

² The Board notes that, following the January 24, 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work commencing October 15, 2022, causally related to the accepted August 25, 2022 employment injury.

FACTUAL HISTORY

On August 30, 2022, appellant, then a 46-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on August 25, 2022 she sustained post-concussion syndrome after being struck on the top of her head with a metal pipe while in the performance of duty. She stopped work on August 25, 2022. OWCP accepted the claim for concussion without loss of consciousness and paid appellant wage-loss compensation.

On October 31, 2022, appellant filed a claim for compensation (Form CA-7) for disability from work for the period commencing October 15, 2022. She continued to file claims for compensation for periods of disability thereafter.

Appellant was treated by Amanda Carrozza, a nurse practitioner, on November 9 and 30, 2022, for an injury that occurred at work on August 25, 2022 when she was hit on the head with a metal pipe. She presented with persistent concussive symptoms, impaired vision, and pain on the left side of her neck and upper back. Ms. Carrozza diagnosed concussion without loss of consciousness. She returned appellant to work with restrictions. In a form report of even date, Ms. Carrozza diagnosed traumatic brain injury, without loss of consciousness, and cervical strain. She returned appellant to work part time with restrictions.

On November 17, 2022, the employing establishment offered appellant a light-duty job as a modified mail handler effective November 17, 2022. The work hours were 6:00 p.m. to 9:00 p.m., with Tuesdays and Wednesdays as her scheduled days off. The duties of the modified assignment included handling damaged mail for up to three hours, mail preparation for up to three hours, culling mail for up to three hours a day, and hanging empty sacks for one hour a day. The physical requirements of the modified assignment were sitting, placing damaged mail into plastic bags and heat sealing for up to three hours a day, sitting and sorting mail pieces for up to three hours a day, standing and culling mail for up to three hours a day, and standing and hanging empty sacks for one hour a day. On December 10, 2022, appellant declined the job offer.

On December 6, 2022, Dr. Jess Rhee, a neuropsychologist, treated appellant for post-traumatic stress disorder (PTSD) related to the August 25, 2022 employment incident. She indicated that appellant could not return to work in the same employing establishment facility, but could return to work if she was transferred elsewhere.

In a development letter dated December 21, 2022, OWCP informed appellant of the deficiencies of her claim for compensation. It advised her of the type of medical evidence needed to establish her claim and afforded her 30 days to respond.

In support of her claim, appellant submitted a December 27, 2022 report, wherein Dr. Abe Timmons, a Board-certified physiatrist, noted his treatment of appellant on December 27, 2022 for

a head injury that occurred when she was hit with a metal pipe while at work on August 25, 2022. Dr. Timmons diagnosed concussion without loss of consciousness. He noted appellant was held off work until cleared by Dr. Rhee. In a workers' compensation medical form report of even date, Dr. Timmons diagnosed PTSD, anxiety, and traumatic brain injury without loss of consciousness. He continued appellant's modified-duty work status.

By decision dated February 7, 2023, OWCP denied appellant's claim for wage-loss compensation, finding that the medical evidence of record was insufficient to establish disability from work commencing October 15, 2022, causally related to the accepted August 25, 2022 employment injury.

Appellant subsequently submitted a November 29, 2022 report by Dr. Rhee, wherein she related treating appellant for persistent post-concussive symptoms. Dr. Rhee diagnosed PTSD and history of concussion. She opined that appellant experienced a history of overt and covert racial micro-aggressions at her workplace by certain coworkers and a supervisor.

In an undated statement, appellant indicated that she was afraid to return to work in the same facility where she was injured. She noted that her supervisor and coworkers threatened her life and created an unsafe workplace. Appellant indicated that the employing establishment would not transfer her to another facility.

Dr. Rhee treated appellant from January 25 through September 1, 2023 for persistent post-concussive symptoms related to her August 25, 2022 employment injury. She diagnosed PTSD and history of concussion. Dr. Rhee indicated that appellant could not return to work with the same coworkers. In attending physician's reports (Form CA-20) dated March 29 and August 22, 2023, she diagnosed PTSD and checked a box marked "Yes" indicating that appellant's condition had been caused or aggravated by an employment activity. Dr. Rhee noted that appellant was totally disabled from work during the period August 25, 2022 through August 22, 2023 and partially disabled from work commencing August 22, 2023. She indicated that appellant could resume full-time work with no contact. In a duty status report (Form CA-17) dated April 26, 2023, Dr. Rhee diagnosed PTSD and noted that appellant could not return to work as her symptoms were too severe for her to function. In a Form CA-17 dated August 22, 2023, she diagnosed PTSD and indicated that appellant could resume full-time work with no contact with her coworkers.

Dr. Catherine Radakovic, an optometrist, treated appellant from March 23 through August 31, 2023, for extreme headaches and blurry vision after she was struck in the back of the head with a metal pipe at work. She diagnosed post-concussion syndrome, lack of coordination, visual sequelae, reduced acuity, convergence excess with a vertical component, constricted functional fields, and post-traumatic vision syndrome. Dr. Radakovic recommended vision therapy and advised that appellant could not return to work as she was at risk for further injury. In a report dated August 31, 2023, she diagnosed reduced acuity, convergence excess, constricted functional fields, and post-traumatic vision syndrome. Dr. Radakovic opined that these conditions were the result of her August 25, 2022 employment injury. She released appellant to work three days a week for two hours a day with restrictions. In a Form CA-20 received by OWCP on September 6, 2023, Dr. Radakovic checked a box marked "Yes" indicating that appellant's condition had been caused or aggravated by an employment activity. She returned appellant to work on September 5, 2023.

