

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period December 15, 2014 through October 9, 2017, causally related to her accepted employment injury.

FACTUAL HISTORY

On February 6, 2013, appellant, then a 65-year-old parcel post distribution machine operator clerk, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome (CTS) in both hands, and experienced frequent swollen knees and feet (ankle), and back pain due to factors of her federal employment. She explained that she walked, pushed, and rolled equipment on a concrete floor; stood on hard floors processing volumes of mail four to six hours per day; keyed mail two to four hours per day, worked at a keying station two hours per day, and climbed stairs. Appellant noted that she first became aware of her conditions and realized their relationship to her federal employment on January 15, 2013. She stopped work on January 15, 2013, and returned to modified duty on January 31, 2013. OWCP assigned the claim OWCP File No. xxxxxx704 and accepted it for bilateral knee unspecified internal derangement, bilateral knee tear of the medial meniscus, bilateral CTS, and bilateral knee and leg sprains of unspecified sites. It paid her wage-loss compensation on the supplemental rolls for the period June 2, 2013 through August 20, 2014.

Appellant returned to full-time, limited-duty work on August 21, 2014.

In a December 18, 2014 attending physician's report (Form CA-20), Dr. Daniel R. Ignacio, an attending physiatrist, diagnosed the accepted conditions of internal derangement strain of the bilateral knee and bilateral CTS. He advised that appellant was totally disabled from December 22 through 31, 2014.

Appellant thereafter filed a series of claims for compensation (Form CA-7) alleging disability from work during the period December 15, 2014 through October 9, 2017.

In medical reports and disability certificates dated January 20, 2014 through January 5, 2015, Dr. Ignacio diagnosed chronic bilateral knee internal derangement, chronic bilateral knee torn meniscus, chronic bilateral knee strain, and chronic bilateral CTS. He also diagnosed chronic pain syndrome. Dr. Ignacio advised that appellant was totally incapacitated from January 1 through 31, 2015 due to her medical conditions.

In a development letter dated February 5, 2015, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received medical evidence, including reports and disability certificates dated January 22 through April 7, 2015, wherein Dr. Ignacio diagnosed additional conditions of chronic bilateral wrist tenosynovitis, chronic shoulder-hand syndrome, and chronic post-traumatic arthropathy of the knees. He opined that appellant was disabled from work during the periods December 22 through 31, 2014, and January 11 through February 28 and March 1 through 31, 2015 causally related to her accepted employment injury.

In reports dated January 6 through September 25, 2015, Dr. Ignacio diagnosed additional conditions of chronic lumbar strain syndrome, chronic lumbar disc syndrome with lumbar radiculopathy, chronic bilateral shoulder strain, bilateral rotator cuff syndrome, and complex regional pain syndrome. He advised that appellant was totally disabled from work during the periods May 1 through 30, 2015, and July 1 through October 30, 2015, and partially disabled from work for the period June 1 through 30, 2015. In an October 30, 2015 disability certificate, Dr. Ignacio advised that appellant was totally incapacitated from November 1 through 30, 2015.³

OWCP continued to receive medical evidence, including disability certificates dated December 10, 2015 and January 27, 2016, wherein Dr. Ignacio advised that appellant was totally incapacitated from December 1, 2015 through January 31, 2016 due to her medical conditions.

In reports dated December 4, 2015 and January 27, 2016, Dr. Ignacio opined that appellant's accepted conditions of chronic bilateral knee strain, chronic internal derangement of bilateral knee with torn meniscus, and chronic bilateral CTS were aggravated by the work duties she performed during the period August 24 through December 14, 2014 and resulted in her disability from work.

In reports and disability certificates dated January 27, 2016 through November 1, 2019, Dr. Ignacio reiterated his diagnoses of bilateral wrist and knee conditions and opined that appellant was intermittently disabled from work during the period January 1, 2016 through October 30, 2019.

On July 18, 2019, OWCP administratively combined OWCP File Nos. xxxxxx279 and xxxxxx704, with the latter designated as the master file.

OWCP subsequently received a Form CA-20 and disability certificates dated March 6 through July 21, 2017, wherein Dr. Ignacio advised that appellant was intermittently disabled from work during the period March 1, 2017 through August 31, 2017.

