

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish that the employee's disability from work for the period December 6, 2012 through August 3, 2021, was causally related to her accepted November 8, 2010 employment injury.

FACTUAL HISTORY

On November 9, 2010, the employee, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on November 8, 2010, she injured her right knee when she slipped and fell while in the performance of duty.³ The employee did not stop work at the time of injury. On September 11, 2012, OWCP accepted the claim for contusion of right knee and sprain of left ankle.

On December 5, 2012, the employee stopped work.

OWCP subsequently received reports dated December 6, 2012 through February 8, 2013, wherein Dr. Kevin Fox, an osteopath Board-certified in family practice, held the employee off work commencing December 6, 2012. In a February 18, 2013 report, Dr. Fox diagnosed reflex sympathetic dystrophy (RSD) causally related to the accepted employment injury and continued to hold the employee off work.

In a report dated January 28, 2013, Dr. John R. Cintron, a Board-certified neurologist, held the employee off work for the period January 28 through February 4, 2013.

In a March 26, 2013 report, Dr. Fox diagnosed plantar fasciitis recommended that the employee rest to prevent injuries due to lower extremity weakness.

On April 29, 2013, OWCP referred the employee, along with a statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. Peter J. Millheiser, a Board-certified orthopedic surgeon, for a second opinion examination regarding expansion of the acceptance of the claim. In a May 6, 2013 report, Dr. Millheiser opined that the employee's RSD was not causally related to the accepted employment injury. He returned the employee to full-time, full-duty work with no restrictions attributable to the accepted employment injury.

On June 24, 2013, OWCP referred the employee, along with an updated SOAF, the medical record, and a series of questions to Dr. Melvin Grossman, a Board-certified neurologist, for a second opinion examination regarding expansion of the acceptance of the claim to include RSD, and any disability caused by the accepted employment injury. In a July 11, 2013 report, Dr. Grossman explained that while the employee may have had RSD previously, there was no present evidence of a sympathetically mediated pain syndrome. He further explained that the accepted right knee contusion and left ankle sprain had ceased without residuals and returned the employee to full-time, full-duty work. In an August 26, 2013 supplemental report, Dr. Grossman

³ OWCP assigned the present claim OWCP File No. xxxxxx103. Previously, the employee filed a Form CA-1 alleging that, on October 13, 2006, she stepped from her long-life vehicle into a hole in a driveway and fell injuring her right ankle and foot. OWCP assigned that claim OWCP File No. xxxxxx432.

opined that the employee was not disabled from work due to any type of complex regional pain syndrome (CRPS).

In a September 2013 work capacity evaluation (Form OWCP-5c), Dr. Dennis J. Patin, a Board-certified anesthesiologist, held the employee off work.

On September 25, 2013, OWCP declared a conflict of medical opinion between Drs. Fox and Grossman regarding whether the employee sustained RSD causally related to the accepted November 8, 2010 employment injury, and if so, whether the condition rendered her totally disabled from work commencing December 5, 2012. On October 11, 2013, OWCP referred the employee, along with the medical record, a SOAF, and a series of questions to Dr. Kenneth C. Fischer, a Board-certified neurologist selected as the impartial medical examiner (IME), to resolve the conflict of medical evidence. In a November 21, 2013 report, Dr. Fischer related the employee's history of injury and medical treatment and noted his review of the SOAF and medical record. He noted an impression of an inconsistent symptom pattern following the November 8, 2010 employment injury, sensory loss indicative of peripheral neuropathy of the upper and lower extremities, and no allodynia or other clinical confirmation of RSD or complex regional pain disorder. Dr. Fischer found that the accepted right knee contusion and left ankle sprain resolved without residuals. He returned the employee to full duty with no restrictions.

In an October 8, 2014 report, Dr. Fox opined that the employee's RSD was caused by the accepted November 9, 2010 right knee contusion and left ankle sprain, and disabled her from work commencing December 5, 2012.

OWCP subsequently received additional medical evidence, including an October 9, 2018 report, wherein Dr. Fox reiterated his prior findings and conclusions.

In a March 15, 2021 report, Dr. Fox held the employee off work due in part to peripheral neuropathy. He opined that the accepted November 8, 2010 employment injury caused nerve damage to the right knee and lower extremity, resulting in neuropathy.

