United States Department of Labor
Employees' Compensation Appeals Board

E.M., Appellant	)	
and	)	**Docket No. 24-0860**
	)	**Issued: July 14, 2025**
U.S. POSTAL SERVICE, WHITE PLAINS PROCESSING & DISTRIBUTION CENTER, White Plains, NY, 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 August 22, 2024, appellant filed a timely appeal from a June 6, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 June 6, 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 a recurrence of disability commencing July 6, 2023, causally related to her accepted October 14, 2021 employment injury.

FACTUAL HISTORY

On October 25, 2021, appellant, then a 53-year-old mail handler/equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on October 14, 2021 she fell on her left knee, cut her chin and hands, and hit/cut her shin when she fell over a broken tow bar while in the performance of duty. She stopped work on October 15, 2021.

OWCP accepted the claim for a left knee contusion, initial encounter; effusion, left knee; temporary aggravation of cervical spondylosis; left knee chondral defect chondromalacia; left knee plica syndrome; and temporary aggravation of left knee osteoarthritis. It paid appellant wage-loss compensation on the supplemental rolls effective December 12, 2021, and on the periodic rolls effective February 26, 2023.

In a report dated December 13, 2022, Dr. Ramsey Saba, Board-certified in pain medicine and anesthesiology, diagnosed C3-C4 disc degeneration with radiculopathy and left cervical radiculitis. He advised that appellant could return to work with restrictions of lifting and carrying limited to 10 to 20 pounds, and that appellant be provided a chair with a backrest.

On April 14, 2023, the employing establishment offered appellant a modified position in accordance with Dr. Saba's restrictions. The duties included prepping mail for automated flats sorting machine for eight hours intermittently. The physical requirements included walking and standing for four hours intermittently and pulling, pushing, and lifting up to 10 pounds for eight hours intermittently. The job offer also noted Dr. Saba's requirement that appellant be provided a chair with a backrest.

On June 2, 2023, OWCP found that the offered position was medically suitable in accordance with the work restrictions provided by Dr. Saba and that the position remained available. It advised appellant that under the provisions of 5 U.S.C. § 8106(c)(2), a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for them is not entitled to compensation. OWCP afforded appellant 30 days to either accept the assignment and report to duty or submit evidence that the assignment was no longer available or no longer accommodated the medical work restrictions as provided by Dr. Saba.

On July 7 and 10, 2023, appellant explained to OWCP that she had returned to work on July 5, 2023, but found that the chair provided for her use was inadequate. Appellant further related that the employing establishment told her to go home and stay home until she heard from them again.

Appellant filed claims for compensation (Form CA-7) for disability from work for the period July 6 through September 27, 2023.

In an August 4, 2023 e-mail, OWCP contacted the employing establishment regarding whether an ergonomic chair was provided to appellant.

By e-mail dated August 15, 2023, the employing establishment provided a screenshot of the chair purchased, which indicated that it was an ergonomic keying chair for automation, "perfect for data entry." It further indicated that the chair was adjustable, with dimensions of 20" x 19" x 44".

On August 21, 2023, OWCP assigned its field nurse to provide medical support to appellant. It specifically requested that the nurse confirm whether the ergonomic chair provided by the employing establishment was sufficient per appellant's work restrictions. If the chair provided was not sufficient, the nurse was to assist in finding an appropriate chair.

In a September 7, 2023 memorandum, the field nurse related that appellant indicated that she returned to work on July 5, 2023, but was told to go home as the ergonomic chair was not the type of chair she required to perform her duties, and that the employing establishment would order a new chair. The field nurse also indicated that she had attempted on numerous occasions to contact the employing establishment; however, her voicemail was always full. Appellant was also frustrated as the employing establishment had not returned her calls.

In a September 13, 2023 letter, appellant related that she reported for work on July 5, 2023. However, the chair she was provided would not adjust to the height of the AI machine. Appellant contacted the union and the AI supervisor, they went to the manager's office and confirmed that the chair would not work, and there was no other job available within her limitations. She was sent home for the day and told to wait for another letter.

In a September 13, 2023 statement, T.G., the shop steward, noted that on July 6, 2023 appellant informed the union that management was sending her home due to a lack of work. T.G. went to the manager's office with appellant, and they discussed the chair, appellant's limitations, and the lack of work. P.G., the manager on duty (MDO), and S.B., the lead MDO, decided to send appellant home and pay her for the night.

In email correspondence dated September 18, 2023, OWCP's nurse explained that she would not be able to assess whether the chair provided to appellant was appropriate as that would be the responsibility of a physical therapist. The nurse also provided a September 25, 2023 report noting that she was unable to reach the employing establishment by telephone regarding the ergonomic chair issue.

In a September 20, 2023 agency response, the employing establishment related that it had tried repeatedly, unsuccessfully, to get an answer from the manager as to why the modified work offer was not accepted. It noted that the work remained available, the chair was ergonomic and adjustable.

