

2018 employment injury; and (2) whether appellant has met his burden of proof to establish a recurrence of disability beginning November 4, 2019 causally related to his accepted employment injury.

FACTUAL HISTORY

On January 13, 2018 appellant, then a 40-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he broke a bone in his right wrist when he slipped and fell descending a stair while in the performance of duty. He stopped work on January 13, 2018. OWCP accepted the claim for a closed intra-articular fracture of the distal end of the right radius. On January 24, 2018 appellant underwent an open reduction and internal fixation of the right radial wrist. OWCP paid him wage-loss compensation on the supplemental rolls for intermittent time lost from work beginning February 28, 2018.³ Appellant returned to full-time modified employment on August 29, 2018. He worked part time beginning September 5, 2018 and resumed full-time modified employment on October 3, 2018. On February 12, 2019 appellant's physician released him to resume work without restrictions.

In a report dated November 4, 2019, Dr. Sami Moufawad, a Board-certified physiatrist, noted appellant's history of a broken wrist with surgical repair and discussed his current complaints of wrist pain, particularly in colder weather. He advised that appellant had compensated for his right wrist pain by overusing his left elbow. Dr. Moufawad diagnosed a closed intra-articular die-punch fracture of the right radius and lateral epicondylitis of the left elbow. He indicated that he had discussed "work restrictions to avoid repeated motion and also avoid working in colder weather."

In a report dated November 7, 2019, Dr. Moufawad again discussed appellant's complaints of increased pain in his right wrist with repeated motion and when working outside in cold temperatures. He indicated that appellant had experienced pain over the left lateral epicondyle due to compensating for his right wrist pain. Dr. Moufawad noted that he required frequent breaks while working to rest his forearm. He diagnosed a closed intra-articular die-punch fracture of the right radius and lateral epicondylitis of the left elbow. Dr. Moufawad opined that appellant should work indoors when temperatures were below 45 degrees. In an accompanying note of even date, he indicated that he was treating appellant for continued right wrist pain following a January 13, 2018 right wrist fracture. Dr. Moufawad related that he should work inside when the temperature was lower than 45 degrees. In a duty status report (Form CA-17) of the same date, he provided restrictions of no working outdoors when the temperature was below 45 degrees.

Dr. Moufawad submitted a similar report and Form CA-17 on November 15, 2019. He noted that appellant could not work outside when the temperature was below 40 degrees. In the CA-17, Dr. Moufawad advised that he could not work outside if the temperature was below 45 degrees.

³ By decision dated July 25, 2019, OWCP granted appellant a schedule award for 11 percent permanent impairment of the right upper extremity. The period of the award ran for 34.32 weeks from February 20 to October 18, 2019.

On December 10, 2019 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation for intermittent time lost from work for the period November 23 through December 6, 2019.

In a letter dated December 12, 2019, OWCP advised appellant that he should file a notice of recurrence (Form CA-2a) if he required work restrictions, noting that he had performed full duty since February 2019. It informed him that complaints of pain were insufficient in the absence of objective findings to support employment limitations.

On December 23, 2019 appellant filed a Form CA-7 requesting intermittent wage-loss compensation from December 7 through 20, 2019.

In a development letter dated December 23, 2019, OWCP requested that appellant specify whether he had lost time from employment due to work restrictions or as a result of obtaining medical treatment. It advised that, if he had lost time due to work restrictions, his physician should provide objective findings supporting the increased restrictions. OWCP afforded appellant 30 days to submit the necessary information.

Thereafter, OWCP received a December 16, 2019 Form CA-17 from Dr. Moufawad based on an examination of even date. Dr. Moufawad indicated that, when the temperature was below 45 degrees, appellant could work outdoors up to one hour at a time delivering packages.

By decision dated February 6, 2020, OWCP denied appellant's claim for disability from December 7 through 20, 2019.

On February 12, 2020 appellant, through counsel, requested a telephone hearing before a representative of OWCP's Branch of Hearings and Review.

On March 16, 2020 appellant filed a Form CA-2a alleging that on November 4, 2019 he sustained a recurrence of disability causally related to his accepted January 13, 2018 employment injury. He related that he could not perform his usual employment duties when the temperature was under 45 degrees.

In a development letter dated March 23, 2020, OWCP advised appellant of the definition of a recurrence of disability and the type of evidence necessary to establish that he had sustained a recurrence of employment-related disability. It afforded him 30 days to submit additional evidence.

