United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 25-0845**
	)	**Issued: December 8, 2025**
DEPARTMENT OF VETERANS AFFAIRS, VA BOSTON HEALTHCARE SYSTEM, WEST ROXBURY VA MEDICAL CENTER, WEST ROXBURY, MA, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 3, 2025 appellant filed a timely appeal from a July 21, 2025 merit decision and an August 19, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, appellant asserted that he wanted an opportunity to defend his leave and attendance. The Board, in exercising its discretion, denies appellant's request for oral argument because the argument on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish intermittent disability from work for the period March 27 through April 18, 2023 causally related to her accepted February 9, 2023 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 February 13, 2023 appellant, then a 48-year-old operating room registered nurse, filed a traumatic injury claim (Form CA-1) alleging that on February 9, 2023 she fractured her left second toe while in the performance of duty. She stopped work on that date. Appellant returned to part-time modified duty five hours a day on March 27, 2023 and full-duty work on April 19, 2023. OWCP accepted the claim for left toe fracture.

Appellant sought medical treatment on February 9, 2023 from Dr. Stephan A. Gaehde, an internist, who related her history of empty gas canisters falling on her left foot crushing her first and second toes. She underwent left foot x-rays and a magnetic resonance imaging (MRI) scan demonstrating a displaced corner fracture at the medial base of the second proximal phalanx with intra-articular extension. Dr. Gaehde diagnosed displaced corner fracture at the medial base of the second proximal phalanx and contusion. He prescribed a controlled ankle motion (CAM) walker boot until appellant was cleared to return to work.

In a March 22, 2023 form report, appellant's attending physician, Dr. John Marcoux, a podiatrist, diagnosed "fracture left second metatarsophalangeal joint -- intra-articular." He opined, with an affirmative checkmark, that she could work eight hours a day with restrictions including sedentary work with a boot on the left lower extremity. Dr. Marcoux further related that appellant could work five hours a day commencing March 27, 2023 and indicated that she could perform activities including sitting, walking, standing, squatting, kneeling, and climbing for five hours a day each. He provided treatment notes of even date including the additional diagnoses of left second hallux valgus deformity and sub metatarsal two overload. Left foot x-rays demonstrated mildly displaced intra-articular fracture through the medial corner of the base of the second proximal phalanx and mild hallux valgus deformity with degenerative changes of the first metatarsophalangeal joint and no obvious signs of fracture healing.

On March 24, 2023 the employing establishment provided appellant with a sedentary light-duty assignment, working five hours a day effective March 27, 2023. She accepted this assignment on March 27, 2023.

In an April 5, 2023 note, Dr. Marcoux diagnosed work-related left second proximal phalanx base intra-articular fracture, recommended a stiff shoe with a supporting insole, and found that appellant could continue to perform light duty four days a week for five hours a day for two weeks. He determined that following the two-week period appellant could return to full-duty work.

On May 9, 2023 the employing establishment related that appellant returned to full-time regular-duty work with no restrictions on April 19, 2023.

On May 22 and June 6, 2025 appellant filed claims for compensation (Form CA-7) for disability from work during the period February 9 through April 18, 2023.

In response, appellant resubmitted the March 22, 2023 left foot x-ray and Dr. Marcoux's April 5, 2023 treatment note diagnosing "work-related left second proximal phalanx base intra-articular fracture."

By decision dated July 21, 2025, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish intermittent disability from work during the period March 27 through April 18, 2023, causally related to the accepted February 9, 2023 employment injury.

On August 4, 2025 appellant requested reconsideration. No additional evidence or argument was received.

By decision dated August 19, 2025, 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[3] has the burden of proof to establish the essential elements of his or her claim,[4] 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 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.[7]

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 appellant, 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.[8]

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[3] *Id.*

[4] *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

[5] *See S.F.*, Docket No. 20-0347 (issued March 31, 2023); *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).

[6] *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

[7] *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

[8] *See B.P.*, Docket No. 23-0909 (issued December 27, 2023); *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

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.[9]

ANALYSIS -- ISSUE 1

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

The issue in this case is whether appellant had intermittent disability from work commencing March 27, 2023. In the case of *William A. Couch*[10] the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. While OWCP is not required to list every piece of evidence submitted, the Board notes that OWCP received a series of reports from Dr. Marcoux commencing March 27, 2023 which addressed appellant's disability status beginning that date and advised that appellant could return to part-time limited-duty work with restrictions due to her accepted employment injury.[11] OWCP's July 21, 2025 decision failed to consider and address this relevant evidence.

Because Board decisions are final with regard to the subject matter appealed,[12] it is crucial that OWCP consider and address all relevant evidence received prior to the issuance of its final decision.[13] As OWCP did not consider and address all evidence submitted prior to its August 29, 2023 decision, the Board finds that this case is not in posture for decision.[14]

On remand OWCP shall review all evidence of record. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

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[9] *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 7.

[10] 41 ECAB 548 (1990); *see J.P.,* Docket No. 24-0263 (issued April 22, 2024); *D.H.*, Docket No. 23-0918 (issued January 24, 2024); *J.R.*, Docket No. 21-1421 (issued April 20, 2022); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

[11] *See D.H., id.*; *C.D.*, Docket No. 20-0168 (issued March 5, 2020).

[12] 20 C.F.R. § 501.6(d).

[13] All evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5b(2) (November 2012). *See also E.D.*, Docket No. 20-0620 (issued November 18, 2020); *Linda Johnson*, 45 ECAB 439 (1994) (OWCP must review all evidence relevant to the subject matter and received by OWCP before issuance of its final decision, including medical reports received on the same day it issues its decision); *William A. Couch*, 41 ECAB 548, 553 (1990).

[14] *See D.H.*, *supra* note 9; *M.N.*, Docket No. 20-0110 (issued July 7, 2020); *Y.B.*, Docket No. 20-0205 (issued July 7, 2020); *H.H.*, Docket No. 14-1985 (issued June 26, 2015).

CONCLUSION

The Board finds that this case is not in posture for decision.[15]

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2025 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. The August 19, 2025 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: December 8, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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