United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 25-0770**
	)	**Issued: November 25, 2025**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION, Fort Dix, NJ, Employer	)	

Appearances:
Michael D. Overman, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 8, 2025 appellant, through counsel, filed a timely appeal from a February 10, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 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.

Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work commencing April 11, 2024, causally related to his accepted February 24, 2024 employment injury.

FACTUAL HISTORY

On February 26, 2024 appellant, then a 34-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on February 24, 2024 he injured his right shoulder and right ankle when he tripped and fell while in the performance of duty. He stopped work on February 24, 2024.[4] On April 8, 2024 OWCP accepted appellant's claim for strain unspecified muscle fascia tendon at shoulder upper right arm and strain unspecified muscle tendon at ankle and foot, right foot.

On May 11, 2024 appellant filed a claim for compensation (Form CA-7) for disability from work for the period May 11 through June 30, 2024. On the reverse side of the claim form, his supervisor noted that appellant had requested the "wrong days" for leave without pay, and that the correct days were April 11 through May 15, 2024.

In a development letter dated May 16, 2024, OWCP informed appellant of the deficiencies of his claim for disability from work commencing April 11, 2024. It advised him of the type of medical evidence needed to establish his claim and afforded him 30 days to submit the necessary evidence.

OWCP subsequently received reports from Dr. Edward Appelbaum, a Board-certified orthopedic surgeon, who noted the history of appellant's February 24, 2024 employment injury, reviewed diagnostic studies of both the right shoulder and right ankle and provided examination findings. In a March 8, 2024 attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16), and a March 8, 2024 duty status report (Form CA-17), Dr. Appelbaum provided impressions of right shoulder pain and right ankle pain. He opined that appellant was disabled from work from March 7 through April 8, 2024 pending magnetic resonance imaging (MRI) scans.

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that following the February 10, 2025 decision, appellant submitted additional evidence to OWCP. 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.*

[4] Appellant received continuation of pay for the period February 25 through April 5, 2024.

In a June 3, 2024 attending physician's report, Part B of a Form CA-16, a Form CA-17, and in reports dated June 3, 2024, Dr. Appelbaum diagnosed right shoulder pain, right ankle and joints of right foot pain and right ankle pain and opined that appellant was totally disabled from March 7 through July 2, 2024, with a return to work date of July 2, 2024.

In a July 8, 2024 report, Dr. Appelbaum noted examination findings and provided impressions of right ankle sprain, right peroneal tendinitis and ankle pain. He indicated that the MRI scan of appellant's right ankle revealed partial tear of the anterior talo-fibular ligament (ATFL) and peroneal tendinitis. Dr. Appelbaum opined that appellant was to remain off work until further notice.

In an August 7, 2024 report and order, Dr. Appelbaum provided impressions of right shoulder pain, right ankle pain and ordered an MRI scan of the right lower leg for better localization of the fascial defect with peroneal herniation. He opined that appellant was to remain off work until his reevaluation. In a September 25, 2024 report, he provided impressions of right shoulder pain and right ankle pain.

OWCP also received reports from Dr. Annetta M. Brzozowski, a podiatrist, who noted the history of appellant's February 24, 2024 employment injury and presented examination findings. In June 17, July 9, 2024 reports and June 17, 2024 order and note, Dr. Brzozowski indicated that diagnostic testing of appellant's right ankle revealed a partial tear of the ATFL. She opined that appellant was to remain off work until further notice.[5] In a July 30, 2024 report and order, Dr. Brzozowski opined that appellant was unable to return to work as he had an ATLF tear, fascial tear and tendinitis of the right ankle. In an August 26, 2024 report, she provided impressions of ankle sprain, right peroneal tendinitis and continued to recommend that appellant remain off work.

In a September 10, 2024 report, Dr. Joshua Okon, a Board-certified family practitioner, noted that the history of appellant's February 24, 2024 employment injury, recounted his medical course, reviewed diagnostic testing, and provided examination findings regarding appellant's right ankle. He diagnosed right ankle pain, unspecified chronicity, sprain of ATFL of right ankle and compression of common peroneal nerve of right lower extremity.

By decision dated October 18, 2024, OWCP denied appellant's claim for wage-loss compensation, finding that the medical evidence of record was insufficient to establish total disability from work commencing April 11, 2024, causally related to his accepted February 24, 2024 employment injury.

In a November 22, 2024 report, Dr. Kimball noted appellant's acute right ankle pain. He related that while the ankle sprain usually did not necessitate surgical intervention, it may need stabilization if residual instability persisted. In a November 22, 2024 Form CA-17 and a work capacity evaluation (Form OWCP-5c), Dr. Kimball opined that appellant was able to work light duty with restrictions and a brace as of November 29, 2024.

[5] Dr. Brzozowski noted the left ankle; however, this appears to be a typographical error as her examination findings referred to the right ankle only.

