

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

C.J., Appellant)	
)	
and)	Docket No. 21-1424
)	Issued: February 27, 2024
U.S. POSTAL SERVICE, RIO RANCHO)	
POST OFFICE, Rio Rancho, NM, Employer)	
)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 27, 2021 appellant filed a timely appeal from May 13 and 27, and July 27, 2021 merit decisions 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 July 27, 2021 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the periods March 16 through 27, 2020, February 2 through 12, 2021, and February 15 through 26, 2021, causally related to her accepted October 4, 2019 employment injury.

FACTUAL HISTORY

On October 4, 2019 appellant, then a 60-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured her right arm, knee, and the right side of her ribcage when she slipped and fell in the rain when stepping out of her postal vehicle to deliver a package while in the performance of duty. She stopped work on the date of injury. By decision dated October 17, 2019, OWCP accepted the claim for nondisplaced closed fracture of head of right radius, and contusion of right front wall of thorax.

In March 13, 2020 reports, Dr. Justin Bartley, a Board-certified orthopedic surgeon, noted that, although he had initially placed appellant on light-duty work following the October 4, 2019 employment injury, she had been unable to return to work due to pain. Physical and occupational therapy had restored appellant's right elbow range of motion, and the fracture had healed completely.³ Dr. Bartley diagnosed subacromial impingement of the right shoulder. He held appellant off from work.

On March 27, 2020 appellant filed a claim for compensation (Form CA-7) for disability from work for the period March 16 through 27, 2020.

In a development letter dated April 1, 2020, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of factual and medical evidence needed and afforded her 30 days to respond.

In an April 17, 2020 report, Dr. Bartley diagnosed right carpal tunnel syndrome and ordered an electromyogram and nerve conduction velocity (EMG/NCV) study of the right upper extremity.⁴

By decision dated May 19, 2020, OWCP denied appellant's claim for disability from work for the period March 16 through 27, 2020. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period due to the accepted employment injury.

In reports dated June 2 and July 2, 2020, Dr. Andrew Schannen, a Board-certified orthopedic surgeon, provided a history of injury and treatment. He related appellant's complaints of paresthesias and diminished sensation in the right upper extremity. On examination of the right

³ A March 13, 2020 right elbow x-ray report demonstrated a healing radial head fracture with unchanged alignment. A May 15, 2020 right elbow x-ray report demonstrated an intra-articular radial head fracture with articular incongruity and mild step-off deformity.

⁴ On June 2, 2020 OWCP received an April 6, 2020 note by Dr. Bartley prescribing the use of an H-wave home electrotherapy system. Dr. Bartley renewed this prescription on July 15, 2020.

upper extremity, Dr. Schannen observed nonanatomic paresthesias throughout the arm, and two-point discrimination at 15 millimeters (mm). He opined that appellant's sensory findings were consistent with a radial head fracture or carpal tunnel syndrome. Dr. Schannen injected the right thumb flexor tendon sheath and referred her to Dr. Edward K. Poon, a radiologist and pain medicine specialist, to manage right elbow pain.⁵

On July 14, 2020 OWCP received a May 7, 2020 report by Dr. Christopher S. Calder, a Board-certified neurologist. Dr. Calder opined that an EMG/NCV study of the right upper extremity demonstrated a "very moderate slowing of median conduction across the right wrist on the transcarpal sensory latency" without evidence of radiculopathy, plexopathy, or entrapment neuropathy.⁶

In an August 18, 2020 report, Dr. Schannen recommended that appellant consult a pain specialist or her primary care provider to determine a "return to work date and restrictions."⁷

In reports dated September 25 through October 12, 2020, Dr. Poon diagnosed right forearm and right shoulder pain of unknown etiology, with a possible right rotator cuff injury.

In a December 30, 2020 report, Dr. Alfred Emmel, Board-certified in emergency medicine, diagnosed a right radial head fracture and radicular pain in the right upper extremity. He returned appellant to full-duty work.

