

² The Board notes that, following the May 10, 2023 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 November 6, 2021 through February 12, 2022 and commencing February 13, 2022, causally related to her accepted August 10, 2021 employment injury.

FACTUAL HISTORY

On August 18, 2021 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 10, 2021 she sustained an injury to the upper left side of her head when she struck the edge of a light scone while in the performance of duty. She stopped work on August 10, 2021. OWCP accepted appellant's claim for concussion without loss of consciousness and contusion of unspecified part of the head. It paid her wage-loss compensation on the supplemental rolls from September 25 through November 3, 2021.

In a note dated December 3, 2021, Mahvash Soltani, a nurse practitioner, diagnosed closed head injury with concussion without loss of consciousness and returned appellant to full-duty work.

Appellant filed claims for compensation (Form CA-7) for disability from work commencing November 6, 2021.

In support thereof, appellant submitted a January 3, 2022 report, wherein Keith Byrd, a physician assistant, noted treatment of appellant for mild, dull pain in the right parietal and occipital aspect of the head that began after the August 10, 2021 employment injury. He diagnosed concussion without loss of consciousness and opined that appellant could return to full-duty work. In a work status report of the same date Mr. Byrd repeated his diagnosis and returned appellant to full-duty work.

In a February 10, 2022 development letter, OWCP informed appellant of the deficiencies of her claim for compensation. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

OWCP subsequently received additional evidence. On February 3, 2022 Dr. Howard Belfer, a Board-certified neurologist, performed a comprehensive neurologic evaluation. He noted that appellant's history was significant for mild Arnold-Chiari syndrome and migraine headaches that were treated with multiple medications. After the work-related injury, appellant complained of continuous headaches associated with light sensitivity and ringing in the ears. Dr. Belfer noted an essentially normal examination and diagnosed headaches of mixed tension and migrainous type. He opined that appellant's employment injury triggered an exacerbation of her underlying headache disorder, which was attributed to migraine and Arnold-Chiari syndrome. Dr. Belfer deferred to her treating physician for work status. In a form report of the same date, he diagnosed closed head injury and cluster headaches. Dr. Belfer noted that appellant was unable to perform her usual work.

On February 17, 2022 Dr. Walter Panganiban, a Board-certified family medicine physician, treated appellant for mild dull pain in the right parietal and occipital aspect of the head.

He noted a normal neurologic examination and diagnosed closed head injury and history of migraine headaches. Dr. Panganiban returned appellant to full-duty work on February 17, 2022.

In a separate February 17, 2022 report, Katherine Uphoff, a physician assistant, also treated appellant and diagnosed closed head injury, history of migraine headaches, and Arnold-Chiari syndrome. In a work status report of the same date she noted diagnoses and advised that appellant was totally disabled.

Appellant filed Form CA-7 claims for disability from work commencing February 17, 2022.

By decision dated March 29, 2022, OWCP denied appellant's claim for disability from work for the period November 6, 2021 through February 12, 2022. It found that the medical evidence of record was insufficient to establish disability during the claimed period due to her August 10, 2021 employment injury.

OWCP received additional evidence. In a form report dated February 17, 2022, Dr. Guy Engelmann, a Board-certified general surgeon, treated appellant for ongoing headaches, migraines, insomnia, photophobia, and dizziness after an August 10, 2021 employment injury. He diagnosed closed head injury and history of migraine headaches and returned her to full-duty work.

In duty status reports (Form CA-17) dated February 17 and April 12, 2022, Dr. Engelmann diagnosed unspecified injury to the head and returned appellant to full-time regular duty. In a form report dated April 12, 2022, he diagnosed closed head injury and history of migraines and returned her to modified duty with restrictions of using glasses as needed for light sensitivity, and breaks every 60 minutes as needed for headaches.

On April 12, 2022 Iqra Maqsood, a nurse practitioner, diagnosed closed head injury and history of migraine headaches and continued modified-duty work.

In an April 7, 2022 report, Dr. Tanja Kujac, a Board-certified physiatrist, noted appellant's history was significant for several head injuries including in 2018 when she banged her head on a door jam, in 2013 when she was attacked by a dog and hit her head, and when she was involved in an automobile accident and struck her forehead on the dashboard. She diagnosed headaches of mixed tension and migrainous type with the underlying headaches exacerbated by the August 10, 2021 employment injury. Dr. Kujac continued her work status. In a form report and work status report of the same date, she diagnosed closed head injury and history of migraine headaches and returned appellant to modified duty with restrictions of use of glasses for light sensitivity and 15-minute breaks every 60 minutes for headaches.

On April 15, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review with regard to the March 29, 2022 decision.

Appellant thereafter filed several claims for compensation (Form CA-7) for work-related disability commencing March 26, 2022.³

OWCP subsequently received a May 16, 2022 report, wherein Dr. Engelmann, noted his treatment of appellant for chronic headaches and Arnold-Chiari syndrome. Appellant reported hitting her head at work in August 2021, which caused a recurrence of headaches. Dr. Engelmann diagnosed history of migraine headaches and closed head injury. He continued modified duty.

On May 26, 2022 OWCP referred appellant to Dr. Michael M. Bronshvag, a Board-certified neurologist, for a second opinion with regard to the current status of appellant's accepted conditions, including appellant's present level of disability.