In a June 8, 2021 report, Dr. Fox reiterated that the employee remained disabled from work indefinitely due to in part to peripheral neuropathy.

On July 27, 2021, OWCP administratively combined the employee's claims under OWCP File Nos. xxxxxx432 and xxxxxx103, with the latter designated as the master file.

The employee passed away on August 3, 2021.

On November 16, 2021, OWCP expanded its acceptance of the claim to include unspecified mononeuropathy of right lower limb.

On December 7, 2021, appellant, through his then-counsel, filed a claim for compensation (Form CA-7) for the employee's disability from work during the period December 6, 2012 through August 3, 2021.

In support thereof, appellant submitted a November 9, 2017 Form OWCP-5c wherein Dr. Patin held the employee off work due to “[l]imited functional capacity.”

On September 27, 2023, OWCP referred the medical record, an updated SOAF, and a series of questions to Dr. Clinton Bush, III, a Board-certified orthopedic surgeon, for a second opinion regarding the nature and extent of the accepted conditions, and whether the employee was disabled from work during the claimed period.

In a November 14, 2023 report, Dr. Bush noted his review of the SOAF and medical record, but indicated that OWCP had not provided medical records pertaining to the October 18, 2006 injury. He opined that the November 8, 2010 employment injury did not cause the employee to develop CRPS/RSD as she did not exhibit the diagnostic criteria of “allodynia, temperature asymmetry, sudomotor changes, edema, diminished motion, measurable weakness, tremor, dystonia, trophic changes of the hair/skin, nails, or muscle atrophy.” Dr. Bush explained that in the absence of allodynia, the lower extremity blotchiness, temperature differential of the hands, and pain were not diagnostic. Additionally, the radionuclide bone scan, thermography, and electrodiagnostic studies showed no evidence of complex regional pain syndrome. Dr. Bush added that the onset of symptoms one-and-a-half years after the identified trauma was inconsistent with causal relationship. He also opined that while appellant had some evidence of right femoral nerve neuropathy, there was “no correlation to the distal sensory symptoms which characterized [the employee’s] complaints over the years.” Dr. Bush therefore concluded that the neuropathy was unrelated to the employee’s “knee and ankle injuries from many years ago.” He concluded that the November 8, 2010 right knee injury had resolved many years previously. Dr. Bush returned appellant to full duty with no restrictions. He further opined that at the time the employee stopped work on December 6, 2012, she had no disability directly or indirectly related to the October 18, 2006 employment incident or November 8, 2010 employment injury.

By decision dated July 1, 2024, OWCP vacated the November 16, 2021 decision which had expanded the acceptance of the claim to include unspecified mononeuropathy of right lower limb. It accorded the weight of the medical evidence to Dr. Bush’s second opinion.

By a separate decision dated July 1, 2024, OWCP denied appellant’s claim for disability from work for the period December 6, 2012 through August 3, 2021, finding that the medical evidence of record was insufficient to establish causal relationship between the claimed disability and the accepted employment injury.

On July 29, 2024, appellant requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review with regard to both July 1, 2024 decisions.

By decision dated October 10, 2024, OWCP’s hearing representative reversed the July 1, 2024 OWCP decision which rescinded acceptance of unspecified mononeuropathy of the right lower extremity. The hearing representative found that OWCP failed to issue a proposed notice of rescission, and that additional development was required as Dr. Bush had not been provided the medical records from OWCP File No. xxxxxx432 regarding the October 18, 2006 injury. The hearing representative directed that OWCP prepare an updated SOAF and refer it, along with the FECA definitions of causation and the medical record in OWCP File No. xxxxxx432 to Dr. Bush and request a supplemental report regarding whether the diagnosed right lower extremity

mononeuropathy was causally related to the accepted injuries. After any additional development deemed necessary, OWCP would issue a *de novo* decision in the claim.