In a report dated January 6, 2021, Dr. Calder noted marked weakness in the right hand secondary to pain and decreased right upper extremity sensation in a glove distribution. He opined that imaging studies demonstrated mild remodeling due to post-traumatic changes of the radial head, small right elbow effusion, ulnar minus variance, tenosynovitis and tendinosis of the extensor carpi ulnaris tendon at the level of the notch, and mild right carpal tunnel syndrome by May 7, 2020 EMG/NCV study. Dr. Calder diagnosed right carpal tunnel syndrome, right upper extremity pain, and complex regional pain syndrome (CRPS) of the right hand. In a duty status report (Form CA-17) dated January 6, 2021, he returned appellant to full-time restricted duty.⁸

In a January 25, 2021 report, Dr. Alan L. Altman, a Board-certified orthopedic surgeon, reviewed a history of injury and treatment. He noted appellant's symptoms of right elbow pain with popping and clicking sensations, paresthesias in the right ring and small fingers, swelling in the right hand, and right wrist pain with swelling and popping along the radial side. On

⁵ OWCP received reports from Kevin Regan, a physician assistant. It also received a May 15, 2020 report by Eva Michele Hardy, and August 25 and December 10, 2020 reports by Christina A. Armijo, both nurse practitioners.

⁶ In a report dated July 15, 2020, Dr. Justin I. Matthew, a physician specializing in emergency medicine, diagnosed right elbow pain and prescribed medication.

⁷ A September 6, 2020 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated multilevel spondylosis with Grade 1 spondylolisthesis of C3-4 and C4-5, minimal spinal stenosis at C4-5, and moderate right C4-5 and left C5-6 neuroforaminal narrowing. A December 13, 2020 MRI scan of the right upper extremity demonstrated mild remodeling related to post-traumatic changes of the radial head, a small elbow effusion, ulnar sinus variance, and tenosynovitis and tendinosis of the extensor carpi ulnaris tendon at the level of the ulnar notch.

⁸ In a January 11, 2021 report, Dr. Ebubechukwu C. Njemanze, an internist, diagnosed right arm pain.

examination, Dr. Altman observed global tenderness of the right wrist and subjectively decreased sensation throughout the right hand. He obtained x-rays of the right elbow, which demonstrated an “old fracture malunion of the lateral side of the radial head with very slight depression” and some joint space narrowing at the radial capitellar joint. Dr. Altman also obtained x-rays of the right wrist, which demonstrated an ulna negative variance of two to three mm. He diagnosed malunion of radial head fracture of the right elbow, right wrist/extensor carpi ulnaris tendinitis, and mild right carpal tunnel syndrome.

On January 29, 2021 OWCP referred appellant, the medical record, a January 14, 2021 statement of accepted facts (SOAF), and a series of questions for a second opinion by Dr. Keith Harvie, an osteopathic physician Board-certified in orthopedic surgery, regarding the status of her accepted conditions and whether they rendered her disabled from work.

In a February 1, 2021 report, Dr. Altman diagnosed work-related CRPS. He also provided a concurring opinion that the medical record did not support that the diagnosed right carpal tunnel syndrome was related to the October 4, 2019 radial head fracture.

In a development letter dated February 9, 2021, OWCP requested that Dr. Altman provide a supplemental report explaining how and why the diagnosed CRPS was causally related to the accepted October 4, 2019 employment injury.

On February 12, 2021 appellant filed a Form CA-7 for the period February 2 through 12, 2021.

In a development letter dated February 22, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and afforded her 30 days to respond.

On February 26, 2021 appellant filed a Form CA-7 for the period February 15 through 26, 2021.

In a March 8, 2021 report, Dr. Altman noted that appellant was first diagnosed with CRPS by Dr. Calder.

Dr. Harvie submitted a March 19, 2021 report, wherein he reviewed the medical record and SOAF. He opined that appellant had disuse atrophy rather than CRPS. Dr. Harvie related her difficulties with activities of daily living including bathing and dressing, and her complaints of weakness and paresthesias throughout the right upper extremity. On examination of the right upper extremity, he observed swelling in the hand and wrist, reduced range of motion with stiffness and spasm, decreased vibratory sensation, decreased pinprick sensation in the median, radial, and ulnar nerve distributions, atrophy of the thenar eminence and hypothenar eminence, frozen shoulder and elbow, and limited motion of the right hand. Dr. Harvie diagnosed frozen right shoulder, elbow, and wrist, disuse atrophy of the right thenar and hypothenar eminences, right shoulder muscles and elbow muscles, and depression. He found appellant disabled from work due to right upper extremity pain and restricted motion of the right wrist, elbow, and shoulder. Dr. Harvie opined that she did not have CRPS as medical literature indicated that the syndrome did not, in fact, exist. He asserted that appellant had “developed disuse atrophy with a frozen shoulder, frozen elbow, [and] frozen wrist,” which had worsened over time. Dr. Harvie opined that the employment injury

remained active and disabling as appellant's right upper extremity was "essentially useless." He completed a work capacity evaluation (Form OWCP-5c) report, finding her totally disabled from work.