Dr. Jason Fleming, a Board-certified neurologist, treated appellant on March 31, 2023 for post-concussive symptoms. He noted treating appellant in July 2018 for headaches, dizziness, right upper extremity weakness, and right shoulder and upper back pain after an automobile accident. Dr. Fleming related that she was hit in her head with a metal pipe in August 2022 and experienced headaches with light sensitivity. He diagnosed PTSD, visual disturbance, and history of closed head injury. Appellant related that her vision issue interfered with her return to work. In a form report of even date, Dr. Fleming diagnosed PTSD, visual disturbance, and history of closed head injury. He noted that appellant was totally disabled. Dr. Fleming treated appellant on May 2 and July 31, 2023, and diagnosed history of closed head injury, minor closed head injury, visual disturbance, PTSD, headache disorder, and dizziness. On July 31, 2023 he indicated that appellant could return to work with restrictions on driving long distances. In form reports dated July 31 and August 14, 2023, Dr. Fleming noted diagnoses and returned appellant to work with restrictions. In a Form-CA-20 dated July 31, 2023, he diagnosed PTSD and convergence issues and checked a box marked “Yes” indicating that appellant’s condition had been caused or aggravated by an employment activity. Dr. Fleming indicated that appellant could return to light-duty work.

On August 3, 2023, appellant requested reconsideration.

An August 14, 2023 report revealed that appellant was treated by Luke Gagne, a counselor, who indicated that appellant did not have symptoms of PTSD and could return to work.

On September 8, 2023, the employing establishment offered appellant a light-duty job as a modified mail handler, effective August 31, 2023. The work hours were noted as 10:00 p.m. to 12:00 a.m. with Sundays, Tuesdays, Wednesdays, and Fridays as scheduled days off. The duties of the modified assignment included mail preparation for up to two hours. The physical requirements of the modified assignment included sitting and prepping mail for up to two hours a day. On September 13, 2023, appellant accepted the job offer and returned to work.

In a form report dated October 16, 2023, Dr. Fleming diagnosed PTSD, visual disturbance, and history of closed head injury. He noted that appellant could return to work light duty on October 16, 2023, and full duty on April 16, 2024.

On October 31, 2023, OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Diana Apetauerova, a Board-certified neurologist, for a second opinion examination regarding the nature and extent of the accepted employment conditions and appellant’s work capacity.

By decision dated November 1, 2023, OWCP denied modification of the February 7, 2023 decision.

On January 18, 2024, appellant requested reconsideration.

On October 31, 2023, Dr. Rhee diagnosed PTSD and sequelae of injury of head. She noted that appellant no longer had active PTSD symptoms and returned to work two hours a day, three days a week. Dr. Rhee discharged appellant from her care. In a form report of even date, she reported that appellant could return to full-duty work with no restrictions.

In a November 8, 2023 report, Dr. Apetauerova noted that appellant sustained a work-related injury on August 25, 2022 and her symptoms were consistent with concussion and post-concussion syndrome. She noted that there were no objective neurological findings on examination. Dr. Apetauerova diagnosed concussion and post-concussion syndrome causally related to the accepted August 25, 2023 employment injury. She advised that appellant's work-related condition resolved, with no evidence of a concussion-related injury. Dr. Apetauerova noted that appellant required no additional treatment. She indicated that appellant was capable of returning to her job as a modified mail handler without restrictions, but not in the same facility. Appellant reported that she started a job at another facility. In a work capacity evaluation (Form OWCP-5c) dated November 19, 2023, Dr. Apetauerova noted appellant could return to her usual job eight hours a day.

On November 15, 2023, OWCP noted that appellant would be paid for intermittent disability from work during the period August 26 through October 24, 2023.

On December 1, 2023, Dr. Radakovic noted that appellant's visual sequelae following her head injury improved with treatment. She diagnosed reduced acuity, convergence excess, constricted functional fields, and post-trauma vision syndrome. Dr. Radakovic recommended that appellant not drive or return to her previous work position at this time.

By decision dated January 24, 2024, OWCP denied modification of the November 1, 2023 decision. It noted that the second opinion physician, Dr. Apetauerova, reported on November 8, 2023 that appellant's work-related condition had resolved and that she was capable of returning to full duty without restrictions.

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.³

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.⁴ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁵ 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.⁶ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical

³ *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).

⁴ 20 C.F.R. § 10.5(f).

⁵ *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁶ *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.⁷

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.⁸

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work causally related to the accepted employment injury.⁹ 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 their disability and entitlement to compensation.¹⁰

ANALYSIS

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

On October 31, 2023, OWCP referred appellant to Dr. Apetauerova for a second opinion evaluation to determine the extent and degree of any employment-related conditions and resultant disability, and to determine appellant's work capacity. However, it failed to ask Dr. Apetauerova to specifically address whether appellant was disabled from work during the claimed period of disability causally related to the accepted employment injury.

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.¹¹ 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.¹²

As OWCP failed to complete the development it undertook when it referred the case to Dr. Apetauerova, the case must be remanded for further development. On remand, OWCP shall request a supplemental report from Dr. Apetauerova, clarifying whether appellant was disabled

⁷ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

⁸ *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

⁹ See *B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁰ *Id.*

¹¹ 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).

¹² *Id.*; see also *R.M.*, Docket No. 16-0147 (issued June 17, 2016).

from work commencing October 15, 2022 causally related to the accepted August 25, 2022 employment injury. 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.

ORDER

IT IS HEREBY ORDERED THAT the January 24, 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: March 21, 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