On August 12, 2020, OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. D. Burke Haskins, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether appellant had any employment-related residuals or disability.

In a report dated September 15, 2020, Dr. Haskins diagnosed degenerative joint disease of the hands; history of CTS; and bilateral knee osteoarthritis with degenerative meniscal disease. He opined that appellant's accepted bilateral knee meniscus tears were not caused by her work, but rather were degenerative in origin and aggravated by her federal employment. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Haskins advised that appellant could not return to her regular work, but she could work eight hours per day, with permanent restrictions.

³ On December 5, 2015, appellant filed a Form CA-2 for knee injuries due to repetitive factors of her federal employment. OWCP assigned the claim OWCP File No. xxxxxx279 and accepted it for aggravation of preexisting tear of medial meniscus, right knee, initial encounter; and aggravation of preexisting tear of medial meniscus left knee, initial encounter.

By decision dated January 19, 2021, OWCP denied appellant's claim for compensation, finding that she failed to submit sufficient medical evidence to establish disability from work commencing December 16, 2014 causally related to her accepted employment injury.

OWCP thereafter received a January 4, 2021 report, wherein Dr. Eric G. Dawson, an attending orthopedic surgeon, noted his review of Dr. Haskins' September 15, 2020 report and opined that appellant was totally disabled from work based on diagnostic test results and the chronic nature of her accepted conditions. Dr. Dawson related that Dr. Haskins had not discussed appellant's 2018 magnetic resonance imaging (MRI) scans which demonstrated bilateral meniscal tears, which had worsened since appellant initially reported these conditions.

On February 5, 2021, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated April 6, 2021, OWCP's hearing representative set aside the January 19, 2021 decision, finding that OWCP had failed to consider all the medical evidence of record in determining whether appellant was disabled from work commencing December 16, 2014. The case was remanded for OWCP to consider the medical evidence in appellant's claims under OWCP File Nos. xxxxxx704 and xxxxxx279, and to determine whether she had employment-related disability for the period December 16, 2014 through December 31, 2015.

In an April 8, 2021 development letter, OWCP informed appellant that it had received her claim for wage-loss compensation benefits for the period December 15, 2014 through October 9, 2017. It requested that she submit rationalized medical evidence to support employment-related disability from work during the claimed period. OWCP afforded appellant 30 days to respond. No response was received.

By *de novo* decision dated May 11, 2021, OWCP denied appellant's claims for compensation, finding that the medical evidence of record was insufficient to establish disability from work commencing December 15, 2014, causally related to her accepted employment-related injury.

On May 24, 2021, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated July 28, 2021, OWCP's hearing representative set aside the May 11, 2021 decision, finding that OWCP had failed to adequately address the medical evidence of record, make findings of fact, and explain its findings in its denial of appellant's disability claim.

By *de novo* decision dated August 5, 2021, OWCP denied appellant's disability claim, finding that the medical evidence of record was insufficient to establish disability from work during the period December 15, 2014 through October 9, 2017 causally related to the accepted employment injury.

On August 29, 2021, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. An oral hearing was held on December 17, 2021.

By decision dated January 19, 2022, OWCP's hearing representative set aside the August 5, 2021 decision, and remanded the case to OWCP for further development of the medical evidence, to be followed by a *de novo* decision. The hearing representative found that Dr. Haskins, the second opinion physician, did not offer an opinion as to whether appellant was disabled from work during the period December 15, 2014 through October 9, 2017. The hearing representative instructed OWCP to update the SOAF to include all the accepted conditions in OWCP File Nos. xxxxxx279 and xxxxxx704 and refer the medical record in both OWCP files to Dr. Haskins for a supplemental opinion addressing whether appellant sustained work-related disability commencing December 15, 2014.

On February 24, 2022, OWCP referred appellant, along with an updated SOAF, the medical record, and a series of questions, to Dr. Rafael A. Lopez, a Board-certified orthopedic surgeon, for a second opinion to determine whether she had any employment-related residuals and disability.⁴

In a report dated March 19, 2022, Dr. Lopez noted his review of the SOAF and medical record and discussed his findings on physical examination. He opined that appellant could return to her date-of-injury job without restrictions because her work-related conditions had resolved. However, Dr. Lopez related that he could not offer an opinion addressing prior periods of disability since he did not examine appellant at that time. In a Form OWCP-5c of even date, Dr. Lopez reiterated his opinion regarding appellant's work capacity.

