

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

M.S., Appellant

and

**U.S. POSTAL SERVICE, GREENACRES POST
OFFICE, Lake Worth, FL, Employer**

Docket No. 25-0330

Issued: March 14, 2025

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 13, 2025 appellant filed a timely appeal from a January 14, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ Appellant submitted a timely request for oral argument before the Board, explaining her disagreement with OWCP's decision. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument as the case can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the January 14, 2025 decision, the Board received additional evidence. 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 disability from work for the period November 14, 2024 and continuing causally related to her accepted February 1, 2024 employment injury.

FACTUAL HISTORY

On February 5, 2024 appellant, then a 48-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 1, 2024 she injured her right forearm, hip and foot when she rolled her ankle and fell when walking from the parking lot to the building while in the performance of duty. She did not stop work, performing modified duties. OWCP accepted the claim for grade 2 strain of the ligaments of the right ankle.⁴

Appellant's attending physician, Dr. Danni Driscoll, a Board-certified anesthesiologist, found that she could return to full-time regular-duty work on April 16, 2024. In a May 22, 2024 duty status report (Form CA-17), she found that appellant was totally disabled. Dr. Driscoll released appellant to part-time modified-duty work on June 25, 2024.

Commencing July 19, 2024, Dr. Rena Amro, an orthopedic surgeon, completed CA-17 forms dated August 2 through October 30, 2024 and found that appellant was partially disabled and could work four hours per day with restrictions.

On October 14, 2024 OWCP referred appellant, a statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. Jon D. Donshik, a Board-certified orthopedic surgeon, for a second opinion to determine the nature and extent of appellant's injury-related residuals and disability from work due to her February 1 and May 15, 2024 right ankle injuries.

An October 21, 2024 magnetic resonance imaging (MRI) scan of the right foot demonstrated mild osteoarthritis of the first and likely mild osteoarthritis of the first and likely mild osteoarthritis of the third tarsometatarsal joints of the right foot, chronic, mild chronic plantar fasciitis, and mild subcutaneous edema about the dorsal medial aspect of the right foot, age indeterminate.

In a letter dated November 7, 2024, appellant requested that her claim be expanded to include the additional conditions of plantar fasciitis, and osteoarthritis of the right foot.

On November 12, 2024 Dr. Donshik reviewed the SOAF and medical records including the October 21, 2024 MRI scan of the right ankle and noted appellant's ongoing right ankle and knee pain. He found that the diagnosis of sprain of the ligaments of the right ankle was causally related to the accepted February 1 and May 15, 2024 employment injuries. Dr. Donshik opined that appellant was not capable of performing her date-of-injury position but noted that he could not determine which restrictions were solely due to her February 1, 2024 employment injury or

⁴ OWCP assigned the present claim OWCP File No. xxxxxx513. Appellant subsequently filed an October 5, 2025 Form CA-1 for an additional right ankle injury on May 15, 2024 which OWCP accepted for grade 2 sprain of the ligaments of the right ankle under OWCP File No. xxxxxx858. OWCP administratively combined OWCP File Nos. xxxxxx858 and xxxxxx513, with the latter serving as the master file.

the May 15, 2024 employment injury or to both. He related that appellant required further medical treatment. Dr. Donshik completed a work capacity evaluation (Form OWCP-5c) and found that appellant could perform sedentary strength level work only, but did not provide specific work restrictions.

In a November 14, 2024 report, Dr. Jacqueline Nunez, a Board-certified family practitioner, examined appellant due to right ankle and knee pain. She described the February 1, 2024 employment injury, reviewed the October 21, 2024 MRI scan of the right ankle, and diagnosed sprains of the right ankle and knee and loose body in the right knee. Dr. Nunez described how the February 1, 2024 employment incident resulted in a right knee sprain and a loose body. She completed November 14, 2024 form reports including a Form OWCP-5c and an attending physician's report (Form CA-20) finding that appellant was totally disabled. OWCP expanded acceptance of the claim to include right knee strain.

Beginning on November 19, 2024, appellant filed a series of claims for compensation (Form CA-7) for disability from work for the period commencing November 14, 2024.

In November 21 and December 6, 2024 development letters, OWCP advised appellant that the evidence submitted was insufficient to establish her disability claims. It requested that she submit additional medical evidence to establish her claims. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received CA-17 forms from Dr. Amro dated July 31 through October 30, 2024, indicating that appellant was partially disabled.

On December 14, 2024 Dr. Nunez found that following a complete physical examination and review of the medical records, appellant was temporarily totally disabled from her date-of-injury position of distribution clerk due to severe sprains of the right ankle and knee.

By decision dated January 14, 2025, OWCP denied appellant's claim for compensation finding that the medical evidence of record was insufficient to establish disability from work commencing November 14, 2024, due to the accepted February 1, 2024 employment injury.

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 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 work, and the duration of that disability, are medical issues

⁵ *Supra* note 2.

⁶ *See M.T.*, Docket No. 21-0783 (issued December 27, 2021); *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

that must be proven by a preponderance of the reliable, probative, and substantial medical opinion evidence.⁸ Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.⁹

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.¹⁰ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹¹ 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.¹²

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.¹³

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.¹⁴ 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 diagnosed condition and the specific employment factors identified by the claimant.¹⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁶

ANALYSIS

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

⁸ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

⁹ *C.S.*, Docket No. 20-1621 (issued June 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹⁰ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹¹ *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

¹² *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹³ *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).

¹⁴ *K.B.*, Docket No. 22-0842 (issued April 25, 2023); *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

¹⁵ *S.S.*, Docket No. 24-0814 (issued September 27, 2024); *R.P.*, Docket No. 18-1591 (issued May 8, 2019).

¹⁶ *Id.*

Appellant performed modified employment after her employment injury on February 1, 2024, until November 14, 2024 when Dr. Nunez opined that the acceptance of her claim should be expanded to include right knee sprain with a loose body and that she was totally disabled. OWCP expanded acceptance of the claim to include right knee sprain.

On November 12, 2024 Dr. Donshik, an OWCP referral physician, found that appellant had continued residuals of her accepted employment injury, but that he could not determine which restrictions were due to her February 1, 2024 employment injury or the May 15, 2024 employment injury. He completed a Form OWCP-5c and found that she could perform sedentary strength level work only, but did not provide specific work restrictions. OWCP did not ask either physician, however, to further address the specific claimed period of total disability.

It is well established that proceedings under FECA are not adversarial in nature, and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁷ 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.¹⁸

On remand, OWCP shall update the SOAF to include all of the accepted conditions and obtain a supplemental report from Dr. Donshik addressing whether appellant was disabled from work commencing November 14, 2024 causally related to the accepted February 1, 2014 employment injury.¹⁹ 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.

¹⁷ See *M.R.*, Docket No. 24-0562 (issued September 26, 2024); *M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B.*, Docket No. 22-1384 (issued January 24, 2024).

¹⁸ *D.F.*, Docket No. 25-0111 (issued December 27, 2024); *F.H.*, Docket No. 21-0579 (issued December 9, 2021); *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

¹⁹ See *M.C.*, Docket No. 24-0731 (issued September 6, 2024); *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 January 14, 2025 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 14, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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