By separate decision dated October 10, 2024, OWCP's hearing representative set aside OWCP's July 1, 2024 decision which denied appellant's disability claim for the period December 6, 2012 through August 3, 2021. The hearing representative found that OWCP had "neglected to summarize, analyze, and weigh the medical evidence received from the claimant's treating physicians in support of disability, explaining why Dr. Bush carries the weight of medical evidence." The hearing representative further found that OWCP failed to send a development letter to the employee's estate requesting the necessary evidence to establish disability. After any further development deemed necessary, OWCP was to issue a *de novo* decision.

In a development letter dated November 26, 2024, OWCP notified appellant of the deficiencies in the claim for disability compensation for the period December 6, 2012 through August 3, 2021. It requested that he provide further factual information regarding the circumstances of the claimed disability, and whether the employee sustained any additional injuries after November 8, 2010. OWCP also requested a comprehensive medical report addressing causal relationship between the accepted employment injuries and the claimed period of disability. It afforded appellant 30 days to respond. No response was received.

By *de novo* decision dated January 31, 2025, OWCP denied appellant's disability claim, finding that he had not met his burden of proof to establish that the employee's disability from work for the period December 6, 2012 through August 3, 2021 was causally related to her accepted November 8, 2010 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.⁵

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.⁶ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁷ 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.⁸ When, however, the medical evidence

⁴ *Supra* note 2.

⁵ *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).

⁶ 20 C.F.R. § 10.5(f).

⁷ *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁸ *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.⁹

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.¹⁰

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.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 their disability and entitlement to compensation.¹²

ANALYSIS

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

On September 27, 2023, OWCP referred the medical record, an updated SOAF, and a series of questions to Dr. Bush for a second opinion regarding the nature and extent of the accepted conditions, and whether the employee was disabled from work during the claimed period. In a November 14, 2023 report, Dr. Bush noted his review of the SOAF and medical record, but indicated that OWCP had not provided medical records pertaining to the October 18, 2006 injury. He opined that the November 8, 2010 employment injury did not cause the employee to develop CRPS/RSD as she did not exhibit the diagnostic criteria of “allodynia, temperature asymmetry, sudomotor changes, edema, diminished motion, measurable weakness, tremor, dystonia, trophic changes of the hair/skin, nails, or muscle atrophy.” Dr. Bush also concluded that the neuropathy was unrelated to the employee’s “knee and ankle injuries from many years ago.” He concluded that the November 8, 2010 right knee injury had resolved many years previously. Dr. Bush returned appellant to full duty with no restrictions. He opined that at the time the employee stopped work on December 6, 2012, she had no disability directly or indirectly related to the October 18, 2006 employment incident or November 8, 2010 employment injury. Dr. Bush, however, did not provide rationale for his conclusory opinion. The Board thus finds that his opinion is insufficiently

⁹ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹⁰ *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹¹ *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).

¹² *Id.*

rationalized. Medical reports consisting solely of conclusory statements without sufficient rationale are of diminished probative value.¹³

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.¹⁴ 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.¹⁵

The case shall therefore be remanded to OWCP for further development.¹⁶ On remand, OWCP shall obtain a supplemental second opinion report from Dr. Bush, including sufficient rationale for his medical opinion on the issue of disability.¹⁷ If Dr. Bush is unavailable or unwilling to provide a supplemental opinion, OWCP shall refer the case record to a new OWCP physician in the appropriate field of medicine for a second opinion on the issue of disability. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹³ *C.C.*, Docket No. 15-1056 (issued April 4, 2016); *see T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹⁴ *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).

¹⁵ *Id.*; *see also R.M.*, Docket No. 16-0147 (issued June 17, 2016).

¹⁶ *D.G.*, *id.*; *see F.A.*, Docket No. 22-0167 (issued December 16, 2022); *T.C.*, Docket No. 17-1906 (issued January 10, 2018); *X.Y.*, Docket No. 19-1290 (issued January 24, 2020); *K.G.*, Docket No. 17-0821 (issued May 9, 2018).

¹⁷ *L.N.*, Docket No. 24-0690 (issued November 4, 2024); *D.D.*, Docket No. 24-0203 (issued May 2, 2024); *J.W.*, Docket No. 22-0223 (issued August 23, 2022); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Talmadge Miller*, 47 ECAB 673 (1996).

ORDER

IT IS HEREBY ORDERED THAT the January 31, 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: January 29, 2026
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