

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

S.C., Appellant

and

**U.S. POSTAL SERVICE, NORTH KENNER
STATION, Kenner, LA, Employer**

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**Docket No. 23-0094
Issued: January 29, 2026**

Appearances:
*Anita Lewallen, for the appellant*¹
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 October 31, 2022, appellant, through her representative, filed a timely appeal from a September 21, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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.

² By order dated March 20, 2023, the Board dismissed appellant's October 31, 2022 appeal, finding that there was no final adverse decision issued by OWCP within 180 days over which the Board could properly exercise jurisdiction. *Order Dismissing Appeal*, Docket No. 23-0094 (issued March 20, 2023). On July 14, 2025 the Board granted appellant's timely petition for reconsideration and reinstated the appeal. *Order Granting Petition for Reconsideration and Reinstating Appeal*, Docket No. 23-0094 (issued July 14, 2025).

³ 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP properly calculated appellant's payment of wage-loss compensation for disability from work during the period April 12 through September 20, 2021; (2) whether appellant has met her burden of proof to establish the remaining claimed disability causally related to the accepted March 17, 2017 employment injury.

FACTUAL HISTORY

On March 17, 2017, appellant, then a 56-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she felt and heard a pop in her right elbow when carrying mail while in the performance of duty. OWCP accepted the claim for sprain of right elbow, initial encounter. It paid her wage-loss compensation on the supplemental rolls for intermittent disability from work commencing December 20, 2018.

In a report dated December 10, 2019, Dr. Rashid J. Tamimie, Board-certified in preventative and occupational medicine, related that appellant had permanent restrictions of "work 5 intermittent days per week followed by 2 days off consecutively per week."

Beginning May 24, 2020, OWCP paid appellant wage-loss compensation on the periodic rolls.

On June 1, 2020, OWCP informally determined appellant's wage-earning capacity, applying the *Shadrick* formula.⁴ It found that her pay rate when her disability began was \$1,151.13 weekly; that the current weekly pay rate for the job and step when injured was \$1,255.90; that appellant had a 45 percent loss of wage-earning capacity (LWEC) in the amount of \$518.01. OWCP thereafter applied the basic 2/3 (66 2/3 percent) compensation rate to find that appellant was entitled to a four-week compensation rate of \$1,381.36. After applying the appropriate consumer price index (CPI), appellant's compensation rate increased to \$1,438.00 every 28 days commencing April 16, 2020, and to \$1,458.00 every 28 days commencing March 28, 2021.

Appellant subsequently filed a series of claims for wage-loss compensation (Form CA-7) for disability from work for the period April 12 through September 24, 2021. On a time analysis form (Form CA-7a) dated April 26, 2021, she claimed 2.54 hours of disability on April 12, 2021 and 8 hours of disability each day on April 13, 16, 17, and 19, 2021, for a total of 34.54 hours. On CA-7a forms dated May 10, 2021, appellant claimed 2 hours of disability each day on April 20 and 21, 2021; 2 hours of disability each day on April 24, 26, and 27 and May 1, 3, 4, and 7, 2021; and 2.5 hours on April 30, 2021, for a total of 18.50 hours. On a Form CA-7a dated June 7, 2021, she claimed 2 hours of disability each day on May 22, 24, 25, 28, 29, and 31 and June 1 and 4, 2021, for a total of 16 hours. On a June 22, 2021 Form CA-7a, appellant claimed 2 hours of disability each day on June 5, 7, 8, 11, 12, 14, 15 and 18, 2021, for a total of 16 hours. On a July 6, 2021 Form CA-7a, she claimed 2 hours of disability each day on June 19, 21, 22, 25, 26, 28, and 29 and July 2, 2021, for a total of 16 hours. On a July 22, 2021 Form CA-7a, appellant claimed 2 hours of disability each day on July 3, 5, 6, 9, 10, 12, 13 and 16, 2021, for a total of 16 hours. On a Form CA-7a dated August 3, 2021, she claimed 2 hours of disability each

⁴ *Albert C. Shadrick*, 5 ECAB 376 (1953), codified at 20 C.F.R. § 10.403.

day on July 17, 29, 20, 23, 24, 26, 27 and 30, 2021, for a total of 16 hours. On a Form CA-7a dated August 16, 2021, appellant claimed 2 hours of disability each day on July 31 and August 2, 3, 6, 7, 9, 10 and 13, 2021, for a total of 16 hours. On a Form CA-7a dated September 9, 2021, she claimed 2 hours of disability each day on August 14, 16, 17, 20, 21, 23, 24 and 27, 2021, for a total of 16 hours. On a Form CA-7a dated September 15, 2021, appellant claimed 2 hours of disability each day on August 28, 30, and 31 and September 3, 4, 6, 7 and 10, 2021, for a total of 16 hours. On a Form CA-7a dated September 27, 2021, she claimed 2 hours of disability each day on September 11, 13, 14, 17, 18, 20, 21 and 24, 2021, for a total of 12 hours.