In an April 9, 2021 letter, OWCP requested that Dr. Harvie submit a supplemental report specifying the date appellant became disabled from work due to a frozen right elbow, shoulder, and wrist, and whether these conditions were diagnoses or symptoms.

On April 20, 2021 OWCP expanded its acceptance of appellant's claim to include stiffness of right elbow, adhesive capsulitis of right shoulder, stiffness of right shoulder, and stiffness of right wrist.

By decision dated May 13, 2021, OWCP denied appellant's claim for compensation for the period February 2 through 12, 2021. It found that the dates of disability could not be determined as Dr. Harvie had not yet provided the requested supplemental report specifying whether she was disabled from work during the claimed period of disability due to the accepted employment injury.

On May 18, 2021 appellant, through her then-counsel, requested reconsideration of OWCP's May 19, 2020 decision denying her claim for disability from work during the period March 16 through 27, 2020.

Appellant submitted May 11, 12, and 16, 2021 reports by Dr. Altman, accompanied by medical literature regarding CRPS. Dr. Altman opined that, while there was only minimal evidence to support Dr. Harvie's diagnosis of adhesive capsulitis, there was a clear etiology for post-fracture CRPS with subtle injury to small nerves, characteristic altered temperature sense, and paresthesias. He noted that the December 13, 2020 MRI scan identified extensor carpi ulnaris tendinitis at the wrist. Dr. Altman explained that the "origin of the extensor tendon is the lateral epicondyle, and the muscle crosses the radial head and neck prior to going to the wrist." The radial head fracture and elbow joint swelling could, therefore, irritate the proximal muscle, which "may cause dysfunction of the entire musculo-tendon unit" and tendinitis at the wrist. Dr. Altman diagnosed minimal malunion of right radial head fracture, CRPS, right elbow lateral and medial epicondylitis, cubital tunnel, and possible right carpal tunnel syndrome as observed by Dr. Calder. He indicated that appellant was likely disabled from her date-of-injury position.

By decision dated May 27, 2021, OWCP denied appellant's claim for wage-loss compensation for the period February 15 through 26, 2021 as it was unable to determine the appropriate dates of disability as it had not yet received the requested supplemental report from Dr. Harvie on this issue.

OWCP subsequently received a May 18, 2021 report, wherein Dr. Altman referred appellant to Dr. Calder for a neurologic follow up and EMG/NCV studies to assess carpal tunnel syndrome, cubital tunnel syndrome, and CRPS.

By decision dated July 27, 2021, OWCP denied modification of the May 19, 2020 decision.

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.⁹ 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.¹⁰ 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.¹¹

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.¹²

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.¹³ 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.¹⁴

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.¹⁵ 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

⁹ 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).

¹⁰ *Id.*

¹¹ 20 C.F.R. § 10.5(f); *B.O.*, *id.*; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹² *Id.*

¹³ *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

¹⁴ *R.H.*, Docket No. 18-1382 (issued February 14, 2019).

¹⁵ 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).

would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁶

ANALYSIS

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

On January 29, 2021 OWCP referred appellant, the medical record, and a SOAF for a second opinion evaluation to Dr. Harvie to determine the extent of her work-related conditions. Dr. Harvie submitted a March 19, 2021 report, wherein he found her totally disabled from work due to frozen right shoulder, elbow, and wrist with disuse atrophy. On April 9, 2021 OWCP requested that he submit a supplemental report specifying the date appellant became disabled from work due to the diagnosed right upper extremity conditions. However, the record reflects that OWCP issued its May 13 and 27 and July 27, 2021 decisions denying her claims for disability prior to obtaining the requested supplemental report from Dr. Harvie.

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁷ It has an obligation to see that justice is done.¹⁸ Once OWCP undertook development of the evidence by referring appellant's case for a second opinion evaluation, it was required to obtain a proper evaluation and report regarding the issue in this case.¹⁹ The Board will, therefore, set aside OWCP's May 13 and 27 and July 27, 2021 decisions and remand the case for OWCP to obtain the supplemental second-opinion report requested from Dr. Harvie. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹⁶ *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).

¹⁷ *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).

¹⁸ *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).

¹⁹ *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 July 27 and May 13 and 27, 2021 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 27, 2024
Washington, DC

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

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

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