

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

M.N., Appellant)	
)	
and)	Docket No. 20-1502
)	Issued: January 13, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Denver, CO, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On August 11, 2020 appellant filed a timely appeal from a July 14, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees'

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of his oral argument request, appellant asserted that oral argument should be granted because it would provide him an opportunity to further explain the evidence he submitted in support of his claim. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the medical evidence required. As such, the arguments on appeal can be adequately addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUE

The issue is whether appellant has met his burden of proof to establish intermittent disability from work for the period April 25 through May 22, 2020 causally related to his December 14, 2019 employment injury.

FACTUAL HISTORY

On December 19, 2019 appellant, then a 35-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on December 14, 2019 he sustained injuries to his left shoulder, neck, hip, ribs, and back when he slipped on snow and fell to the ground while in the performance of duty. He stopped work on December 14, 2019 and returned to limited-duty work on a full-time basis on December 19, 2019. OWCP accepted appellant's claim for left shoulder strain, superior glenoid labrum tear of the left shoulder, and neck strain. Appellant began working 35.77 hours per week on February 1, 2020 and OWCP paid him wage-loss compensation on the supplemental rolls for partial disability commencing February 1, 2020 for the hours that he ordinarily would have worked beyond 35.77 hours per week but for the effects of the December 14, 2019 employment injury.

In an April 22, 2020 report, Dr. Jeffrey T. Baker, a Board-certified emergency medicine specialist, advised that appellant followed up for left shoulder symptoms he associated with his December 14, 2019 injury. He indicated that, upon physical examination, appellant exhibited tenderness on palpation and had normal shoulder range of motion and muscle strength. Dr. Baker diagnosed left shoulder strain and superior labrum anterior to posterior (SLAP) lesion of the left shoulder. He indicated that appellant could return to work on April 22, 2020 for only six hours per day with restrictions of lifting up to 20 pounds for up to three hours per day, pushing/pulling up to 40 pounds for up to three hours, no reaching above shoulder level with the left arm, and no use of the left arm to move more than 10 pounds.

On April 22, 2020 appellant began working in a modified rural carrier position for six hours per day, which involved casing and carrying mail. The physical requirements of the position included lifting up to 20 pounds for 0.5 hours per day, pushing/pulling up to 20 pounds for 0.5

² 5 U.S.C. § 8101 *et seq.* The case record contains a July 17, 2020 informational letter regarding the calculation of appellant's loss of wage-earning capacity for the period May 23 through July 3, 2020. As there is no final decision of OWCP concerning this matter within the Board's jurisdiction, it is not currently before the Board. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

³ The Board notes that following the July 14, 2020 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

hours, standing/walking for 1.5 hours, and driving for 1.5 hours. Payment documents of record show that appellant stopped receiving partial disability compensation after April 24, 2020.

In a May 17, 2020 statement, appellant claimed that, on some days, he did not work a full six hours because he had completed his work in less than six hours. He asserted that he checked with the employing establishment on those occasions, but it did not provide him with six hours of work.

On May 17, 2020 appellant filed a claim for compensation (Form CA-7) for wage-loss compensation for intermittent disability during the period April 25 through May 8, 2020 due to his December 14, 2019 employment injury. A time analysis form (Form CA-7a) signed by an employing establishment official on May 18, 2008 indicates that appellant worked 53.02 hours during the period April 25 through May 8, 2020. An employing establishment leave analysis record received by OWCP on May 18, 2020 indicates that he worked 27.15 hours during the period April 25 through May 8, 2020.

In a May 18, 2020 development letter, OWCP requested that appellant submit additional medical evidence in support of his disability claim. It afforded him 30 days to submit the requested evidence.

In a June 1, 2020 letter, appellant asserted that he never voluntarily went home after working less than six hours. He claimed that, on occasions when he worked less than six hours, the employing establishment sent him home because it was unable to provide six hours of work. A Form CA-7a signed by an employing establishment official on June 1, 2008 indicates that appellant worked 52.33 hours during the period May 9 through 22, 2020.

In a June 2, 2020 development letter, OWCP again requested that appellant submit additional medical evidence in support of his disability claim. It afforded him 30 days to submit the requested evidence. Appellant subsequently submitted a May 21, 2020 report from Dr. Baker, who indicated that appellant could return to modified duty for the period December 19 through 23, 2019 with restrictions, including lifting, pushing, or pulling no more than 10 pounds.