In a June 22, 2022 report, Dr. Bronshvag, the second opinion physician, diagnosed preexisting Arnold-Chiari malformation, stable and borderline, hypertension, psychological difficulties, and previous headache difficulties. He noted subjective findings of headaches that did not correspond with objective findings. Dr. Bronshvag opined that the work-related condition resolved, and appellant required no further care for the contusion, but required follow-up treatment for her headaches. He advised that she was able to return to the assistant letter carrier position without restrictions related to her head injury. Dr. Bronshvag found that appellant had reached maximum medical improvement as of the date of his examination. In a work capacity evaluation (Form OWCP-5c) of even date, he diagnosed headaches and contusion and indicated that appellant could perform sedentary, light, and medium-duty work without restrictions.

In form reports dated June 28 and August 16, 2022, Dr. Engelmann diagnosed history of migraines and closed head injury and continued appellant's modified work restrictions. In an August 16, 2022 Form CA-17, Dr. Engelmann repeated his diagnoses and returned her to full duty.

A hearing was held on November 16, 2022 with regard to the March 29, 2022 denial of disability for the period November 6, 2021 through February 12, 2022.

By decision dated January 31, 2023, an OWCP hearing representative affirmed the March 29, 2022 decision.

OWCP subsequently received a February 22, 2023 supplemental report, wherein Dr. Bronshvag opined that the August 10, 2021 work-related injury aggravated appellant's preexisting headache condition. He noted her headache condition was a combination of Arnold-Chiari syndrome, hypertension, and muscle contractions headaches prior to the August 2021 employment injury. Dr. Bronshvag opined that appellant developed a mild traumatic brain injury causing a worsening of the headache symptoms.

By decision dated May 9, 2023, OWCP expanded the acceptance of appellant's claim to include unspecified focal traumatic brain injury without loss of consciousness.

³ In a notification of personnel action Standard Form (SF)-50 dated October 22, 2021 appellant was separated from employment, effective August 23, 2021.

By decision dated May 10, 2023, OWCP denied appellant's claim for wage-loss compensation for disability from work commencing February 13, 2022. It found that the medical evidence of record was insufficient to establish that she was disabled from work during the claimed period due to her August 10, 2021 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.⁵ 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.⁶ Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues, which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.⁷ Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.⁸

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.⁹ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹⁰ 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.¹¹

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence 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.¹²

⁴ *Supra* note 1.

⁵ *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Id.*; *William A. Archer*, 55 ECAB 674 (2004).

⁷ *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, *id.*

⁸ *Dean E. Pierce*, 40 ECAB 1249 (1989).

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

¹⁰ *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

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

¹² *See B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, *supra* note 6; *see also C.S.*, Docket No. 17-1686 (issued February 5, 2019).

Where employment is terminated, disability benefits would be payable if the evidence of record established that the claimant was terminated due to injury-related physical inability to perform assigned duties, or the medical evidence of record established that the claimant was unable to work due to an injury-related disabling condition.¹³

ANALYSIS

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

To determine the status of appellant's accepted conditions, OWCP referred appellant to Dr. Bronshvag for a second opinion evaluation. In a June 22, 2022 report, Dr. Bronshvag diagnosed preexisting Arnold-Chiari malformation, stable and borderline, hypertension, psychological difficulties, and previous headache difficulties. He noted subjective findings of headaches that did not correspond with objective findings. Dr. Bronshvag opined that the work-related condition resolved and appellant required no further care for the contusion, but required follow-up treatment for her headaches. He advised that she was able to return to the assistant letter carrier position without restrictions related to her head injury. In a Form OWCP-5c of even date, he diagnosed headaches and contusion and indicated that appellant could perform sedentary, light, and medium-duty work without restrictions. OWCP subsequently received a February 22, 2023 supplemental report, wherein Dr. Bronshvag opined that the August 10, 2021 work-related injury aggravated appellant's preexisting headache condition. He noted her headache condition was a combination of Arnold-Chiari syndrome, hypertension, and muscle contractions headaches prior to the August 2021 employment injury. Dr. Bronshvag opined that appellant developed a mild traumatic brain injury causing a worsening of the headache symptoms. OWCP, however, did not specifically ask that he address whether appellant was disabled from work during the periods November 6, 2021 through February 12, 2022 and commencing February 13, 2022 due to her accepted right ankle condition.

It is well established that, proceedings under FECA are not adversarial in nature, it has an obligation to see that justice is done.¹⁴ While appellant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence.¹⁵ Once OWCP undertook development of the evidence it had an obligation to do a complete job and obtain a response that would address the issue in this case.¹⁶

The Board shall, therefore, set aside OWCP's January 31 and May 10, 2023 decisions, and remand the case for OWCP to request that Dr. Bronshvag specifically address whether appellant was disabled from work during the claimed periods of November 6, 2021 through February 12,

¹³ S.S., Docket No. 18-1680 (issued March 4, 2019); S.J., Docket No. 17-0783 (issued April 9, 2018).

¹⁴ 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).

¹⁵ 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).

¹⁶ 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).

2022 and commencing February 13, 2022 causally related to the accepted employment injury. 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.

ORDER

IT IS HEREBY ORDERED THAT the January 31 and May 10, 2023 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 21, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board