

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

P.J., Appellant

and

**DEPARTMENT OF COMMERCE, PATENT &
TRADEMARK OFFICE, Arlington, VA,
Employer**

Docket No. 23-1163
Issued: June 10, 2025

Appearances:

Case Submitted on the Record

Appellant, pro se

Office of Solicitor, for the Director

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

JURISDICTION

On September 13, 2023 appellant filed a timely appeal from an August 30, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish entitlement to wage-loss compensation for the period August 22, 2019 through May 31, 2023 causally related to the accepted employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board on different issues.² The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On March 1, 2001 OWCP accepted that appellant, then a 39-year-old legal instrument examiner, sustained an occupational disease in the form of bilateral carpal tunnel syndrome due to performing the repetitious duties of her job.³ It later expanded the acceptance of her claim to include cervical disorder with myelopathy, cervical radiculopathy, strain of muscle, fascia, and tendon at neck level, and strain of muscle, fascia, and tendon of the rotator cuff of the right shoulder. Appellant initially stopped work on March 12, 2001 and OWCP paid her disability compensation, effective that day. She returned to part-time work (four hours per day) on September 4, 2007 and stopped work on September 20, 2007. On July 7, 2015 appellant underwent OWCP-authorized cervical surgery, including anterior cervical fusion and arthrodesis at C5-6, and partial cervical corpectomy with spinal cord and foraminal decompression at C5-6.

On March 4, 2016 appellant filed a claim for compensation (Form CA-7) for a schedule award. By decision dated December 5, 2016, OWCP granted her a schedule award for nine percent permanent impairment of her left upper extremity due to impairment stemming from her cervical spine.

By decision dated July 18, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective July 21, 2019.

On August 5, 2019 appellant filed a Form CA-7 for an increased schedule award. By decision dated December 10, 2019, OWCP granted appellant a schedule award for 35 percent permanent impairment of her right upper extremity and an additional 28 percent permanent impairment of her left upper extremity. The award ran for 196.56 weeks from August 22, 2019 through May 28, 2023.

Appellant requested a review of the written record by a representative of OWCP's Branch of Hearing and Review regarding the July 18, 2019 termination decision. By decision dated December 17, 2019, OWCP's hearing representative affirmed the July 18, 2019 decision. On January 13, 2020 appellant appealed to the Board. By decision dated April 26, 2021, the Board reversed OWCP's December 17, 2019 decision.⁴

² Docket No. 13-1191 (issued December 2, 2013); Docket No. 18-0248 (issued August 14, 2018), *petition for reconsideration denied*, Docket No. 18-0248 (issued March 8, 2019); Docket No. 19-1479 (issued May 8, 2020); Docket No. 20-0549 (issued December 18, 2020); Docket No. 20-0550 (issued April 26, 2021).

³ OWCP assigned the present claim OWCP File No. xxxxxx548. It had previously accepted under OWCP File No. xxxxxx385 that appellant sustained intervertebral cervical disc disorder with myelopathy, cervical sprain, myalgia/myositis, fibromyalgia, brachial neuritis/radiculitis, and right shoulder/arm sprain due to an April 19, 1999 reaching incident. It administratively combined OWCP File Nos. xxxxxx385 and xxxxxx548, with the latter file serving as the master file.

⁴ *Supra* note 2.

In accordance with the Board's December 17, 2019 decision, OWCP paid appellant retroactive wage-loss compensation in the amount of \$2,772.45 for the period July 21 through August 21, 2019, with the end date being one day prior to when payments for the December 10, 2019 schedule award began.

On June 1, 2021 appellant filed a Form CA-7 for disability from work for the period May 21, 2019 to the "present."

On May 25, 2023 OWCP sent appellant an election of benefits letter, which advised her that she was entitled to elect FECA disability compensation as of May 29, 2023, the day after the schedule award ended, but needed to make an election between OPM and FECA monetary benefits.

In a May 26, 2023 statement, appellant requested "reconsideration" and expressed her disagreement with OWCP's actions pertaining to the May 25, 2023 election of benefits letter. She indicated that she was requesting payment of lost wages she believed were wrongfully taken from her after the termination, effective July 21, 2019, of her wage-loss compensation. Appellant advised that, because of the termination action effective July 21, 2019, she was forced to file for a schedule award. She asserted that she was entitled to compensation for loss of back wages based on the Board's April 26, 2021 decision.