In a report dated April 12, 2021, Dr. Tamimie related that appellant was treated for right elbow flexion deformity, osteoarthritis, chronic pain, and medial epicondylitis. He concluded that appellant was totally disabled until her next appointment on April 19, 2021. In a report dated April 19, 2021, Dr. Tamimie related that appellant was no longer totally disabled but should continue with permanent restrictions. He completed a duty status report (Form CA-17) on April 19, 2021, wherein he related that appellant was limited to six-hour shifts daily, five days of intermittent work per week followed by two days off work consecutively. In reports dated May 26 and July 7, 2021, Dr. Tamimie related that appellant was limited to six hours of work per shift, and should work intermittent days per week, followed by two days off consecutively. He explained that when she returned to work on April 19, 2021, she required an additional restriction to prevent recurrence of severe right elbow pain. Appellant was therefore provided permanent restrictions of six-hour shifts per day.

On August 24, 2021, OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. James C. Butler, a Board-certified orthopedic surgeon, for a second opinion to determine whether appellant continued to suffer from residuals and/or disability causally related to her accepted work-related injury.

In an August 9, 2021 report, Dr. Butler related that appellant had experienced a brief exacerbation of her right elbow pain in April because of increased workload, however, her condition had returned to its pre-exacerbation state. He opined that there was no need for appellant to work two days on and two days off, and that he did not see contraindication for eight hours of work per day. Dr. Butler concluded that “this opinion is given with the assumption that she has reached the same state that she was in prior to the exacerbation of her right elbow symptoms noted in her medical records in April 2021.” He completed a work capacity evaluation (Form OWCP-5c) on August 9, 2021, wherein he indicated that appellant could not perform the duties of her usual position, but that she was able to work eight hours a day with restrictions. Dr. Butler also indicated that appellant could only perform work requiring repetitive movement of the right elbow for six hours a day.

By decision dated September 17, 2021, OWCP authorized payment of wage-loss compensation for disability from work for the period April 12 through 19, 2021. However, it denied entitlement to the remaining claimed disability, finding that Dr. Butler’s August 9, 2021 reports established that appellant had returned to her pre-exacerbation state.

OWCP subsequently received a report dated October 1, 2021, wherein Dr. Tamimie continued appellant’s restrictions of six-hour work shifts, no work for five consecutive days without days off, and two days off consecutively per week. In a report dated October 20, 2021, Dr. Tamimie clarified that he agreed with Dr. Butler’s opinion that appellant could work eight-

hour shifts, as long as her other restrictions were maintained. Dr. Tamimie concluded that appellant should still have two days off consecutively per week to allow her body to recover.

On October 21, 2021, appellant requested reconsideration of the September 17, 2021 decision.

On a Form CA-7a dated October 26, 2021, appellant claimed eight hours of disability each day on October 9 and 21, 2021. On a Form CA-7a dated November 9, 2021, she claimed eight hours of disability each day on October 28 and November 5, 2021.

On October 27, 2021, Dr. Tamimie completed a Form CA-17 wherein he reiterated that appellant could work six hours a day, could not work five days in a row, and must have two days off consecutively each week.

In a report dated January 17, 2022, Dr. Tamimie reiterated that appellant should be limited to eight-hour shifts, no work for five consecutive days without days off, and two days off consecutively per week.

By decision dated January 19, 2022, OWCP modified the September 17, 2021 decision to authorize payment of wage-loss compensation for a total of 172.5 hours of disability from work during the period April 24 through September 20, 2021. However, it denied entitlement to the remaining claimed disability, finding that the evidence of record from Dr. Tamimie was insufficient to establish disability from work on those dates.