In a December 16, 2019 progress report, Dr. Moufawad evaluated appellant for pain in his right wrist and forearm. He noted that appellant could work no more than one hour outside when the temperature was below 45 degrees. Dr. Moufawad again advised that appellant had been compensating for his right wrist pain by using his left elbow. He diagnosed a right radius closed intra-articular die-punch fracture and lateral epicondylitis of the left elbow. In a closing note, Dr. Moufawad indicated that appellant should work indoors when the temperature was below 40 degrees.

On February 18, 2020 Dr. Moufawad provided a similar report. He indicated that appellant could work outdoors except when temperatures were under 45 degrees and diagnosed a right radius

closed intra-articular die-punch fracture and lateral epicondylitis of the left elbow. Dr. Moufawad noted that his grip strength was weaker on the right and that he compensated for pain in his right wrist by using his left elbow.

By decision dated April 30, 2020, OWCP found that appellant had not established a recurrence of disability beginning November 2019 causally related to his January 13, 2018 employment injury. It advised appellant that he could file a claim if he believed that he had new employment-related right wrist problems or a left elbow condition.

On May 5, 2020 counsel requested a telephone hearing before a representative of OWCP's Branch of Hearings and Review.

A telephone hearing was held on June 3, 2020 regarding OWCP's February 6, 2020 decision. Appellant noted that he was requesting compensation for intermittent time lost because he was unable to work outside because of the low temperature.

In an April 15, 2020 report based on a telehealth appointment, Dr. Moufawad noted that appellant continued to have pain and sensitivity to cold in the right wrist and left elbow pain due to compensating for his right wrist pain. He diagnosed a right radius closed intra-articular die-punch fracture and lateral epicondylitis of the left elbow. Dr. Moufawad advised that appellant should continue to work outdoors no more than one hour at a time if the temperature was below 45 degrees, but noted that he would not need those restrictions in summer months.⁴

By decision dated July 31, 2020, OWCP's hearing representative affirmed the February 6, 2020 decision. She found that Dr. Moufawad had not provided a reasoned opinion explaining why appellant was unable to work in the cold weather.

LEGAL PRECEDENT -- ISSUE 1

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 For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled for work as a result of the accepted employment injury.⁷ Whether a particular injury causes an

⁴ Dr. Moufawad noted that appellant had to work indoors if the temperature was below 40 degrees.

⁵ *Supra* note 2.

⁶ *See 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 *C.E.*, Docket No. 19-1617 (issued June 3, 2020); *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁸

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.⁹ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.¹⁰ 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.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 -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish intermittent disability for the period December 7 through 20, 2019. The Board further finds that the case is not in posture for decision regarding entitlement to compensation for time lost to obtain medical treatment on December 16, 2019.

On December 23, 2019 appellant filed a Form CA-7 requesting compensation for intermittent time lost from work from December 7 through 20, 2018. He claimed seven hours of compensation on December 16, 2019.

In support of his claim, appellant submitted a December 16, 2019 progress report from Dr. Moufawad. Dr. Moufawad discussed his complaints of right wrist and forearm pain, especially with colder weather. He found that appellant could work no more than one hour outside when the temperature was below 45 degrees. Dr. Moufawad also noted that he had pain over the lateral epicondyle of the left elbow which he attributed to overuse as a result of him compensating for his right elbow pain. He diagnosed a right radius closed intra-articular die-punch fracture and lateral epicondylitis of the left elbow. In a Form CA-17 of the same date, Dr. Moufawad opined that appellant could only work outside one hour at a time or to deliver packages when the temperatures were below 45 degrees. However, in his December 16, 2019 reports, he did not provide medical rationale explaining why appellant was unable to work when temperatures were below 45 degrees

⁸ See *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *K.C.*, Docket No. 17-1612 (issued October 16, 2018).

⁹ 20 C.F.R. § 10.5(f); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *S.T.*, Docket No. 18-0412 (issued October 22, 2018).

¹⁰ See *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹¹ See *D.P.*, Docket No. 18-1439 (issued April 30, 2020); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

¹² *J.K.*, Docket No. 19-0488 (issued June 5, 2020); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

other than to note his complaints of increased right wrist pain in cold weather.¹³ The Board has held that subjective complaints of pain are insufficient to establish disability from employment.¹⁴ Additionally, medical limitations based solely on the fear of a possible future injury are also insufficient to support payment of compensation.¹⁵ As Dr. Moufawad failed to provide a rationalized opinion substantiating disability from work supported by objective findings, his reports are insufficient to meet appellant's burden of proof.¹⁶

The remaining medical evidence fails to address the claimed periods of intermittent disability from December 7 through 20, 2019 and thus lacks probative value and is insufficient to meet appellant's burden of proof.¹⁷

The Board further finds, however, that OWCP failed to determine whether appellant was entitled to up to four hours of compensation for wage loss while obtaining medical services on December 16, 2019. OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.¹⁸ The evidence must establish that a claimant attended an examination or treatment for the accepted work injury on the dates claimed in order for compensation to be payable. For a routine medical appointment, a maximum of four hours may be allowed.¹⁹ The case will therefore be remanded for OWCP to consider payment for the appropriate amount of wage-loss compensation for time lost for a medical appointment on December 16, 2019.

