

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

K.D., Appellant)	
and)	
U.S. POSTAL SERVICE, PATERSON POST OFFICE, Paterson, NJ, Employer)	
)	
)	

Appearances:

Paul Kalker, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

**Docket No. 26-0008
Issued: January 29, 2026**

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 7, 2025, appellant filed a timely appeal from a September 12, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

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 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period October 24, 2018 through May 3, 2021, causally related to his accepted September 8, 2018 employment injury.

FACTUAL HISTORY

This case was previously before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On September 8, 2018, appellant, then a 77-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he injured his right shoulder when he fell pushing two trash cans while in the performance of duty. He stopped work on September 9, 2018 and has not returned to work.

By decision dated November 20, 2018, OWCP accepted that the September 8, 2018 incident occurred as alleged, but denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 8, 2019, appellant requested reconsideration. OWCP received additional medical and factual evidence.

By decision dated January 2, 2020, OWCP modified its November 20, 2018 decision to find that appellant had established a diagnosis of right shoulder rotator cuff tear. However, the claim remained denied as the medical evidence of record was insufficient to establish that appellant's diagnosed condition was causally related to the accepted September 8, 2018 employment incident.

On December 29, 2020 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

By decision dated March 23, 2021, OWCP vacated its January 2, 2020 decision. It found that the medical evidence submitted was sufficient to establish that appellant sustained a right rotator cuff tear causally related to his accepted September 8, 2018 employment incident. By separate decision of even date, OWCP formally accepted his claim for right rotator cuff tear.

Appellant subsequently filed claims for compensation (Form CA-7) for disability from work for the period September 9, 2018 through May 3, 2021.

OWCP, by decision dated July 1, 2021, denied appellant's claims for compensation, finding that the medical evidence of record was insufficient to establish disability from work

³ Docket No. 22-0862 (issued March 30, 2023); Docket No. 25-0411 (issued April 17, 2025).

during the period September 9, 2018 through May 3, 2021, due to his accepted September 8, 2018 employment injury.

On December 24, 2021, appellant, through counsel, requested reconsideration and submitted additional medical evidence.

By decision dated March 23, 2022, OWCP corrected its earlier July 7, 2021 decision, finding that a July 29, 2021 medical report from Dr. Stephen J. McIlveen, an attending Board-certified orthopedic surgeon, was insufficient to establish that appellant's disability from work during the period October 24, 2018 through May 3, 2021, was causally related to his accepted September 8, 2018 employment injury.

On May 11, 2022 appellant, through counsel, appealed to the Board. By decision dated March 30, 2023,⁴ the Board affirmed OWCP's March 23, 2022 decision, finding that appellant had not met his burden of proof to establish disability from work for the period October 24, 2018 through May 3, 2021, due to his accepted September 8, 2018 employment injury.

On March 22, 2024, appellant requested reconsideration and submitted a March 13, 2024 addendum report by Dr. McIlveen.

By decision dated March 26, 2024, OWCP denied modification of its March 30, 2023 decision, finding that Dr. McIlveen's reports of record, including his March 13, 2024 report, did not contain a rationalized opinion to establish that appellant was totally disabled from work during the claimed period due to his accepted September 8, 2018 employment injury.

On February 19, 2025, appellant, through counsel, requested reconsideration and submitted a January 31, 2025 addendum report by Dr. McIlveen.

By decision dated March 5, 2025, OWCP denied modification of the March 26, 2024 decision.

On March 24, 2025, appellant, through counsel, appealed to the Board. By decision dated April 17, 2025,⁵ the Board set aside OWCP's March 5, 2025 decision, finding that the case was not in posture for decision regarding whether appellant's disability from work during the period October 24, 2018 through May 3, 2021 was causally related to his accepted September 8, 2018 employment injury. The Board remanded the case to refer appellant, along with the medical record and a statement of acceptance facts (SOAF), to a second opinion physician for an evaluation and a rationalized opinion regarding causal relationship, to be followed by a *de novo* decision.

On remand, OWCP referred appellant, a SOAF, the medical record, and a series of questions, to Dr. Robert Hole, III, a Board-certified orthopedic surgeon, for a second opinion examination to determine the nature and extent of appellant's employment-related residuals and disability. The May 28, 2025 SOAF provided to Dr. Hole noted a history of injury that on

⁴ Docket No. 22-0862 (issued March 30, 2023).

⁵ Docket No. 25-0411 (issued April 17, 2025).

September 8, 2018 appellant injured his right shoulder when he fell pushing two trash cans. The SOAF also listed appellant's accepted condition as right rotator cuff tear.

In a July 25, 2025 report, Dr. Hole reviewed the medical record and SOAF and recounted a history of injury and treatment. He noted that appellant "was seen today for an alleged injury to his right shoulder which occurred on September 8, 2018 as a result of a slip and fall at work." Dr. Hole further noted that appellant reported that he was retired. He discussed appellant's physical and diagnostic examination of both shoulders. Dr. Hole diagnosed the accepted condition of right shoulder rotator cuff tear. He opined that appellant was not totally disabled during the period September 9, 2018 through May 3, 2021, due to his right shoulder injury. Dr. Hole also opined that although he was not medically capable of performing his custodian job, he could perform light-duty work with right shoulder restrictions. He advised that appellant's recovery prognosis was poor as it was unlikely that appellant was a candidate for reverse shoulder arthroplasty given his multiple medical comorbidities. In a work capacity evaluation (Form OWCP-5c) dated July 25, 2025, Dr. Hole reiterated his opinion regarding appellant's work capacity. Additionally, he noted that appellant's work restrictions were permanent.

