

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish disability from work commencing April 23, 2018 causally related to the accepted July 19, 2017 employment injury; and (2) whether she has met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted July 19, 2017 employment injury.

FACTUAL HISTORY

On April 12, 2018 appellant, then a 42-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained injuries to her neck, lower back, left arm, and feet due to factors of her federal employment, including excessive reaching, bending, pushing and pulling, and lifting parcels of mail. She noted that she first became aware of her conditions on July 19, 2017 and realized they were caused or aggravated by her federal employment on March 23, 2018. Appellant stopped work on April 23, 2018. On March 8, 2019 OWCP accepted the claim for left supraspinatus tendinitis, a partial tear of the tendon of the medial head of the left triceps, aggravation of bilateral plantar fasciitis, aggravation of right Achilles tendinitis, aggravation of left Achilles tendinitis, aggravation of right foot calcaneal spur, and aggravation of left foot calcaneal spur.

On January 29, 2018 Dr. Robert Sammartino, an osteopath and Board-certified neurologist, diagnosed lumbar region radiculopathy and bilateral L4-5 radiculopathy, right greater than left, based on electrodiagnostic studies.

On March 6, 2018 appellant underwent a magnetic resonance imaging (MRI) scan of her thoracic spine which demonstrated slight kyphosis and osteoarthrosis in the lower thoracic region.

In an April 23, 2018 report, Dr. Steven J. Valentino, an osteopath and Board-certified orthopedic surgeon, evaluated appellant for neck pain radiating into her left shoulder and arm with paresthesia and weakness, and upper and lower back pain radiating into her legs. He diagnosed cervical pain, cervical degenerative disc disease, left shoulder tendinitis, radiculitis, bilateral tarsal tunnel syndrome, bilateral plantar fasciitis and lumbar radiculopathy.

On May 10, 2018 appellant's podiatrist, Dr. Jack Bondi, completed a duty status report (Form CA-17) diagnosing tarsal tunnel, plantar fasciitis, neck, arm, and back conditions. He indicated that she was partially disabled and provided work restrictions including no standing or kneeling, and one hour a day of walking, climbing, pushing and pulling, and reaching above the shoulder. In a May 22, 2018 note, Dr. Bondi released appellant to return to work on that date.

In a report dated July 12, 2018, Dr. Valentino diagnosed left supraspinatus tendinitis and partial tear of the tendon of the medial head of the triceps. He opined that these conditions were employment-related due to repetitive use. Dr. Valentino noted that she had not worked since April 2018 as her employer could not accommodate her medical restrictions for a sedentary position with a 10-pound lifting limit, and no use of the left elbow and left shoulder. He found no disability from any concurrent medical conditions.

By decision dated July 25, 2018, OWCP denied appellant's occupational disease claim, finding that she had not established causal relationship between her diagnosed conditions and the accepted factors of her federal employment.

On July 31, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

During the oral hearing, held on December 18, 2018, appellant testified that there was no work available within the restrictions provided by Dr. Bondi and that the employing establishment sent her home on May 22, 2018.

In an August 17, 2018 report, Dr. Josh Miller, a podiatrist, diagnosed bilateral plantar fasciitis, bilateral Achilles tendinitis, bilateral calcaneal spurs, and lumbar radiculopathy and opined that appellant's conditions were aggravated and accelerated by the conditions of her federal employment. He explained that the repetitive activities she performed on hard surfaces resulted in the overuse and strain on the plantar fascia and Achilles tendon. Dr. Miller provided a prognosis for appellant's foot conditions and indicated that he was not qualified to provide a prognosis for her lumbar radiculopathy.

By decision dated February 28, 2019, the hearing representative modified in part and affirmed in part OWCP's July 25, 2018 decision, finding that appellant established causal relationship between her diagnosed conditions of left supraspinatus tendinitis, partial tear of the tendon of the medial head of the triceps, and aggravations of bilateral plantar fasciitis, bilateral Achilles tendinitis and bilateral calcaneal spurs. However, he also found that the medical evidence of record was insufficient to establish that her diagnosed cervical and lumbar conditions were causally related to the factors of her federal employment.

Beginning on March 14, 2019, appellant filed claims for compensation (Form CA-7) for work-related disability commencing April 23, 2018.

In a March 26, 2019 development letter, OWCP requested that appellant submit medical evidence to support disability during the period claimed causally related to the accepted July 19, 2017 employment injury. It afforded her 30 days to submit the requested evidence.

In an April 1, 2019 report, Dr. Valentino evaluated appellant for low back pain. He found spasms of the lumbar spine and recommended that she continue conservative treatment with her chiropractor and podiatrist to treat her conditions. Dr. Valentino found that her left shoulder and elbow symptoms had improved.

In an April 11, 2019 attending physician's report (Form CA-20), Dr. Valentino diagnosed right shoulder tendinitis and a partial triceps tear, and checked a box marked "Yes" to indicate his opinion that appellant's conditions were caused or aggravated by her federal employment. He found that she was totally disabled commencing April 23, 2018 due to these conditions. Dr. Valentino provided treatment on May 31, July 23, and September 6, 2019 as well as October 8, 2019.

By decision dated May 9, 2019, OWCP denied appellant's claim, finding that she had not established disability for work commencing April 23, 2018 causally related to the accepted July 19, 2017 employment injury.

