

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

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J.A., Appellant))	
and))	Docket No. 24-0889
U.S. POSTAL SERVICE, MEMPHIS))	Issued: December 11, 2024
PROCESSING & DISTRIBUTION CENTER,))	
Memphis, TN, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 3, 2024 appellant filed a timely appeal from an August 16, 2024 merit decision and an August 27, 2024 nonmerit 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

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish disability from work for the period July 14, 2022 through May 21, 2023, causally related to her accepted

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the August 27, 2024 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 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.*

employment injury; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 28, 2022 appellant, then a 65-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she developed pain and numbness in her left arm due to factors of her federal employment, including loading mail into the delivery bar code sorter machine for up to 12 hours a day. She noted that she first became aware of her condition and realized its relationship to her federal employment on May 10, 2022. Appellant stopped work on July 10, 2022. OWCP accepted the claim for left carpal tunnel syndrome and left elbow tendinitis.

In a July 19, 2022 attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16), a medical practitioner with an illegible signature advised that appellant could resume light work on July 20, 2022 with no use of the left arm.

In a July 25, 2022 work release note, Allyson Dormors, a family nurse practitioner, found that appellant could return to limited-duty work on July 26, 2022 with restrictions.

Dr. John J. Lochemes, a Board-certified orthopedic surgeon, performed a cervical magnetic resonance imaging (MRI) scan on August 19, 2022 which demonstrated multilevel foraminal stenosis most prominent at C6-7 on the left. In an August 23, 2022 note, he diagnosed cervical radiculopathy and opined that appellant was totally disabled. On September 8, 2022, Dr. Lochemes diagnosed left carpal tunnel syndrome based on an August 31, 2022 electrodiagnostic study and indicated that appellant related that her job duties included repetitively grasping/loading mail. He opined that there was "reason to believe that the repetitive movements/grasping at work could have caused her diagnosed condition."

In reports dated April 27 through July 11, 2023, Dr. Syed Naseeruddin, a Board-certified family practitioner, examined appellant regarding a repetitive occupational injury to her bilateral wrists, left elbow, and neck. He described her work activities of loading mail into a sorting machine. Dr. Naseeruddin diagnosed left tennis elbow, carpal tunnel syndrome, cervical radiculopathy, and bilateral osteoarthritis of the carpometacarpal (CMC) joints of the thumbs and explained why these conditions resulted from repetitive employment duties. He indicated that appellant should slowly return to work with restrictions, and on July 11, 2023 noted that she requested fewer work restrictions to provide for herself financially. Dr. Naseeruddin completed work capacity evaluations (Form OWCP-5c) from April 27 through June 7, 2023 advising that she could perform sedentary work reaching above the shoulder, twisting, lifting, pushing, pulling, and performing repetitive movements of the wrists and elbows for two hours. He completed a duty status report (Form CA-17) on July 11, 2023 restricting appellant's use of her upper extremities to four hours a day.

In reports dated August 15 through November 13, 2023 Dr. Naseeruddin related that appellant had returned to full-time work on May 24, 2023 but began performing light-duty work on June 3, 2023 after she experienced increased pain using a flat sorter machine. He noted that after her return to work she had experienced increased pain symptoms in her left shoulder and wrists. Dr. Naseeruddin related that appellant could not work less than eight hours due to financial constraints. He completed CA-17 forms of even date and continued to find that she could not

perform her date-of-injury position. Dr. Naseeruddin provided restrictions on the use of appellant's upper extremities to four hours a day.

Beginning on November 29, 2023 appellant filed claims for compensation (Form CA-7) alleging disability from work during the period July 14, 2022 through May 21, 2023.

In a December 12, 2023 report, Dr. Naseeruddin repeated his earlier findings and diagnoses. He completed a Form CA-17 of even date and determined that appellant could perform simple grasping for eight hours a day, "casing only." Dr. Naseeruddin continued to restrict the remainder of upper extremity movements to four hours a day.³

On January 16, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Samuel Meredith, Jr., a Board-certified orthopedic surgeon, for a second opinion examination. In his February 7, 2024 report, Dr. Meredith noted findings on physical examination and determined that the accepted conditions of carpal tunnel syndrome and left elbow tendinitis had resolved. He further opined that the additional conditions of aggravation of degenerative cervical spine disease and CMC arthritis of both thumbs were causally related to the accepted employment activities of repetitive motion. Dr. Meredith completed a Form OWCP-5c and determined that appellant could return to work for eight hours a day lifting no more than 10 pounds and performing no overhead reaching, twisting, bending, stooping, or repetitive movements of the wrists.

