

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

<p>C.C., Appellant</p> <p>and</p> <p>DEPARTMENT OF VETERANS AFFAIRS, WEST PALM BEACH VA MEDICAL CENTER, West Palm Beach, FL, Employer</p>	<p>)))))))</p>	<p>Docket No. 25-0613</p> <p>Issued: July 22, 2025</p>
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Appearances:

Wayne Johnson, 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

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 9, 2025 appellant, through counsel, filed a timely appeal from a December 10, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the

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 A claimant has 180 days from the date of OWCP's decision to timely file an appeal. 20 C.F.R. § 501.3(e). The 180th day following OWCP's December 10, 2024 decision was Sunday, June 8, 2025. However, when the last day to file an appeal falls on a Saturday, Sunday, or federal holiday, the 180-day period runs until the close of the next business day. 20 C.F.R. § 501.3(f)(3). Appellant therefore had until Monday, June 9, 2025 to file this appeal. As this appeal was received by the Office of the Clerk of the Appellate Boards on Monday, June 9, 2025, it was timely filed.

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work commencing December 2, 2022 causally related to her accepted October 17, 2022 employment injury.

FACTUAL HISTORY

On November 14, 2022 appellant, then a 50-year-old surgical technician, filed a traumatic injury claim (Form CA-1) alleging that on October 17, 2022 she sprained her left ankle when she tripped over a step stand in the operating room and fell to both knees while in the performance of duty. She stopped work on October 17, 2022.

In state compensation form reports dated December 7, and 19, 2022, Dr. Harvey E. Montijo, a Board-certified orthopedic surgeon, diagnosed a left ankle sprain and knee contusions. He held appellant off work.

On December 19, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work during the period December 2 through 16, 2022.

In a duty status report (Form CA-17) dated January 9, 2023, Dr. Montijo held appellant off work.⁵

OWCP accepted the claim for contusion of right knee, contusion of left knee, and sprain of other ligament of left ankle.

On January 31, 2023 appellant filed a series of Form CA-7 claims for disability from work during the period December 19, 2022 through January 27, 2023. She continued to file Form CA-7 claims for disability for periods of disability thereafter.

In a February 4, 2023 development letter, OWCP informed appellant of the deficiencies of her disability claim. It advised her of the type of medical evidence needed and afforded her 30 days to submit the necessary evidence.

Thereafter, OWCP received a January 5, 2023 prescription for a transcutaneous electrical stimulation (TENS) unit by Dr. Montijo.

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the December 10, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

⁵ OWCP subsequently received additional physical therapy treatment notes dated December 20, 2022 through January 20, 2023.

In a January 9, 2023 report, Dr. Montijo recounted that appellant's right knee and left ankle had improved slightly with physical therapy and medication and that her left knee remained symptomatic. On examination, he observed decreased effusion and swelling of the left ankle and knees, bilateral medial and joint line tenderness to palpation, pain with palpation over the patella bilaterally, and pain over the fibula laterally with global swelling of the left ankle. Dr. Montijo noted that a November 30, 2020 magnetic resonance imaging (MRI) scan of the left ankle demonstrated mild plantar fasciitis, thickening of the anterior talofibular ligament (ATFL) ligament compatible with prior remote injury, and mild tenosynovitis of the peroneus longus and brevis. A November 30, 2022 MRI scan of the left knee demonstrated a small suprapatellar effusion, and Grade I chondromalacia of the patella. An MRI scan of the right knee performed on November 30, 2022 demonstrated Grade II chondromalacia of the patella, a small suprapatellar effusion, and a two-millimeter subcortical cyst in the lateral femoral condyle.⁶ Dr. Montijo diagnosed knee contusions and left ankle sprain. He administered an intra-articular injection to the left knee and prescribed medication.

In reports dated February 6 through March 13, 2023, Dr. Montijo continued to hold appellant off work. He noted that appellant had made progress in physical therapy although her knees remained symptomatic.⁷

By decision dated April 6, 2023, OWCP denied appellant's disability claim, finding that the medical evidence of record was insufficient to establish disability from work commencing December 2, 2022, causally related to the accepted October 17, 2022 employment injury.⁸

In an April 17, 2023 form report, Dr. Montijo restricted appellant to sedentary work with modifications.

On May 5, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a May 19, 2023 report of work status (Form CA-3), the employing establishment indicated that on May 15, 2023 appellant returned to modified-duty work for eight hours a day with restrictions.

In reports dated May 22 through August 17, 2023, Dr. Montijo found that appellant's condition was unchanged. In the May 22, 2023 report, he maintained her on light duty with restrictions.

On August 24, 2023 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Jon D. Donshik, a Board-certified orthopedic surgeon, for a second opinion examination. It requested that he provide a rationalized

⁶ OWCP also received the November 30, 2022 reports of these imaging studies.

⁷ OWCP also received physical therapy treatment notes dated January 19 through March 17, 2023.