On June 8, 2023 appellant completed an election form indicating that she was electing to resume wage-loss compensation under FECA effective May 29, 2023, the day after schedule award compensation ended. She however received OPM retirement benefits for the period May 29 through 31, 2023. OWCP responded to appellant's concerns in letters dated June 23 and 26, and July 13, 2023, and advised her that there was no outstanding issue for reconsideration. It explained the prior payments made to her and informed her of OWCP's procedures, which provided that a schedule award was payable consecutively, but not concurrently with wage-loss compensation for disability for the same injury. OWCP further explained that this provision meant that a schedule award could be paid before or after payment of disability compensation (consecutively), but schedule award compensation could not be paid for the same period as disability compensation (concurrently). It noted that the Board had previously held that a claimant was not entitled to receive schedule award compensation and disability benefits based on the same employment injury at the same time.

Appellant disagreed with OWCP's response and continued to claim entitlement to retroactive wage-loss compensation for disability for the period August 22, 2019 through May 31, 2023.

In a development letter dated July 27, 2023, OWCP informed appellant of the deficiencies of her claim for retroactive wage-loss compensation for disability, and requested that she provide evidence and/or argument to support why she believed she was entitled to be paid retroactive wage-loss compensation for the period August 22, 2019 through May 31, 2023. It requested that she submit evidence and/or argument establishing that it failed to comply with the Board's April 26, 2021 decision. OWCP afforded appellant 30 days to respond.

In an August 17, 2023 statement, appellant indicated that, when OWCP stopped her from getting treatment from her OWCP-approved physician, she started going to her primary doctor for treatment. She advised that she would be uploading some medical documents, which demonstrated that she still had issues with her neck, shoulders, and hands, and was still disabled from work. Appellant submitted medical reports concerning her medical condition and disability, most of which had previously been submitted.

By decision dated August 30, 2023, OWCP found that appellant failed to meet her burden of proof to establish entitlement to wage-loss compensation for the period August 22, 2019 through May 31, 2023.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.⁶

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁷ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.⁸

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.⁹ 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.¹⁰

⁵ *Supra* note 1.

⁶ See *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).

⁷ 20 C.F.R. § 10.5(f); see e.g., *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁸ *G.T.*, *id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

⁹ See *L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁰ *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

The Federal (FECA) Procedure Manual provides that a schedule award is payable consecutively, but not concurrently, with an award for wage loss for disability for the same injury.¹¹ A schedule award for one injury may be paid concurrently with compensation for wage loss paid for another injury, as long as the two injuries do not involve the same part of the body and/or extremity.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish entitlement to wage-loss compensation for the period August 22, 2019 through May 31, 2023.

The evidence of record reflects that OWCP paid appellant schedule award compensation for the period August 22, 2019 through May 28, 2023. Despite the Board's reversal of OWCP's termination of compensation, including wage-loss compensation, any subsequent resumption of wage-loss compensation payments cannot override the provisions of OWCP's procedures, which do not allow for concurrent payment of disability compensation and schedule award compensation for the same employment injury during the same period of time.¹³ Appellant elected to receive FECA wage-loss compensation in lieu of OPM retirement benefits effective May 29, 2023. However, OPM paid retirement benefits for the period May 29 through 31, 2023. The Board notes that a claimant is not entitled to receive both OPM annuity benefits and FECA wage-loss compensation at the same time.¹⁴

For the above-described reasons, the Board finds that appellant received all benefits payable, and there is no evidence to support that she is entitled to receive additional compensation for the claimed period.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish entitlement to wage-loss compensation for the period August 22, 2019 through May 31, 2023.

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.4a(3) (February 2013); *see S.M.*, Docket No. 17-1557 (issued September 4, 2018); *E.S.*, Docket No. 16-1248 (issued May 15, 2017); *S.W.*, Docket No. 10-2071 (issued July 11, 2011).

¹² *Id.* at Chapter 2.808.4a(5); *Michael J. Biggs*, 54 ECAB 595, 596-97 (2003).

¹³ *See supra* notes 11 and 12. *See also E.C.*, Docket No. 22-0116 (issued July 20, 2022).

¹⁴ 20 C.F.R. § 10.421(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4(a) (January 1997); *see also R.S.*, Docket No. 11-0428 (issued September 27, 2011).

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 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