Appellant continued to file CA-7 forms, claiming wage-loss compensation through December 7, 2024. He returned to full-time limited duty with restrictions on December 9, 2024. Appellant continued to file CA-7 forms, claiming compensation through March 31, 2025.

OWCP thereafter received treatment notes from Dr. Kimball dated October 4, November 22, and December 17, 2024. In his report of October 4, 2024, Dr. Kimball provided assessments of right foot pain, acute right ankle pain, peroneal tendinitis of right lower leg, and right sinus tarsi syndrome. He provided a cortisone injection and discussed the possibility of surgical intervention. In a November 22, 2024 progress note, Dr. Kimball noted acute right ankle pain and related that appellant's previous MRI scan had revealed a torn ligament and inflamed tendons. In his December 17, 2024 report, he provided assessments of peroneal tendinitis of right lower leg, sprain of ATFL right ankle, right ankle instability and right acquired hindfoot varus. Dr. Kimball opined that appellant's right ankle instability, peroneal tendinitis with associated peroneus longus brevis partial tear were caused by the February 2024 employment injury. He recommended surgical intervention as nonoperative management has failed. In a December 17, 2024 preoperative report, Dr. Kimball noted that appellant wanted to proceed with surgical intervention. He indicated that appellant could return to light-duty work. In a December 17, 2024 Form CA-17, Dr. Kimball diagnosed right ankle pain and instability and opined that appellant could resume light-duty work as of December 18, 2024.

By decision dated December 31, 2024, OWCP accepted the claim for additional conditions of peroneal tendinitis, right leg and tarsal tunnel syndrome right lower leg.

On January 6, 2025 appellant requested reconsideration of the October 18, 2024 decision.

On January 20, 2025 OWCP referred appellant, a January 16, 2025 statement of accepted facts (SOAF), and the medical record to Dr. Lawrence Barr, an osteopath Board-certified in orthopedic surgery, for a second opinion examination to determine the nature and extent of appellant's work-related conditions, disability, and treatment recommendations. The examination was scheduled for February 3, 2025.

In a January 29, 2025 note, Dr. Kimball stated that appellant was seen in his office on December 17, 2024. He opined that appellant should remain off work until further notice, noting that surgery was scheduled for March 31, 2025.

By decision dated February 10, 2025, OWCP denied modification of its October 18, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which

[6] *Supra* note 2.

compensation is claimed is causally related to the employment injury.[7] 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.[8] 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.[9]

Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of 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 his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.[12] 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 employment, the employee is entitled to compensation for any loss of wages.[13]

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. Doing so would essentially allow employees to self-certify their disability and entitlement to compensation.[14]

ANALYSIS

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

On January 20, 2025 OWCP referred appellant to Dr. Barr for a second opinion evaluation to determine the nature and extent of his work-related conditions and disability. The examination was scheduled for February 3, 2025. OWCP, however, issued its February 10, 2025 decision

[7] *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).

[8] *See M.M.,* Docket No. 24-0553 (issued July 30, 2025); *S.F.*, *id.*; *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[9] 20 C.F.R. § 10.5(f); *M.M., id.*; *S.F., id.*; *J.M.*, Docket No. 18-0763 (issued April 29, 2020); *S.L.*, Docket No. 19-0603 (issued January 28, 2020).

[10] *Id.* at § 10.5(f); *see J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[11] *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

[12] *See D.N.*, Docket No. 19-1344 (issued November 6, 2020); *G.R.*, Docket No. 19-0940 (issued December 20, 2019); *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

[13] *M.M., supra* note 9; *J.T., supra* note 10; *S.L., supra* note 9.

[14] *Id.*; *Fereidoon Kharabi, supra* note 8.

denying modification of its October 18, 2024 total disability decision, without receiving the second opinion report.

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[15] OWCP has an obligation to see that justice is done.[16] Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the issue in the case.[17]

This case shall, therefore, be remanded for further development. On remand, OWCP shall refer appellant, along with the medical record, a SOAF, and a series of questions to a specialist in the appropriate field of medicine for an evaluation and a well-rationalized opinion as to whether appellant was disabled from work commencing April 11, 2024 causally related to the accepted February 24, 2024 employment injury. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's disability claim.

CONCLUSION

The Board finds that this case is not in posture for decision.[18]

[15] *See A.M.,* Docket No. 24-0899 (issued June 26, 2025); *see also A.P.,* Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons,* 51 ECAB 219, 223 (1999).

[16] *A.M., id*.; *see A.D.,* Docket No. 21-0143 (issued November 15, 2021).

[17] *L.N.,* Docket No. 22-0497 (issued September 14, 2023); *G.M.,* Docket No. 19-1931 (issued May 28, 2020); *W.W.,* Docket No. 18-0093 (issued October 9, 2018).

[18] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *S.G.,* Docket No. 23-0552 (issued August 28, 2023); *J.G.,* Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane,* 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the February 10, 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: November 25, 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