

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

K.W., Appellant)	
)	
and)	Docket No. 23-0558
)	Issued: October 19, 2023
U.S. POSTAL SERVICE, WEST AVENUE)	
CARRIER ANNEX, Stamford, CT, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 6, 2023 appellant filed a timely appeal from a February 1, 2023 merit decision 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 to consider the merits of this case.

¹ The Board notes that following the February 1, 2023 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.*

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability from work for the period November 21 through December 1, 2022, causally related to her accepted July 24, 2019 employment injury.

FACTUAL HISTORY

On July 24, 2019 appellant, then a 56-year-old delivery clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained an injury to her left shoulder when another employee hit her with a postal container while in the performance of duty. She stopped work that day. OWCP accepted the claim for aggravation of spinal stenosis of the cervical region, and aggravation of cervical disc degeneration. It expanded acceptance of the claim to include incomplete lesion of the spinal cord at C4. OWCP paid appellant wage-loss compensation on the periodic rolls beginning September 14, 2019.

On December 9, 2019 Dr. Arianne Boylan, a neurosurgeon, performed C4-T1 posterior cervical fusion on an urgent basis due to worsening myelopathy, head heaviness, and arm weakness. OWCP subsequently authorized this surgery.

Appellant accepted a limited-duty modified lead customer service clerk position beginning on September 21, 2020 working four hours a day. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning September 21, 2020 for four hours of partial disability.

Dr. Boylan examined appellant on November 8, 2021 and January 21, 2022, diagnosed cervical pseudoarthrosis with some mechanical element. She also diagnosed lumbar radiculopathy with known degenerative disease that could have had an exacerbation at the time of her injury.

On May 16, 2022 appellant accepted a modified lead customer service clerk position working from “2:00 to 10:50” five days a week with restrictions.

Dr. Boylan reported on May 11, 2022 that appellant had increased her work hours to eight hours a day with lifting restrictions. In an August 10, 2022 note, she determined that appellant’s lower back symptoms had improved with minimal neck pain and that she did not require any surgical intervention.

Appellant began using intermittent leave on August 10, 2022. She subsequently accepted a modified lead customer service clerk position on August 18, 2022.

On October 13, 2022 Dr. Paul Eugene Lleva, a Board-certified vascular neurologist, found that appellant’s symptoms had much improved and reduced the dosage of her pain medication.

Dr. Boylan completed a note on November 9, 2022 addressing appellant’s reduced lumbar symptoms. She recounted her stable but persistent neck pain which was not responding well to injections. Dr. Boylan noted that appellant had refused additional cervical surgery for extension of the fusion given pseudoarthrosis. She noted hand symptoms which seemed consistent with carpal tunnel syndrome.

In a December 1, 2022 note, appellant advised OWCP that she had exhausted her sick leave due to her accepted employment injury. She alleged continued significant pain in her neck and both arms making it difficult for her to get dressed, drive, or lift and carry.

On December 5, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period November 21 through December 1, 2022.

In a December 7, 2022 development letter, OWCP advised appellant of the deficiencies of her disability claim and the type of additional evidence needed. It afforded her 30 days to respond.

On December 14, 2022 Dr. Tabitha B. Fortt, a family practitioner, diagnosed chronic pain due to the work-related injury. She explained that appellant's pain had been managed by medication but that her neck, upper back, and arm pain had increased since she stopped her medication, preventing her from sleeping during the claimed period.

In a December 14, 2022 note, Dr. Boylan recounted appellant's history of injury and medical history. She related that appellant did not currently wish to undergo additional cervical surgery and that her back and leg pain had largely resolved.

Dr. Fortt completed a December 28, 2022 note repeating her earlier history, diagnosing chronic pain, and relating that appellant had undergone injections which did not provide immediate pain relief.

On January 24, 2023 Dr. Leigh Flagler Hanke, a Board-certified physiatrist, related treating appellant on November 22, 2022. She recounted appellant's report that due to pain she was out of work from November 28 through December 1, 2022.