On February 25, 2022, appellant requested reconsideration and submitted a February 17, 2022 report, wherein Dr. Tamimie reiterated appellant's January 17, 2022 restrictions.

On April 20, 2022, the employing establishment advised that appellant had actual earnings from April 12 through September 20, 2021 in the amount of \$14,229.40.

In a May 5, 2022 fiscal worksheet, OWCP calculated appellant's rate of compensation for disability, every 28 days, based on the *Shadrick* formula.⁵ It determined that appellant's four-week compensation rate was \$1,783.00, based on a 51 percent LWEC. In a manual adjustment form dated May 5, 2022, OWCP noted that it had previously paid only \$8,435.57 in wage-loss compensation for the period April 12 through September 20, 2021,⁶ when the correct entitlement was \$9,569.57, a difference of \$1,134.00. Accordingly, on May 13, 2022, it paid appellant an additional \$1,134.00 for the period April 12 through September 20, 2021.

In a letter dated May 24, 2022, appellant requested that OWCP explain why the May 13, 2022 compensation payment was only \$1,134.00.

⁵ *Id.*

⁶ The case record reflects that OWCP previously paid appellant wage-loss compensation as follows: on April 24, 2021 it paid appellant \$1,458.00 for the period March 28 through April 24, 2021; on May 22, 2021 it paid appellant \$1,458.00 for the period April 25 through May 22, 2021; on June 19, 2021 it paid appellant \$1,458.00 for the period May 23 through June 19, 2021; on July 17, 2021 it paid appellant \$1,458.00 for the period June 20 through July 17, 2021; on August 14, 2021 it paid appellant \$1,458.00 for the period July 18 through August 14, 2021; on September 11, 2021 it paid appellant \$1,458.00 for the period August 15 through September 11, 2021; and on October 9, 2021 it paid appellant \$1,458.00 for the period September 12 through October 9, 2021.

In a June 7, 2022 response, OWCP explained that the May 13, 2022 compensation payment was calculated based on appellant's actual earnings as provided by the employing establishment on April 20, 2022, and the compensation that it had previously paid her. It enclosed a copy of its May 5, 2022 fiscal worksheet and manual adjustment form for her review.

In a letter dated June 8, 2022, appellant, through her representative, requested that OWCP issue a payment for 172.50 hours of wage-loss compensation for disability from work during the period April 24 through September 20, 2021, as previously ordered.

In a July 8, 2022 response, OWCP again explained that the compensation payment issued to appellant for the period April 12 through September 20, 2021 was calculated based on her actual earnings as provided by the employing establishment and the compensation it had previously paid her. It noted that its January 19, 2022 decision did not consider the compensation it had previously paid.

By decision dated September 21, 2022, OWCP denied modification, finding that it had correctly paid only \$1,134.00 in additional wage-loss compensation for the period April 12 through September 20, 2021 based on her actual earnings, applying the *Shadrick*⁷ formula, and the amount of compensation previously paid. It also summarily denied the remaining claimed disability.

LEGAL PRECEDENT -- ISSUE 1

Section 8115 of FECA provides that when an individual sustains an employment-related injury that prevents return to the employment held at the time of injury, but that does not render the employee totally disabled for all gainful employment, the employee is considered partially disabled and is entitled to compensation for his or her LWEC.⁸ If a claimant is entitled to compensation for partial wage loss after return to work, OWCP offsets actual earnings by comparing the wages of the position he or she was currently able to perform with the current wages of the position he or she held when injured pursuant to the *Shadrick* formula.⁹

The formula for determining an LWEC has been codified at section 10.403(c)-(e) of OWCP's regulations.¹⁰ Under the *Shadrick* formula, OWCP calculates an employee's wage-earning capacity in terms of percentage by dividing the employee's actual earnings (or constructed earnings) by the current or updated pay rate for the position held at the time of injury.¹¹ The employee's wage-earning capacity in dollars is computed by first multiplying the pay rate for compensation purposes, defined in 20 C.F.R. § 10.5(a) as the pay rate at the time of injury, the time disability begins or the time disability recurs, whichever is greater, by the

⁷ *Supra* note 4.

⁸ 5 U.S.C. § 8115. *See also* 20 C.F.R. § 10.402.

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Wage-Earning Capacity*, Chapter 2.815.2e (June 2013).

¹⁰ 20 C.F.R. § 10.403(c)-(e).