On August 28, 2025, OWCP requested that Dr. Hole provide a supplemental report to explain, with medical rationale, why appellant was able to work during the period September 9, 2018 through March 3, 2021.

In an addendum report dated September 5, 2025, Dr. Hole referenced findings set forth in his prior report dated July 25, 2025. He noted that at the time of his evaluation, appellant was seen for "an alleged injury which occurred eight years prior." Dr. Hole related that it was not possible to more precisely estimate appellant's work capabilities eight years ago at the time of the "alleged injury" since his condition also had a component of degeneration and progression over time and his work capacity was estimated based on his evaluation eight years after the injury. He concluded that, he made the above estimates regarding appellant's work capacity during the period in question based solely on the assumptions above, contralateral shoulder issues, and the nature of the injury, a rotator cuff tear.

By *de novo* decision dated September 12, 2025, OWCP denied appellant's disability claims for the period October 24, 2018 through May 3, 2021.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim,⁷ including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁸ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled

⁶ *Supra* note 2.

⁷ See *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

⁸ 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).

from work as a result of the accepted employment injury.⁹ 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.¹⁰

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 appellant, 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.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 his or her disability and entitlement to compensation.¹²

ANALYSIS

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

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's March 5, 2025 decision because the Board considered that evidence in its April 17, 2025 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹³

Following the Board's April 17, 2025 decision, OWCP referred appellant to Dr. Hole for a second opinion evaluation regarding whether he had any residuals or disability causally related to his accepted September 8, 2018 employment injury. The May 28, 2025 SOAF provided to Dr. Hole described appellant's history of injury on September 8, 2018, and listed his accepted condition as right rotator cuff tear. In a report dated July 25, 2025, Dr. Hole noted that appellant "was seen today for an alleged injury to his right shoulder which occurred on September 8, 2018 as a result of a slip and fall at work." He also noted his review of the SOAF and medical records. Dr. Hole provided examination findings and diagnosed the accepted condition of right shoulder rotator cuff tear. He opined that appellant was not totally disabled during the period September 9, 2018 through May 3, 2021, due to his right shoulder injury. Dr. Hole further

⁹ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

¹⁰ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

¹¹ See *B.P.*, Docket No. 23-0909 (issued December 27, 2023); *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹² See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 10.

¹³ *K.D.*, Docket No. 25-0411 (issued April 17, 2025); *T.H.*, Docket No. 25-0345 (issued March 20, 2025); *M.V.*, Docket No. 24-0092 (issued March 28, 2024); *R.P.*, Docket No. 23-0638 (issued November 30, 2023); *A.D.*, Docket No. 20-0553 (issued April 19, 2021); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

opined that while appellant was not medically capable of performing his custodian job, he could perform light-duty work with permanent right shoulder restrictions.

In a September 5, 2025 supplemental report, Dr. Hole referenced findings set forth in his prior report dated July 25, 2025. Additionally, he noted that at the time of his evaluation, appellant was seen for “an alleged injury which occurred eight years prior.” Dr. Hole advised that it was not possible to more precisely estimate appellant’s work capabilities eight years ago at the time of his “alleged injury” since his condition also had a component of degeneration and progression over time and his work capacity was estimated based on his evaluation eight years after the injury. Dr. Hole concluded that, based solely on the assumptions above, contralateral shoulder issues, and the nature of the injury, rotator cuff tearing, he made the above estimates regarding appellant’s work capacity during the period in question.

It is well established that a physician’s opinion must be based on a complete and accurate factual and medical background. When OWCP has accepted an employment condition as occurring in the performance of duty, the physician must base his opinion on these accepted conditions.¹⁴ Further, OWCP’s procedures dictate that, when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF, which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹⁵

In the present case, OWCP erred in according the weight of the medical evidence to Dr. Hole’s July 25 and September 5, 2025 reports. Dr. Hole’s opinion was speculative in nature as he related that his opinion regarding appellant’s ability to perform light-duty work was an “estimate.” The Board has long held that an opinion, which is equivocal or speculative in nature is of limited probative value.¹⁶

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.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

¹⁴ *J.J.*, Docket No. 25-0340 (issued March 20, 2025); *K.S.*, Docket No. 22-1011 (issued January 5, 2023); *D.T.*, Docket No. 21-1168 (issued April 6, 2022); *G.B.*, Docket No. 20-0750 (issued October 27, 2020); *T.P.*, 58 ECAB 524 (2007).

¹⁵ *J.J.*, *id.*; *J.Z.*, Docket No. 22-0829 (issued December 9, 2022); *M.H.*, Docket No. 21-1014 (issued July 8, 2022); *N.W.*, Docket No. 16-1890 (issued June 5, 2017); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

¹⁶ *S.L.*, Docket No. 23-0152 (issued May 16, 2023); *see L.L.*, Docket No. 21-0981 (issued July 1, 2022); *C.A.*, Docket No. 21-0601 (issued November 15, 2021); *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹⁷ *J.J.*, *id.*; *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).

¹⁸ *Id.*; *see also R.M.*, Docket No. 16-0147 (issued June 17, 2016).

The case shall therefore be remanded for further development of the medical evidence. On remand, OWCP shall refer appellant, along with the case record and SOAF, to a new second opinion physician for a rationalized medical report specifically addressing whether appellant was disabled from work for the period October 24, 2018 through May 3, 2021, causally related to the accepted September 8, 2018 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.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 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

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

¹⁹ See *J.J.*, *supra* note 14; *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).