

J.B., Appellant

**U.S. POSTAL SERVICE, POST OFFICE,
Grand Rapids, MI, Employer**

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

Case Submitted on the Record

Before:

ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On September 26, 2023 appellant filed a timely appeal from an August 25, 2023 merit 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

The issue is whether appellant has met her burden of proof to establish disability from work for the period October 8 through 21, 2022 causally related to her accepted employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the August 25, 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.*

FACTUAL HISTORY

On September 14, 2022 appellant, then a 53-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed severe pain in her right elbow and numbness, tingling, and coldness in her hand due to factors of her federal employment, including repetitive casing, pulling, and delivering mail. She noted that she first became aware of her condition and realized its relation to her federal employment on September 1, 2020. Appellant stopped work on September 7, 2022. On October 5, 2022 OWCP accepted her claim for right elbow tendinitis.

OWCP received a duty status report (Form CA-17) dated October 6, 2022 by Dr. Terri Williams, a Board-certified emergency medicine physician, who noted a diagnosis of chronic tendinitis and clinical findings of pain in right elbow. Dr. Williams advised that appellant could sit for five hours per day and stand, walk, climb, kneel, bend, stoop, twist, drive and operate machinery up to one hour per day.

On October 25, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period October 8 through 21, 2022. On the reverse side of the claim form, the employing establishment noted that appellant was in a leave without pay (LWOP) status from October 8 through 21, 2022.

In a November 3, 2022 memorandum of telephone call (Form CA-110), OWCP noted that it left a message with appellant to verify if she was claiming LWOP due to no work being available.

In a Form CA-17 dated November 3, 2022, Dr. Williams noted that appellant had a right elbow injury. She advised that appellant could work modified duty and provided specific restrictions.

In a November 7, 2022 development letter, OWCP informed appellant of the deficiencies of her claim for disability. It advised her of the type of medical evidence needed, including a medical opinion reflecting that she was totally disabled due to her accepted condition. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received a report dated October 6, 2022 by Dr. Williams who indicated that appellant was evaluated for complaints of right elbow pain for the past month. Dr. Williams reported that on September 6, 2022 appellant was seen at the emergency department and placed off work. On examination of appellant's right arm, she observed pain with supination and pronation at the elbow, and tenderness over the lateral epicondyle. Dr. Williams diagnosed right elbow tendinitis.

Appellant submitted an emergency department report dated October 6, 2022 by Dr. Jamie Christopoulos, an osteopathic physician Board-certified in emergency medicine, who indicated that appellant was evaluated for complaints of ongoing right elbow pain since 2020 secondary to her job as a mail carrier. Dr. Christopoulos reported that appellant declined a physical examination and requested that he complete some paperwork for workers' compensation. He diagnosed right elbow pain.

In a November 8, 2022 Form CA-110, the employing establishment informed OWCP that it had received more medical evidence from appellant. It noted that it was unable to accommodate her restrictions, so she continued to be off work.

By decision dated December 1, 2022, OWCP denied appellant's claim for compensation for disability from work for the period October 8 through 21, 2022. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period due to her employment injury.

On December 16, 2022 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review.

On January 10, 2023 OWCP paid appellant wage-loss compensation on the supplemental rolls, beginning October 22, 2022. It noted that the employing establishment was unable to accommodate her restrictions.

On February 15, 2023 appellant accepted a part-time, modified rural carrier associate position working two hours per day. OWCP adjusted her wage-loss compensation benefits to reflect her loss of wage-earning capacity.

A hearing was held before a representative of OWCP's Branch of Hearings and Review on June 7, 2023.

By decision dated August 25, 2023, OWCP's hearing representative affirmed the December 1, 2022 OWCP decision.

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 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 become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of the reliable, probative, and substantive medical opinion evidence.⁷ The medical evidence 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 agency is not able to

³ *Supra* note 1.

⁴ *C.B.*, Docket No. 20-1621 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ 20 C.F.R. § 10.5(f); *J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁶ *S.Y.*, Docket No. 20-0347 (issued March 31, 2023); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁷ *J.M.*, Docket No. 20-1507 (issued August 8, 2023); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

accommodate.⁸ Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.⁹

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.¹⁰

ANALYSIS

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

Appellant filed a Form CA-7 for disability from work for the period October 8 through 21, 2022. In support of her claim, she submitted a Form CA-17 dated October 6, 2022 by Dr. Williams, who noted a diagnosis of chronic tendinitis and clinical findings of pain in the right elbow. Dr. Williams authorized appellant to work part-time, modified duty and provided specific work restrictions. The record reflects that on November 3, 2022 OWCP contacted the employing establishment *via* telephone to verify if appellant was claiming wage-loss compensation due to no work being available. In a November 8, 2022 Form CA-110, the employing establishment informed OWCP that it was unable to accommodate appellant's restrictions, so she continued to be off work.

As noted above, to establish disability from work a claimant must submit medical evidence that either establishes that he or she is precluded from performing any type of work, or that she has work restrictions due to the injury that the employing agency is not able to accommodate.¹¹ In this case, appellant submitted medical evidence dated October 6, 2022, which noted her accepted right shoulder condition, provided examination findings, and recommended work restrictions. On November 8, 2022 the employing establishment subsequently confirmed that appellant remained out of work because it was unable to accommodate her work restrictions. It did not, however, confirm nor deny that work was available within her restrictions during the claimed period of disability from October 8 through 21, 2022. The Board finds, therefore, that the factual evidence of record is insufficient to determine whether appellant is entitled to wage-loss compensation for the claimed period because the employing establishment was unable to accommodate her work restrictions due to her accepted injury. OWCP should have requested that the employing establishment clarify the dates that appellant did not work because it was unable to accommodate her work restrictions.¹² The Board notes that this factual evidence addressing the specific dates of disability is particularly important as OWCP paid appellant wage-loss compensation beginning October 22, 2022.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.5a(2) (February 2013).

⁹ *B.L.*, Docket No. 22-0998 (issued July 10, 2023); *C.S.*, Docket No. 20-1621 (issued June 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹⁰ See *M.M.*, Docket No. 21-0482 & 21-1051 (issued April 19, 2023); *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, *supra* note 7.

¹¹ *Supra* note 8.

¹² *K.C.*, Docket No. 22-0788 (issued August 23, 2023); *G.P.*, Docket No. 21-0112 (issued July 14, 2021).

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.¹³ OWCP has an obligation to see that justice is done.¹⁴ Thus, the Board will remand the case to OWCP to obtain clarifying information from the employing establishment regarding whether there was work available within appellant's work restrictions during the claimed period of disability from October 8 through 21, 2022. Following this and any other necessary further development, 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 August 25, 2023 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: March 13, 2024
Washington, DC

Alec J. Koromilas, 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

¹³ See *e.g.*, *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71 (1956).

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).