

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

D.M., Appellant)	
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)	
and)	Docket No. 25-0551
)	Issued: June 16, 2025
U.S. POSTAL SERVICE, PECOS POST OFFICE, Pecos, TX, Employer)	
)	
)	

Appearances:

Appellant, pro se

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 May 17, 2025, appellant filed a timely appeal from a November 27, 2024 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 27, 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 his burden of proof to establish the remaining claimed disability from work during the period August 17, 2019 through January 3, 2020, causally related to his accepted February 1, 2019 employment injury.

FACTUAL HISTORY

This case was previously before the Board on a different issue.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 11, 2019, appellant, then a 55-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 1, 2019 he injured his left shoulder, left hip, and left ankle when he was struck by a rolling cage while in the performance of duty. OWCP accepted the claim, assigned OWCP File No. xxxxxx296, for unspecified joint derangements of the left shoulder, left hip, and left ankle; breakdown (mechanical) of other internal orthopedic devices, implants and grafts; peroneal tendinitis, left leg; spontaneous rupture of extensor tendons, left ankle and foot; and strain of other muscles and tendons of posterior muscle group at lower left lever, left leg.⁴

On May 28 and June 17, 2019, appellant underwent injections into the left peroneal tendon sheath by Dr. Ryan P. Shock, a Board-certified podiatrist. Dr. Shock noted a prior history of open reduction internal fixation (ORIF) surgery to the left ankle in 2015 and diagnosed left ankle painful hardware and left peroneal tendon tear.

In a September 23, 2019 follow-up report, Dr. Shock noted that appellant related that he was doing well and had no pain. He diagnosed joint derangement of the left ankle.

In a medical report also dated September 23, 2019, Dr. Michael Burris, a Board-certified orthopedic surgeon, noted that appellant related complaints of pain in the left hip which he attributed to the February 1, 2019 employment injury. He performed a physical examination and observed mild discomfort and decreased flexion of the lumbar spine and a normal left hip.

A duty status report (Form CA-17) dated November 12, 2019, bearing an illegible signature, indicated that appellant could work two hours per day with continuous lifting up to 5 pounds and intermittent lifting up to 20 pounds.

³ Docket No. 23-0912 (issued March 5, 2024).

⁴ Appellant has a prior May 26, 2012 occupational disease claim (Form CA-2) under OWCP File No. xxxxxx319, which OWCP accepted for displacement of lumbar intervertebral disc without myelopathy and thoracic or lumbosacral neuritis or radiculitis. OWCP administratively combined OWCP File Nos. xxxxxx296 and xxxxxx319, with the latter serving as the master file. Appellant also has a February 1, 2019 occupational disease claim under OWCP File No. xxxxxx172, which OWCP accepted for cervical disc disorder with myelopathy, cervical radiculopathy, and other derangements of the right and left patellae and right shoulder. OWCP has not administratively combined OWCP File No. xxxxxx172 with OWCP File Nos. xxxxxx296 and xxxxxx319.

On December 2, 2019, appellant began filing claims for compensation (Form CA-7) for disability from work commencing August 17, 2019.

For the period August 17, 2019 through January 3, 2020, the employing establishment completed time analysis forms (Form CA-7a) dated December 2, 2019 through January 8, 2020 reporting that appellant generally worked two hours per day, received four hours of wage-loss compensation per day under OWCP File No. xxxxxx319,⁵ and was claiming two hours of leave without pay (LWOP) per day.⁶ It also noted that on August 19 and December 23, 2019 appellant was claiming four hours of LWOP to attend medical appointments for the February 1, 2019 employment injury.

In a December 23, 2019 follow-up report, Dr. Shock noted that appellant related minimal pain. He documented physical examination findings and diagnosed joint derangement of the left ankle.

In a December 30, 2019 narrative medical report, Dr. Thomas E. Martens, a Board-certified family physician, noted the history of appellant's February 1, 2019 employment injury and subsequent treatment. He performed a physical examination and observed tenderness to palpation and pain with range of motion (ROM) of the left shoulder and left ankle. Dr. Martens diagnosed joint derangement of the left shoulder, hip, and ankle. He opined that appellant was not capable of performing his preinjury position for the period August 17 through November 22, 2019 but could perform modified-duty work.

By decision dated January 17, 2020, OWCP denied appellant's disability claim, finding that the medical evidence of record was insufficient to establish disability from work commencing August 17, 2019 due to the accepted February 1, 2019 employment injury.

Appellant requested reconsideration of OWCP's January 17, 2020 decision and submitted a January 30, 2020 medical narrative by Dr. Martens, who noted that he restricted appellant to work two hours per day, modified duty, effective November 13, 2019. Dr. Marten opined that the restrictions were due to bilateral knee, right shoulder, and cervical spine conditions under OWCP File No. xxxxxx172 and a lumbar spine condition under OWCP File No. xxxxxx319.