LEGAL PRECEDENT -- ISSUE 2

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.²⁰ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.²¹

¹³ See *J.N.*, Docket No. 20-1030 (issued November 20, 2020).

¹⁴ *B.L.*, Docket No. 19-0852 (issued October 18, 2019); *G.J.*, Docket No. 18-1335 (issued March 22, 2019).

¹⁵ *V.G.*, Docket No. 18-0936 (issued February 6, 2019).

¹⁶ See *G.J.*, *supra* note 14.

¹⁷ *K.R.*, Docket No. 20-0681 (issued January 12, 2021); *M.A.*, Docket No. 19-1119 (issued November 25, 2019).

¹⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19 (February 2013).

¹⁹ *Id.* at Chapter 2.901.19(a); *E.W.*, Docket No. 17-1988 (issued January 28, 2019).

²⁰ 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

²¹ *Id.*

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.²²

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.²³ Where no such rationale is present, the medical evidence is of diminished probative value.²⁴

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability beginning November 4, 2019 causally related to his accepted employment injury.

In a report dated November 4, 2019, Dr. Moufawad discussed his examination findings and treatment plan; however, he did not provide an opinion on causal relationship. Thus, this report is of no probative value and is insufficient to establish appellant's claim.²⁵

On November 7, 2019 Dr. Moufawad noted that appellant experienced increased pain in his right wrist when working outside in cold weather and with repeated motion. He also indicated that he had left elbow pain as a result of compensating for the pain in his right wrist. Dr. Moufawad diagnosed a closed intra-articular die-punch fracture of the right radius and lateral epicondylitis of the left elbow. He advised that appellant should work indoors when temperatures were below 45 degrees. Dr. Moufawad attributed appellant's inability to work to increased pain. As discussed, subjective complaints of pain are insufficient to establish disability from employment.²⁶ Dr. Moufawad did not explain with rationale why appellant's condition had worsened such that he had work restrictions when the temperature fell below 45 degrees. A mere conclusion without the necessary rationale is insufficient to meet a claimant's burden of proof.²⁷

²² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

²³ *L.O.*, Docket No. 19-0953 (issued October 7, 2019); *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

²⁴ *M.G.*, Docket No. 19-0610 (issued September 23, 2019); *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

²⁵ *L.B.*, Docket No 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²⁶ *B.L.*, Docket No. 19-0852 (issued October 18, 2019).

²⁷ *See D.M.*, Docket No. 17-1052 (issued January 24, 2019).

In a December 16, 2019 progress report, Dr. Moufawad provided the same diagnoses and opined that appellant should work no more than one hour outside when the temperature was below 45 degrees. On February 18 and April 15, 2020 he noted that appellant could work outdoors except when temperatures were below 45 degrees. Dr. Moufawad did not provide a rationalized medical opinion substantiating disability from employment and thus these reports are insufficient to meet appellant's burden of proof.²⁸

Appellant submitted Form CA-17 reports dated November 7 and 15 and December 16, 2019. However, the Form CA-17 reports do not contain a clear opinion on whether the accepted employment injury caused disability from employment for the claimed period; consequently, they are of no probative value on the issue of causal relationship and are insufficient to establish appellant's claim.²⁹

As appellant has not submitted rationalized medical evidence establishing recurrence of disability commencing November 4, 2019, the Board finds that he has not met his burden of proof. He may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish intermittent disability from employment for the period December 7 through 20, 2019. The Board also finds that the case is not in posture for decision regarding entitlement to compensation for time lost to obtain medical treatment on December 16, 2019. The Board further finds that appellant has not met his burden of proof to establish a recurrence of disability beginning November 4, 2019 causally related to his accepted employment injury.

²⁸ *B.L.*, *supra* note 26.

²⁹ *J.K.*, Docket No. 18-0854 (issued June 5, 2020); *A.A.*, Docket No. 19-0957 (issued October 22, 2019).

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and the case is remanded for further proceedings consistent with this decision of the Board. The April 30, 2020 decision is affirmed.

Issued: May 25, 2021
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