By *de novo* decision dated April 4, 2022, OWCP denied appellant's claim for compensation, finding that the medical evidence of record was insufficient to establish disability from work during the period December 15, 2014 through October 9, 2017, causally related to the accepted employment injury. It accorded the weight of the medical evidence to the opinion of Dr. Lopez, the second opinion physician.

On April 23, 2022, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. An oral hearing was held on August 19, 2022.

By decision dated November 2, 2022, OWCP's hearing representative set aside the April 4, 2022 decision, and remanded the case to OWCP for further development of the medical evidence. The hearing representative found that Dr. Lopez' opinion failed to address whether appellant was disabled during the period December 15, 2014 through October 19, 2017. The hearing representative directed OWCP to update the SOAF to include appellant's date-of-injury work duties and subsequent limited-duty work duties and refer her to a new second opinion physician in the appropriate field of medicine for an examination and a rationalized medical opinion addressing whether she was disabled from work for the period December 15, 2014 through October 19, 2017 causally related to her accepted employment injury.

On November 16, 2022, OWCP referred appellant, along with a SOAF, the medical record, and a series of questions, to Dr. Seth L. Jaffe, an osteopath Board-certified in orthopedic

⁴ In a February 22, 2022 e-mail, a QTC Medical Services medical case administrator informed OWCP that it was unable to obtain a supplemental report from Dr. Haskins because he was no longer in its provider panel.

surgery, for a second opinion evaluation to determine whether appellant had any employment-related residuals and disability commencing December 15, 2014.

In a December 14, 2022 report, Dr. Jaffe related appellant's history of injury and noted his review of the SOAF and medical record. He discussed his findings on physical examination and assessed bilateral CTS, bilateral knee internal derangement, and arthritis of carpometacarpal (CMC) joint of right and left thumbs. Dr. Jaffe noted that the accepted condition of bilateral knee internal derangement with meniscal tears continued to be present. He noted that these conditions would have likely occurred with or without an employment injury. Dr. Jaffe maintained that appellant was not disabled from work during the period December 15, 2014 through October 9, 2017, and there was never any reason why she could not have performed either her regular work or limited-duty work with restrictions that limited kneeling, squatting, and climbing. He explained that the above-noted conditions were typically degenerative in nature and would continue to worsen. Regarding the accepted condition of CTS, he advised that appellant was minimally clinically symptomatic and there were minimal objective findings on examination to diagnose CTS. Dr. Jaffe noted that primary evidence of this condition existed on an electromyogram. He maintained that she was not disabled from work from 2014 until 2017 due to CTS. Dr. Jaffe advised that she could have continued to work with restrictions and could have received treatment for the condition at the same time. He noted that appellant's main complaints were pain and discomfort in her hands particularly, the thumb and base of thumb, which were not part of the accepted claim. Dr. Jaffe advised that most of the disability in her hands was related to arthritis and not CTS. In an accompanying Form OWCP-5c of even date, he advised that appellant was unable to perform her regular job, but she could work eight hours per day with permanent restrictions.

By decision dated January 23, 2023, OWCP denied appellant's disability claim, finding that the medical evidence of record was insufficient to establish disability from work during the period December 15, 2014 through October 9, 2017, causally related to her accepted employment injury. It found that the weight of the medical evidence rested with the opinion of Dr. Jaffe, the second opinion physician.

On December 16, 2023 appellant, through counsel, requested reconsideration. In support thereof, counsel submitted a November 6, 2023 report, wherein Dr. Dawson noted that appellant presented for a follow-up examination regarding her left knee arthroscopic surgery. He discussed his findings on physical examination and reviewed diagnostic test results. Dr. Dawson noted that following her original injury, appellant returned to modified-duty work and stopped work when she suffered an extension of that injury on December 15, 2014. He maintained that she sustained specific injuries, including the intra-articular tear shown on an MRI scan and on examination, and not gradual or degrading changes caused by aging or structural senility. Dr. Dawson opined that appellant had been totally disabled from work since December 15, 2014, due to her accepted employment injury.