¹¹ *Id.* at § 10.403(c)-(d).

percentage of wage-earning capacity. The resulting dollar amount is then subtracted from the pay rate for compensation purposes to obtain LWEC.¹²

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly calculated appellant's payment of wage-loss compensation for disability from work during the period April 12 through September 20, 2021.

Beginning May 24, 2020, OWCP paid appellant wage-loss compensation on the periodic rolls. On June 1, 2020, it informally determined appellant's wage-earning capacity, applying the *Shadrick* formula.¹³ OWCP found that her pay rate when her disability began was \$1,151.13 weekly; that the current weekly pay rate for the job and step when injured was \$1,255.90; that appellant had a 45 percent LWEC in the amount of \$518.01. Thereafter it applied the basic 2/3 (66 2/3 percent) compensation rate to find that appellant was entitled to a four-week compensation rate of \$1,381.36. After applying the appropriate consumer price index (CPI), appellant's compensation rate increased to \$1,438.00 every 28 days commencing April 16, 2020, and to \$1,458.00 every 28 days commencing March 28, 2021.

Accordingly, OWCP paid appellant wage-loss compensation as follows: on April 24, 2021 it paid appellant \$1,458.00 for the period March 28 through April 24, 2021; on May 22, 2021 it paid appellant \$1,458.00 for the period April 25 through May 22, 2021; on June 19, 2021 it paid appellant \$1,458.00 for the period May 23 through June 19, 2021; on July 17, 2021 it paid appellant \$1,458.00 for the period June 20 through July 17, 2021; on August 14, 2021 it paid appellant \$1,458.00 for the period July 18 through August 14, 2021; on September 11, 2021 it paid appellant \$1,458.00 for the period August 15 through September 11, 2021; and on October 9, 2021 it paid appellant \$1,458 for the period September 12 through October 9, 2021.

On April 20, 2022, the employing establishment advised that appellant had actual earnings from April 12 through September 20, 2021 in the amount of \$14,229.40. On May 5, 2022, OWCP again calculated appellant's entitlement to compensation based on the *Shadrick* formula, for the period April 12 through September 20, 2021.¹⁴ It determined that appellant's four-week compensation rate should be \$1,783.00, based on a 51 percent LWEC. As a result, appellant had been underpaid a total of \$1,134.00 for the period April 12 through September 20, 2021.

The Board has reviewed OWCP's calculations and finds that it properly calculated appellant's payment of wage-loss compensation for disability from work during the period April 12 through September 20, 2021.

¹² *Id.* at § 10.403(e).

¹³ *Supra* note 4.

¹⁴ *Id.*

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA¹⁵ 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.¹⁶ 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.¹⁷ 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.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that the case is not in posture for decision with regard to appellant's entitlement to the remaining claimed disability.

In the decision dated September 21, 2022, OWCP summarily denied appellant's entitlement to the remaining claimed disability. In this regard it did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the precise defect of his claim and the kind of evidence which would overcome it.¹⁹

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and an award for or against payment of compensation.²⁰ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings and facts and a statement of reasons.²¹ As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.²²

¹⁵ *Supra* note 3.

¹⁶ *R.B.*, Docket No. 25-0715 (issued December 9, 2025); *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).

¹⁷ *A.M.*, Docket No. 25-0788 (issued November 17, 2025); *see C.W.*, Docket No. 25-0243 (issued July 17, 2025); *B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁸ *Id.*

¹⁹ *See id.*; *see also N.R.*, Docket No. 22-0958 (issued February 21, 2025); *D.W.*, Docket No. 18-0483 (issued March 7, 2019).

²⁰ 5 U.S.C. § 8124(a).

²¹ 20 C.F.R. § 10.126.

²² Federal(FECA)Procedure Manual Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

As such, the Board shall set aside OWCP's September 21, 2022 decision and remand the case for findings of fact and a statement of reasons for its decision with regard to the remaining claimed disability, pursuant to the standards set forth in section 5 U.S.C. § 8124(a) and 20 C.F.R. § 10.126.²³ After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that OWCP properly calculated appellant's payment of wage-loss compensation for disability from work during the period April 12 through September 20, 2021. The Board further finds that the case is not in posture for decision with regard to whether appellant has met her burden of proof to establish the remaining claimed disability causally related to the accepted March 17, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2022 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 29, 2026
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

²³ *D.O.*, Docket No. 22-0315 (issued June 29, 2022).