

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

B.J., Appellant)	
)	
and)	Docket No. 24-0514
)	Issued: July 7, 2025
U.S. POSTAL SERVICE, POST OFFICE)	
STATION B, Cleveland, OH, Employer)	
)	

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
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
JANICE B. ASKIN, Judge

JURISDICTION

On April 18, 2024, appellant, through counsel, filed a timely appeal from a March 13, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the March 13, 2024 decision, OWCP received additional evidence. 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 period January 14 through April 7, 2023 causally related to her accepted October 14, 2022 employment injury.

FACTUAL HISTORY

On October 17, 2022, appellant, then a 33-year-old city delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that, on October 14, 2022, a dog bit her on her left thigh and right calf while in the performance of duty. She stopped work October 15, 2022 and returned to a part-time modified city carrier assignment on November 1, 2022. Appellant worked part-time limited duty until January 14, 2023, when she stopped work.⁴ On January 24, 2023, OWCP accepted the claim for sprain of right knee. It subsequently expanded acceptance of the claim on May 2, 2023 to include puncture wound of right calf and right lower leg, laceration without foreign body of the left thigh and right lower leg. OWCP paid appellant wage-loss compensation on the supplemental rolls for intermittent partial disability from November 29, 2022 through April 7, 2023.

Beginning January 31, 2023, appellant filed claims for compensation (Forms CA-7) for disability from work for the period January 14 through April 7, 2023.

Prior to her January 14, 2023 work stoppage, appellant was working under restrictions provided by Dr. Amanda Hagan, a Board-certified preventative medicine specialist. In a December 27, 2022 duty status report (Form CA-17), Dr. Hagan opined that appellant could work with limitations of lifting 20 pounds continuously and 40 pounds intermittently no more than eight hours a day; standing and walking no more than four hours a day; no climbing; kneeling, bending, stooping or twisting more than one hour each day, each; pushing/pulling limited to intermittent work only; simple grasping no more than eight hours a day; and fine manipulation, reaching above shoulder, and driving a vehicle no more than six hours per shift, each.

In a report dated January 13, 2023, Dr. Bruce Cohn, an orthopedic surgeon, noted that he first saw appellant that day for right knee sprain, causally related to the October 14, 2022 employment injury. He completed a January 13, 2023 Form CA-17, setting forth appellant's restrictions of sitting work only, standing/walking .5 to 1 hour per day, each; no climbing, kneeling, bending/stooping, twisting, pushing/pulling and no reaching above the shoulder. In his January 13 and 27, 2023 narrative reports, Dr. Cohn noted appellant's physical examination findings. In these reports, as well as in a January 16, 2023 attending report (Form CA-20), he related that appellant should remain on light duty, which he specified as "sit down work only," until the next visit.

In February 8 and 24, 2023 development letters, OWCP informed appellant of the deficiencies of her disability claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. In a February 9, 2023 development letter, OWCP also requested that the employing establishment explain why appellant was disabled

⁴ Appellant initially worked for two hours per day, five days per week; and then later worked four hours per day, five days per week.

from work commencing January 14, 2023. It afforded both parties 30 days to submit the necessary evidence.

In March 27 and April 25, 2023 letters, appellant and counsel indicated that she had accepted a job offer for a position at a different station.⁵ They asserted that no light-duty work was available, within her new restrictions provided on January 13, 2023, at her date-of-injury station.

The employing establishment advised that appellant's modified job remained available, and the medical evidence of record did not establish that appellant was totally disabled from work causally related to the accepted employment injury. In a memorandum of telephone call dated April 28, 2023 (Form CA-110), an employing establishment representative, A.W. advised that appellant stopped working on January 14, 2023 due to new work restrictions which limited her to sit down (sedentary) work only. It noted that it had anticipated accommodating appellant's work restrictions, which she had been working up to January 13, 2023, but was not prepared for Dr. Cohn's new work restrictions and had sent appellant home when she arrived at her new duty station on January 14, 2023. She reiterated that the employing establishment would have continued to offer appellant four hours of modified work as of January 14, 2023, absent all the medical and factual issues discussed.

In a March 10, 2023 report, Dr. Cohn related appellant's physical examination findings regarding the right knee, noted her accepted right knee sprain, and continued to opine that she should remain on light duty with sit down work only.