By decision dated February 1, 2023, OWCP denied appellant's claim for compensation, beginning November 21, 2022. It found that the medical evidence of record was insufficient to establish that she was totally disabled from work beginning November 21, 2022 due to her accepted July 24, 2019 employment-related injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ 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.⁵ For each period of disability claimed, the employee has the

³ *Id.*

⁴ *See 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).

⁵ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁶

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position, or the medical evidence establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. As part of this burden of proof, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.⁷ This burden of proof includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁸ Where no such rationale is present, the medical evidence is of diminished probative value.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 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.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 total disability from work for the period November 21 through December 1, 2022, causally related to her accepted July 24, 2019 employment injury.

⁶ See *S.H.*, Docket No. 21-0640 (issued February 2, 2023); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁷ *S.H.*, *id.*; *S.F.*, Docket No. 19-1735 (issued March 12, 2020); *J.B.*, Docket Nos. 18-1752, 19-0792 (issued May 6, 2019); *C.G.*, Docket No. 16-1503 (issued May 17, 2017); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁸ *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁹ *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

¹⁰ *S.H.*, *supra* note 6; *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

¹¹ See *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

In support of her disability claim for the period November 21 through December 1, 2022, appellant submitted reports from Dr. Boylan dated November 9 and December 14, 2022 which described her stable but persistent neck pain and found that this was not responding well to injections. Dr. Boylan further reported that appellant had refused additional surgery for the accepted cervical condition and that her back and leg pain had largely resolved. To the extent in which Dr. Boylan attributed appellant's disability to her accepted cervical conditions, she failed to address whether she was totally disabled from work during the period claimed. The Board has held that medical evidence that does not address appellant's dates of disability is of no probative value and insufficient to establish her claim.¹²

On December 14 and 28, 2022 Dr. Fortt diagnosed chronic pain due to the work-related injury. She explained that appellant's pain had been managed by medication, but that it did not provide immediate pain relief. Dr. Fortt found that appellant's neck, upper back, and arm pain had increased since she stopped her medication, preventing her sleeping during the claimed period. She failed to provide any medical rationale explaining how appellant's accepted cervical conditions from her July 24, 2019 employment injury caused disability during the alleged time period. Dr. Fortt failed to explain how appellant's inability to work was causally related to her accepted employment conditions.¹³ Thus, these reports are of limited probative value and insufficient to establish appellant's disability claim.

On January 24, 2023 Dr. Hanke related that, due to pain, appellant was out of work from November 28 through December 1, 2022. However, she did not provide an opinion that appellant was disabled from work during the claimed period due to the accepted July 2019 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's disability is of no probative value on the issue of causal relationship.¹⁴ Therefore, the above-noted report is of no probative value with regard to the issue of appellant's disability for the claimed period and is insufficient to establish her claim for wage-loss compensation.

Although on October 13, 2022 Dr. Lleva reported that appellant's symptoms had improved, he did not address the claimed period of disability. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's disability is of no probative value on the issue of causal relationship.¹⁵ The Board finds, therefore, that his report is of no probative value and is insufficient to establish appellant's disability claim.

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's claimed period of total disability and her accepted

¹² See *G.H.*, Docket No. 20-1214 (issued December 16, 2022); *T.G.*, Docket No. 20-0121 (issued May 17, 2022); *M.L.*, Docket Nos. 18-1058 & 18-1224 (issued November 21, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *G.H.*, and *T.G.*, *id.*; *M.M.*, Docket No. 18-0817 (issued May 17, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁴ *G.J.*, Docket No. 22-0942 (issued January 10, 2023); *L.B.*, *supra* note 12; *D.K.*, *supra* note 12.

¹⁵ *Id.*

employment condition, the Board finds that she has not met her burden of proof to establish total disability from work for the period November 21 through December 1, 2022.

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 total disability from work for the period November 21 through December 1, 2022, causally related to her accepted July 24, 2019 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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