⁸ OWCP continued to receive Form CA-7 claims for compensation for the periods March 27 through June 16, 2023 OWCP paid appellant wage-loss compensation on the supplemental rolls for attendance at physical therapy appointments during the period May 22 through November 3, 2023.

opinion as to whether the accepted conditions had resolved, and whether appellant was medically capable of returning to her date-of-injury position.

A hearing was held on September 26, 2023.

By decision dated December 6, 2023, OWCP's hearing representative affirmed the April 6, 2023 decision.

OWCP received a series of Form CA-17 reports dated December 5, 2023 through July 29, 2024 wherein Dr. Montijo maintained appellant on full-time, limited-duty work with restrictions.

In a report dated September 18, 2023, received by OWCP on February 6, 2024, Dr. Donshik reviewed the medical record and SOAF. He noted that appellant walked with one crutch and could not toe or heel walk. On examination, Dr. Donshik observed tenderness to palpation of the medial joint line of the left knee, no swelling or instability in the knees, negative anterior and posterior drawer signs bilaterally, and negative Lachman's sign in the knees. He also found slight swelling of the left ankle, diffuse swelling of the left foot, and tenderness to palpation over the left ATFL and left Achilles tendon. Dr. Donshik obtained x-rays of the knees, which revealed slight varus deformity of the right knee with some patellofemoral arthritis and narrowing of the medial joint space, and varus deformity of the left knee. He also obtained x-rays of the left ankle, which were negative for fracture, osteoarthritis, or deformity. Dr. Donshik diagnosed left knee contusion, right knee contusion, left ankle sprain, and chondromalacia of patella. He opined that while the knee contusions had resolved, appellant remained symptomatic due to chondromalacia. The left ankle sprain also persisted. Dr. Donshik returned appellant to full-duty work with no restrictions. In a January 25, 2024 work capacity evaluation (Form OWCP-5c), Dr. Donshik returned appellant to full-duty work with no restrictions but indicated that it was "unclear" as to how long restrictions would apply.

On March 11, 2024 OWCP requested that Dr. Donshik submit a supplemental report clarifying appellant's work capacity.

In a June 22, 2024 addendum report, Dr. Donshik opined that appellant could perform full-duty work with no restrictions. He opined that the "[o]nly way to have objective data related to a sprain is to undergo an MRI."

In reports dated August 15 and September 3, 2024, Dr. Montijo limited standing and walking to one hour, with no climbing, kneeling, bending, or squatting. He diagnosed left ankle sprain and bilateral knee contusions with osteoarthritis.⁹

On October 2, 2024 OWCP requested that Dr. Donshik submit a supplemental report addressing the causal relationship of the diagnosed chondromalacia of the patella to the accepted employment injuries.

In a November 10, 2024 addendum report, Dr. Donshik opined that chondromalacia continued to contribute to appellant's symptoms. He opined that the November 30, 2022 MRI scan demonstrated objective evidence of chondromalacia, and that the "mechanism of injury is

⁹ OWCP received additional Form CA-17 reports dated October 1 through November 26, 2024, wherein Dr. Montijo renewed prior work restrictions.

consistent with aggravation of her underlying/preexisting chondromalacia (having fallen on both knees)."

On December 6, 2024 appellant, through counsel, requested reconsideration of OWCP's December 6, 2023 decision.

By decision dated December 10, 2024, OWCP denied modification of the December 6, 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 including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹⁰ Under FECA, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹¹ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹² 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.¹³ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.¹⁴

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 the claimant, 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.¹⁵

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

¹⁰ *S.F.*, Docket No. 20-0347 (issued March 31, 2023); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ 20 C.F.R. § 10.5(f).

¹² See *H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹³ See *H.B.*, *id.*; *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

¹⁴ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹⁵ *R.W.*, Docket No. 25-0096 (issued January 31, 2025); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁶

ANALYSIS

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

In reports dated September 18, 2023, June 22, 2024, and November 10, 2024, Dr. Donshik, OWCP's second opinion physician, opined that appellant could perform her date-of-injury position as a surgical technician. However, he was not asked to address the specific claimed period of disability.¹⁷

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.¹⁸ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁹

On remand, OWCP shall request a supplemental opinion from Dr. Donshik clarifying whether appellant was disabled from work commencing December 2, 2022 causally related to her accepted October 17, 2022 employment injury.²⁰ Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹⁶ *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁷ *A.B.*, Docket No. 25-0504 (issued June 20, 2025); *C.R.*, Docket No. 25-0245 (issued April 3, 2025); *J.V.*, Docket No. 24-0621 (issued September 19, 2024); *D.F.*, Docket No. 25-0111 (issued December 17, 2024); *J.A.*, Docket No. 24-0889 (issued December 11, 2024); *M.R.*, Docket No. 24-0562 (issued September 26, 2024).

¹⁸ See *M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

¹⁹ *Id.*; see also *R.M.*, Docket No. 16-0147 (issued June 17, 2016).

²⁰ See *A.B.*, *supra* note 17; *S.G.*, Docket No. 22-0014 (issued November 3, 2022); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *P.S.*, Docket No. 17-0802 (issued August 18, 2017).

ORDER

IT IS HEREBY ORDERED THAT the December 10, 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 22, 2025
Washington, DC

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

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

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