By decision dated March 15, 2024, OWCP denied modification of the January 23, 2023 decision.

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 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.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 the reliable, probative, and substantial medical evidence.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

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.¹¹

Section 8123(a) of FECA provides, in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician (known as a referee physician or an impartial medical examiner (IME) who shall make an examination.”¹² This is called an impartial medical examination and OWCP will select a physician who is qualified in the appropriate specialty and

⁵ *Supra* note 2.

⁶ *See C.B.*, Docket No. 20-0629 (issued May 26, 2021); *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).

⁷ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁸ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁹ *A.S.*, Docket No. 20-0406 (issued August 18, 2021); *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

¹⁰ *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).

¹¹ *See C.T.*, Docket No. 20-0786 (issued August 20, 2021); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 9.

¹² 5 U.S.C. § 8123(a).

who has no prior connection with the case.¹³ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁴

ANALYSIS

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

OWCP received multiple reports from appellant's treating physician, Dr. Ignacio, wherein he related that appellant was disabled due to the accepted employment conditions. In a report dated December 4, 2015, Dr. Ignacio explained that appellant's accepted conditions were aggravated by the work duties she performed during the period August 24 through December 14, 2014, and resulted in her disability from work. He continued to report that appellant was totally disabled through October 9, 2017. In his November 6, 2023 medical report, Dr. Dawson, opined that appellant had been totally disabled from work since December 15, 2014. He explained that on that date, she sustained specific injuries, including the intra-articular tear as shown on an MRI scan and on examination. Dr. Dawson noted that appellant's injuries were not gradual or degrading changes caused by aging or structural senility.

In his December 14, 2022 progress note and Form OWCP-5c, Dr. Jaffe, OWCP's referral physician, opined that appellant was not totally disabled from work for the period December 15, 2014 through October 9, 2017, due to her accepted employment injury. He reasoned that although the accepted condition of bilateral knee internal derangement with meniscal tears continued to be present, she was not disabled from work during the claimed period of disability and there was no reason why she could not have performed either her regular work or limited-duty work with restrictions. Dr. Jaffe further reasoned that while appellant was minimally clinically symptomatic regarding the accepted condition of CTS, there were minimal objective findings on examination to diagnose this condition. He maintained that she was not disabled from work from 2014 until 2017 due to CTS. Dr. Jaffe noted that appellant could have continued to work with restrictions and to receive treatment for the condition at the same time. He concluded that although she was unable to perform her regular job, she could work eight hours per day with permanent restrictions.

As noted above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint an IME who shall make an examination.¹⁵ The Board finds that a conflict in medical opinion exists between appellant's treating physicians

¹³ 20 C.F.R. § 10.321; *M.S.*, Docket No. 25-0391 (issued April 14, 2025); *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *R.C.*, 58 ECAB 238 (2006).

¹⁴ See *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *A.G.*, Docket No. 21-0315 (issued December 29, 2021); *R.R.*, Docket No. 19-0086 (issued February 10, 2021); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

¹⁵ See *M.S.*, Docket No. 25-0391 (issued April 14, 2025); *E.B.*, Docket No. 23-0169 (issued August 24, 2023); *S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.S.*, Docket No. 19-0731 (issued August 22, 2019); see also *supra* note 14.

Dr. Ignacio and Dr. Dawson, and OWCP's second opinion physician Dr. Jaffe regarding whether appellant was disabled from work commencing December 15, 2014 due to the accepted employment injury.¹⁶

The Board, therefore, will remand the case for OWCP to refer appellant to an IME for resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a).¹⁷ After such further development as OWCP deems necessary, it shall issue a *de novo* decision regarding appellant's claim for compensation.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2024 merit 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 6, 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

¹⁶ See *M.S., id.; J.H.*, Docket No. 22-0981 (issued October 30, 2023).

¹⁷ *M.S., id.; Y.M.*, Docket No. 23-0091 (issued August 4, 2023); *V.B.*, Docket No. 19-1745 (issued February 25, 2021).