Appellant subsequently submitted a June 1, 2020 report from Dr. Ryan L. Hartman, a Board-certified orthopedic surgeon, who described a steroid injection he administered to the left shoulder and recommended that appellant lift no more than 20 pounds and limit reaching overhead or away from the body. In a June 8, 2019 report, Dr. Baker indicated that appellant could return to work on that date for six hours per day with restrictions of lifting up to 20 pounds for up to three hours per day, pushing/pulling up to 40 pounds for up to three hours, no reaching above shoulder level with the left arm, and no use of the left arm to move more than 10 pounds.⁴

A Form CA-7a signed by an employing establishment official on June 8, 2008 indicates that appellant worked 53.02 hours during the period April 25 through May 8, 2020.

⁴ On June 17, 2020 Dr. Baker provided the same work restrictions.

On June 11, 2020 OWCP received the employing establishment's response to appellant's claim that he was provided with less than six hours of work per day. It asserted that he was provided with the 35.77 hours of work to which he was entitled each week, but advised that he had been taking sick leave for extended periods. The employing establishment claimed that it had not received a PS Form 3971 (Request for or Notification of Absence) showing that appellant had been sent home.⁵

In a June 29, 2020 work capacity evaluation (Form OWCP-5c), Dr. Baker indicated that appellant could return to work for 6 hours per day with restrictions of lifting up to 10 pounds for up to 3 hours per day, pushing/pulling up to 40 pounds for up to 3 hours, and no use of the left arm to move more than 10 pounds.

By decision dated July 14, 2020, OWCP denied appellant's claim for intermittent disability from work for the period April 25 through May 22, 2020 causally related to his December 14, 2019 employment injury. It found that the evidence of record was insufficient to establish that the employing establishment failed to provide him with six hours of work per day.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact 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 the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁸ 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.⁹ When, however, the medical evidence 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.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

⁵ On June 6 and 11, 2020 OWCP received copies of PS Form 3971 s, which were only partially legible.

⁶ *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).

⁷ 20 C.F.R. § 10.5(f).

⁸ *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁹ *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

¹⁰ *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

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.¹¹

ANALYSIS

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

Appellant began working for 35.77 hours per week on February 1, 2020. OWCP paid him wage-loss compensation on the supplemental rolls for partial disability commencing February 1, 2020 to compensate him for the hours that he ordinarily would have worked beyond 35.77 hours per week but for the effects of the December 14, 2019 employment injury. Payment documents of record show that OWCP stopped paying appellant this partial disability compensation after April 24, 2020 and did not pay him any wage-loss compensation for the period in question in the present case, *i.e.*, April 25 through May 22, 2020. The Board notes that OWCP has not explained why it ceased paying appellant partial disability compensation given that it had previously determined that he was disabled for a portion of each workday due to the effects of his December 14, 2019 employment injury.

The Board also notes that documents in the case record are inconsistent regarding the total number of hours appellant worked between April 25 and May 22, 2020 and, consequently, the number of hours he effectively claimed disability from work and entitlement to wage-loss compensation. An employing establishment leave analysis record received by OWCP on May 18, 2020 indicates that he worked 27.15 hours during the period April 25 through May 8, 2020. However, Form CA-7a time analysis forms signed by an employing establishment official on May 18 and June 8, 2020 indicate that he worked 53.02 hours during this period.¹²

In deciding matters pertaining to a given claimant's entitlement to compensation benefits, OWCP is required by statute and regulation to make findings of fact.¹³ The Federal (FECA) Procedure Manual further specifies that a final decision of OWCP "should be clear and detailed so that the reader understands the reason for the disallowance of the benefit and the evidence necessary to overcome the defect of the claim."¹⁴ These requirements are supported by Board precedent.¹⁵

¹¹ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹² A time analysis form signed by an employing establishment official on June 1, 2008 indicates that appellant worked 52.33 hours during the period May 9 through 22, 2020. The case record does not contain an employment establishment leave analysis record for this period.

¹³ 5 U.S.C. § 8124(a) provides that OWCP "shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP "shall contain findings of fact and a statement of reasons."

¹⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5c(3)(e) (February 2013).

¹⁵ See *P.G.*, Docket No. 17-1461 (February 7, 2019); *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

The Board finds that appellant would not understand the reason for the denial of his disability claim and the evidence necessary to overcome the defect of his claim. Therefore, the case shall be remanded to OWCP in order for it to further develop appellant's disability claim for the period April 25 through May 22, 2020 and to issue a *de novo* decision containing adequate findings of facts and reasons which address the above-noted concerns.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: January 13, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board