By decision dated May 3, 2023, OWCP authorized four hours of wage-loss compensation per day, for a total of 240 hours, for the period January 14 through April 7, 2023 based on appellant's prior work status and the employing establishment's assertion that they would have continued to offer four hours of modified work as of January 14, 2023. It denied payment of wage-loss compensation for the remaining disability claimed from January 14 through April 7, 2023, finding that the evidence failed to support that appellant was unable to perform her limited-duty assignment or the employing establishment was unable to accommodate her established work restrictions based on her accepted work-related medical conditions. OWCP specifically found that appellant had not provided medical evidence which explained Dr. Cohn's January 13, 2023 change in work restrictions to support an increase in disability due to the accepted medical conditions.

On May 9, 2023, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on October 11, 2023. Evidence pertaining to potential consequential right knee anterior cruciate ligament (ACL) and medial meniscus tears was received.

By decision dated March 13, 2024, OWCP's hearing representative affirmed OWCP's May 3, 2023 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

⁵ A March 28, 2023 modified job offer, which appellant signed and accepted on April 11, 2023, was of record.

or specific condition for which compensation is claimed is causally related to the employment injury.⁶ 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.⁷ 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.⁸

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition that had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. The term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to the work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁹ If the claim for recurrence of disability for work is based on modification of the claimant's duties or physical requirements of the job, the claimant should be asked to describe such changes. If the evidence establishes that the limited-duty position has changed such that it no longer accommodates the claimant's work restrictions, OWCP should accept the recurrence.¹⁰

OWCP's procedures require that, in cases where recurrent disability for work is claimed within 90 days or less from the first return to duty, the claimant is not required to produce the same evidence as a recurrence claimed long after apparent recovery and return to work.¹¹ Thus, in cases where a recurrence is claimed within 90 days of the first return to duty, the focus is on disability rather than causal relationship of the accepted condition(s) to the work injury.¹²

The Board has held that, if recurrent disability from work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties which the employee cannot perform and demonstrate objective medical findings that form the basis for the renewed disability from work.¹³

⁶ 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).

⁷ *Id.*

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

⁹ 20 C.F.R. § 10.5(x); *see D.T.*, Docket No. 19-1064 (issued February 20, 2020).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6.a(3) (June 2013); *J.T.*, Docket No. 15-1133 (issued December 21, 2015).

¹¹ *Id.* at Chapter 2.1500.5 (June 2013); *see also L.L.*, Docket No. 20-0956 (issued October 19, 2021); *R.E.*, Docket No. 20-0421 (issued May 17, 2021); *R.W.*, Docket No. 17-0720 (issued May 21, 2018).

¹² *R.E.*, *id.*; *K.R.*, Docket No. 19-0413 (issued August 7, 2019).

¹³ *M.H.*, Docket No. 19-1552 (issued February 2, 2021); *A.B.*, Docket No. 18-0978 (issued September 6, 2019); *J.F.*, 58 ECAB 124 (2006).

ANALYSIS

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

OWCP accepted appellant's October 14, 2022 claim for lacerations of the left thigh and right lower leg; puncture wound of the right lower extremity; and sprain of the right knee. Appellant stopped work on October 15, 2022 and returned to a part-time limited-duty assignment on November 29, 2022. She worked part-time limited duty for four hours per day until January 14, 2023 when she stopped work. Beginning January 31, 2023, appellant filed Form CA-7 claims for disability from work for the period January 14 through April 7, 2023.

As noted, OWCP's procedures require that in cases where recurrent disability from work is claimed within 90 days or less from the first return to duty, the claimant is not required to produce the same evidence as for a recurrence claimed long after apparent recovery and return to work. Thus, in cases where a recurrence is claimed within 90 days or less from the return to work, the focus is on disability rather than causal relationship.¹⁴

On February 8 and 24, 2023, OWCP issued appellant's recurrence claim development letters. However, the February 8 and 24, 2023 development letters instructed her to provide factual and medical evidence in accordance with the standard for a recurrence of disability more than 90 days after return to duty. As appellant claimed a recurrence of disability within 90 days of her first return to duty, OWCP should have developed and adjudicated the claim under the proper recurrence standard, emphasizing disability rather than causal relationship.¹⁵

The Board thus finds that this case must be remanded for further development applying the appropriate standard.¹⁶ Following any such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹⁴ *Supra* notes 11 and 12.

¹⁵ *Id.*

¹⁶ *Id.*; see also L.M., Docket No. 25-0055 (issued December 6, 2024).

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2024 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: July 7, 2025
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