In a September 20, 2023 statement, T.G., the shop steward, noted that P.G., the MDO, stated that appellant should wait until management sent her a letter before returning to work, and that she could not return to work until she was fit for full duty.

By decision dated September 27, 2023, OWCP denied the claim for disability from work, finding that the medical evidence of record was insufficient to establish that appellant was disabled from her modified position during the claimed period causally related to the accepted October 14, 2021 employment injury. It noted that the employing establishment had confirmed that the chair provided to her was ergonomic and adjustable.

Dr. Saba submitted an August 8, 2023, work note advising that appellant could return to work on August 9, 2023, with restrictions of occasional floor-to-waist lifting of 30 pounds, waist-to-shoulder lifting of 15 pounds, shoulder-to-overhead lifting of 15 pounds, and carrying limited to no more than 20 pounds.[3]

On October 13, 2023, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 12, 2024. During the hearing, appellant related that she returned to the modified job on July 5, 2023 and was assigned work prepping mail. She testified that a chair was provided, per the job offer, but the height adjustment did not allow her to reach the AI machine as the counter was higher than a desk. Appellant related that she called her union representative, they went to the MDO office to discuss the chair requirements, and she was told to go home and wait for a letter. She stated that she was off work until September 28, 2023, when she received another job offer and returned to work. At that time, her supervisor located a chair for her that was height adjustable, with a back rest.

By decision dated March 28, 2024, OWCP's hearing representative affirmed the September 27, 2023 decision.

On June 3, 2024, appellant requested reconsideration. She also provided photos and measurements of the chair and of herself sitting in the chair. Appellant reiterated her assertion that the chair was not high enough.

By decision dated June 6, 2024, OWCP denied modification of the March 28, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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] 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.[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

[3] Appellant accepted a modified job offer of mail handler on September 22, 2023.

[4] *Supra* note 1.

[5] *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

[6] 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[7] *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

work, and the duration of that disability, are medical issues that must be proven by a preponderance of the reliable, probative, and substantial medical 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 compensable injury or illness and without an intervening injury or new exposure in the work environment. This term also means an ability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness is withdrawn or altered so that the assignment exceeds the employee's physical limitations.[9] A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties, downsizing, or the existence of a loss of wage-earning capacity determination.[10]

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty job requirements.[11]

The Board has noted that the term disability means the incapacity because of injury to earn the wages which the employee was receiving at the time of such injury. Disability benefits are payable regardless of whether the termination of employment was for cause if the medical evidence establishes that appellant was unable to perform his assigned duties due to her injury-related condition.[12]

ANALYSIS

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

Appellant filed a Form CA-7 claim for disability from work for the period July 6 through September 27, 2023, asserting that she was sent home on July 6, 2023 because a proper chair was not available. She contended that while a chair was provided, its height could not be adjusted.

In an August 4, 2023 email, OWCP requested that the employing establishment provide information regarding whether an ergonomic chair was provided to appellant. By e-mail dated

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

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

[10] *H.L.*, Docket No. 17-1338 (issued April 25, 2018); *C.P.*, Docket No. 17-0549 (issued July 13, 2017); *J.F.*, 58 ECAB 124 (2006); *see also* 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013).

[11] *G.P.*, Docket No. 21-0112 (issued July 14, 2021); *J.S.*, Docket No. 19-1402 (issued November 4, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

[12] *See K.E.*, Docket No. 19-1922 (issued July 10, 2020); *T.L.*, Docket No. 09-1066 (issued February 17, 2010).

August 15, 2023, the employing establishment submitted a screenshot of the chair purchased, which indicated that it was an ergonomic keying chair for automation, "perfect for data entry." It further indicated that the chair was adjustable, with dimensions of 20" x 19" x 44." On August 21, 2023, OWCP assigned its field nurse to confirm whether the ergonomic chair provided by the employing establishment was sufficient, per appellant's medical restrictions. If the chair provided was not sufficient, the nurse was to assist in finding an appropriate chair. In a September 7, 2023 memorandum, the field nurse indicated that she had attempted on numerous occasions to contact the employing establishment, however the employing establishment did not respond. Thus, she was unable to assess whether the chair provided to appellant was appropriate. OWCP subsequently received a September 20, 2023 agency response, wherein the employing establishment noted, without explanation, that the work remained available, and that the chair was ergonomic and adjustable.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.[13] It shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.[14]

Thus, the Board shall remand the case for OWCP to request additional information from the employing establishment, including whether there was work available within appellant's established work restrictions on or after July 6, 2023, and whether appellant was directed to stop work until further notice. Following 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.

[13] *See S.H.,* Docket No. 21-1380 (issued September 22, 2023); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

[14] *K.W.,* Docket No. 15-1535 (issued September 23, 2016).

ORDER

IT IS HEREBY ORDERED THAT the June 6, 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 14, 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