per day consistent with the February 18, 2020 restrictions of Dr. Shin, whether she continued to work three hours per day modified duty until she went out of work for the unrelated medical conditions, and whether and to what extent it, accommodated her ongoing restrictions for the left tibia condition during the claimed period of disability. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### CONCLUSION

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

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<sup>14</sup> 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).

<sup>15</sup> See *R.S.*, Docket No. 20-1448 (issued April 12, 2021); *R.B.*, Docket No. 20-0109 (issued June 25, 2020); *B.W.*, Docket No. 19-0965 (issued December 3, 2019).

<sup>16</sup> See *T.T.*, Docket No. 20-0383 (issued August 3, 2020).

<sup>17</sup> See *J.M.*, Docket No. 21-0569 (issued December 6, 2021); see *R.L.*, Docket No. 20-1069 (issued April 7, 2021); *W.W.*, Docket No. 18-0093 (issued October 9, 2018); *Peter C. Belkind*, 56 ECAB 580 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 4, 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: October 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