OWCP requested clarification of Dr. Meredith's report on March 13, 2024 with regard to whether appellant's employment-related conditions had resolved and whether the employment injury aggravated her preexisting condition(s). In a March 19, 2024 supplemental opinion, Dr. Meredith explained that appellant had no subjective symptomatology and no physical findings indicative of carpal tunnel syndrome or an elbow condition. He further related that she had sustained an aggravation of preexisting degenerative cervical spine conditions and osteoarthritis of the thumbs secondary to repetitive motion job activities and that these aggravations were permanent. He explained that appellant's work restrictions were due to the additional work-related conditions of an aggravation of CMC arthritis and degenerative cervical spine conditions.

On August 16, 2024 OWCP expanded its acceptance of the claim to include permanent aggravation of degenerative cervical spine disease and permanent aggravation of bilateral thumb osteoarthritis.

In a letter dated April 3, 2024, OWCP requested that the employing establishment verify appellant's pay status for the period July 14, 2022 through May 21, 2023, and whether limited-duty work was available for this period, and to provide a description of any full or light-duty work that she had performed during this period.

On April 8, 2024 Dr. Naseeruddin repeated his diagnoses. He clarified that the December 12, 2023 Form CA-17 allowed eight hours of standing, walking, kneeling, bending/stooping, and twisting with four hours of pulling, pushing, fine manipulation, and reaching above the shoulder at appellant's request, as she related that she could not work less than

³ Appellant retired from the employing establishment effective December 22, 2023.

eight hours a day due to financial strain. Dr. Naseeruddin provided a weight limit of 15 pounds and found that she could not operate heavy machinery or push and pull.

In an April 11, 2024 response to OWCP's development letter, the employing establishment contended that appellant had returned to work for one day on March 8, 2023. On April 17, 2024 the employing establishment related that a limited-duty position was available, but that it had not provided appellant with a modified-duty job offer.

In a development letter dated May 23, 2024, OWCP informed appellant of the deficiencies of her Form CA-7 claim for disability from work during the period July 14, 2022 through May 21, 2023. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

OWCP received additional evidence. On September 22 and 28, 2022 and January 9, 2023, Dr. Lochemes found that appellant was totally disabled. On January 16, 2023 he determined that she could return to work on March 4, 2023. In a March 23, 2023 note, Dr. Lochemes opined that appellant was totally disabled from March 30 through May 18, 2023.

On July 15, 2024 Dr. Naseeruddin completed a narrative report repeating his findings, diagnoses, and work restrictions.

By decision dated August 16, 2024, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish disability from work during the period July 14, 2022 through May 21, 2023, causally related to the accepted employment injury.

On August 22, 2024 appellant requested reconsideration. No additional evidence was received.

By decision dated August 27, 2024, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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

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.⁵ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁶ An employee who has a physical impairment causally related to a federal employment

⁴ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ 20 C.F.R. § 10.5(f).

⁶ *See G.T.*, Docket No. 18-1369 (issued March 13, 2019); *L.W.*, Docket No. 17-1685 (issued October 9, 2018); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

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.⁷ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.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 accepted employment injury.⁹

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work causally related to 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 their disability and entitlement to compensation.¹¹

ANALYSIS -- ISSUE 1

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

On February 7, 2024, Dr. Meredith, an OWCP referral physician, opined that appellant had no residuals of her accepted carpal tunnel syndrome and left elbow tendinitis. He diagnosed an aggravation of degenerative cervical spine disease and CMC arthritis of the bilateral thumbs causally related to her repetitive employment duties and provided work restrictions. Dr. Meredith advised that appellant could work eight hours per day lifting no more than 10 pounds and performing no repetitive wrist movement, overhead reaching, twisting, bending, or stooping. In a supplemental report dated March 19, 2024, Dr. Meredith opined that appellant had sustained a permanent aggravation of preexisting degenerative cervical spine conditions and osteoarthritis of the thumbs due to repetitive work duties and had restrictions resulting from these conditions. However, Dr. Meredith was not asked to address the specific claimed periods of disability.¹²

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that

⁷ See *H.B.*, Docket No. 20-0587 (issued June 28, 2021); *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

⁸ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

⁹ *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁰ See *B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹¹ *Id.*

¹² *M.R.*, Docket No. 24-0562 (issued September 26, 2024).

justice is done.¹³ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁴

On remand OWCP shall request a supplemental opinion from Dr. Meredith addressing whether appellant was disabled from work during the period July 14, 2022 through May 21, 2023 causally related to the accepted employment injury.¹⁵ Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.¹⁶

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2024 decision of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further proceedings

¹³ See *M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

¹⁴ *Id.*; see also *R.M.*, Docket No. 16-0147 (issued June 17, 2016).

¹⁵ See *M.S. and E.B.*, *supra* note 13p.; *S.G.*, Docket No. 22-0014 (issued November 3, 2022); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *P.S.*, Docket No. 17-0802 (issued August 18, 2017).

¹⁶ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

consistent with this decision of the Board. The August 27, 2024 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: December 11, 2024
Washington, DC

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

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

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