Between March 10, 2020 and June 1, 2021, appellant underwent additional injections into the left peroneal tendon sheath by Dr. Shock.

On June 18, 2021, Dr. Shock performed a left peroneal tendon repair and hardware removal.

⁵ Under OWCP File No. xxxxxx319, OWCP paid appellant wage-loss compensation for partial disability on the supplemental rolls effective August 1, 2013, and on the periodic rolls from April 14, 2018 through June 19, 2021, following a formal determination of his loss of wage-earning capacity (LWEC) based upon actual wages.

⁶ For December 26, 2019 the employing establishment noted that appellant worked 2.11 hours and was claiming 1.89 hours of LWOP.

By decision dated August 18, 2021, OWCP denied modification of the January 17, 2020 decision.

OWCP continued to receive evidence including Dr. Shock's October 21, 2021 follow-up report and October 22, 2021 Form CA-17.

On April 6, 2022, appellant requested reconsideration of OWCP's August 18, 2021 decision.

By decision dated July 1, 2022, OWCP denied modification of its August 18, 2021 decision.

OWCP received a March 14, 2023 medical report by Dr. Shock discussing appellant's progress.

On June 30, 2023, appellant requested reconsideration of OWCP's July 1, 2022 decision.

By decision dated September 19, 2023, OWCP denied modification of its July 1, 2022 decision.

On September 16, 2024, appellant requested reconsideration of OWCP's September 19, 2023 decision.

OWCP thereafter received follow-up reports dated March 13 through August 27, 2024 by Dr. Shock.

By decision dated November 27, 2024, OWCP denied modification of its September 19, 2023 decision, finding that appellant had not submitted sufficient medical evidence to establish disability from work for the period August 17, 2019 through January 3, 2020 due to the accepted February 1, 2019 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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.⁸

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.⁹ Disability is, thus, not

⁷ *Supra* note 1.

⁸ 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); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

⁹ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹⁰ 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.¹¹

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.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish the remaining claimed disability from work during the period August 17, 2019 through January 3, 2020, causally related to his accepted February 1, 2019 employment injury.

In support of his claim, appellant submitted reports dated May 28 and June 17, 2019, by Dr. Shock, who administered injections into the left peroneal tendon sheath and diagnosed left ankle painful hardware and left peroneal tendon tear. In a September 23, 2019 follow-up report, he noted that appellant related that he was doing well and had no pain. In a report also dated September 23, 2019, Dr. Burris noted mild discomfort and decreased flexion of the lumbar spine and a normal left hip. However, neither physician provided an opinion that appellant was disabled from work due to the accepted conditions during the claimed period. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value.¹³ Therefore, these reports are of no probative value and are insufficient to establish appellant's remaining claim for compensation.

In a December 30, 2019 and January 30, 2020 narratives, Dr. Martens indicated that he released appellant to return to work two hours per day with no lifting over 20 pounds as of November 13, 2019. Although he outlined work restrictions, he did not indicate that appellant was disabled from work due to his February 1, 2019 employment injury.¹⁴ As such, Dr. Marten's reports are insufficient to establish appellant's claim.

OWCP also received medical reports and CA-17 forms by Dr. Shock dated March 10, 2020 through August 27, 2024. As these reports did not address appellant's disability status during the

¹⁰ *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaauamoana*, 54 ECAB 150 (2002).

¹¹ See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹² See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹³ *P.L.*, Docket No. 22-0337 (issued September 9, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *Id.*

specific dates for which compensation was claimed, they are of no probative value and are insufficient to establish appellant's claim.¹⁵

The record also contains a Form CA-17 dated November 12, 2019 bearing an illegible signature. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.¹⁶

As the medical evidence of record is insufficient to establish the remaining claimed disability during the period August 17, 2019 through January 3, 2020, causally related to his accepted February 1, 2019 employment injury, the Board finds that appellant has not met his burden of proof.¹⁷

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 his burden of proof to establish the remaining claimed disability from work during the period August 17, 2019 through January 3, 2020, causally related to his accepted February 1, 2019 employment injury.

¹⁵ *Id.* See C.S., *supra* note 12.

¹⁶ See D.F., Docket No. 22-0904 (issued October 31, 2022); see also R.C., Docket No. 19-0376 (issued July 15, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁷ For a routine medical appointment, a maximum of four hours of compensation for time lost to obtain medical treatment is usually allowed. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19c (February 2013); see also K.A., Docket No. 19-0679 (issued April 6, 2020); *William A. Archer*, *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the November 27, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 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