In a May 6, 2019 report, Dr. Valentino diagnosed low back pain, left elbow lateral epicondylitis, Achilles tendinitis of the left lower extremity, plantar fascial fibromatosis and a spontaneous rupture of the extensor tendon of the left upper arm.

On May 16, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on August 20, 2019.

In a September 11, 2019 letter, appellant, through counsel, requested expansion of the acceptance of her claim to include aggravation of her cervical and lumbar degenerative disc disease.

On May 29, 2019 Dr. Valentino noted appellant's symptoms of neck pain with radiation into her left shoulder with paresthesia and weakness, as well as upper and lower back pain with radiation into her legs which began on July 19, 2017. He attributed her upper and lower back symptoms to her job duties of lifting, bending, and twisting. Dr. Valentino explained that these work activities caused a torsional mechanism of injury that aggravated previously quiescent cervical and lumbar degenerative disc changes. He noted that bending and twisting can make degenerative disc disease worse and that these activities usually make the pain of degenerative disc disease worse. Dr. Valentino reasoned that the progression of osteoarthritis or degenerative joint disease may make degenerative disc disease symptoms worse and stated that, along with age and injuries, osteoarthritis also contributed to degenerative disc disease. He asserted that appellant's bending, lifting, and twisting associated with her job activities as a mail handler caused her pain, inflammation, swelling, stiffness, and decreased range of motion. Dr. Valentino attributed her injuries to her employment activities which aggravated her neck and back conditions.

By decision dated September 23, 2019, the hearing representative affirmed OWCP's May 9, 2019 decision, finding that appellant had not established a period of disability as causally related to her accepted employment injury.

On October 2, 2019 appellant, through counsel, requested reconsideration of OWCP's February 28, 2019 decision and resubmitted Dr. Valentino's May 29, 2019 report.

By decision dated October 23, 2019, OWCP denied modification of the February 28, 2019 decision. It found that the medical evidence of record was insufficient to establish that appellant's diagnosed cervical and lumbar conditions were employment related.

LEGAL PRECEDENT -- ISSUE 1

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 Whether a particular injury

⁴ *Supra* note 2.

⁵ *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).

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.⁶

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁷ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.⁸

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.⁹ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁰

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.¹¹ 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.¹² 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.¹³

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

⁶ See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁷ *Id.* at § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁸ See *A.D.*, Docket No. 21-0143 (issued November 15, 2021); *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Merle J. Marceau*, 53 ECAB 197 (2001).

⁹ See *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁰ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹¹ 20 C.F.R. § 10.5(x); see *J.W.*, Docket No. 20-0021 (issued September 10, 2021); *V.H.*, Docket No. 18-0456 (issued August 9, 2019).

¹² *Id.*

¹³ See *M.B.*, Docket No. 18-1455 (issued March 11, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

claimed. To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.¹⁴

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for a decision regarding whether appellant has met her burden of proof to establish disability from work commencing April 23, 2018 causally related to the accepted July 19, 2017 employment injury.

OWCP accepted appellant's July 19, 2017 claim for left supraspinatus tendinitis, a partial tear of the tendon of the medial head of the left triceps, aggravation of bilateral plantar fasciitis, aggravation of right Achilles tendinitis, aggravation of left Achilles tendinitis, aggravation of right foot calcaneal spur and aggravation of left foot calcaneal spur.

In his July 12, 2018 report, Dr. Valentino noted that she had not worked since April 2018, as her employer could not accommodate her medical restrictions for a sedentary position with a 10-pound lifting limit, and no use of the left elbow and left shoulder.

In a May 10, 2018 form report, Dr. Bondi diagnosed tarsal tunnel, plantar fasciitis, neck, arm, and back conditions. He indicated that appellant was partially disabled and provided work restrictions including no standing or kneeling, walking, climbing, pushing, and pulling, and reaching above the shoulder each for one hour a day. In a May 22, 2018 note, Dr. Bondi released appellant to return to work on that date.

At the December 18, 2018 oral hearing, appellant testified that there was no work available within the restrictions provided by Dr. Bondi and that the employing establishment sent her home on May 22, 2018.

In an April 11, 2019 form report, Dr. Valentino diagnosed right shoulder tendinitis and a partial triceps tear and checked a box marked "Yes" to indicate his opinion that appellant's conditions were caused or aggravated by her federal employment. He found that appellant was totally disabled from work commencing April 23, 2018 due to these conditions. Dr. Valentino provided treatment on May 31, July 23, September 6, and October 8, 2019.

The Board finds that the evidence of record is insufficient to determine whether, on or after April 23, 2018, a light-duty job was available for appellant to perform or whether it had been withdrawn on May 22, 2018 resulting in a recurrence of disability. As noted above, OWCP's regulations provide that a recurrence of disability is established when a light-duty job is withdrawn or when there is a change in her work restrictions.¹⁵ Accordingly, the evidence of record must be fully developed so that it contains accurate information regarding appellant's claim in order to determine whether she was provided with a light-duty job within her restrictions as established by Drs. Bondi and Valentino and whether she sustained a recurrence of disability.¹⁶

¹⁴ *W.H.*, Docket No. 21-0139 (issued October 26, 2021); *Fereideoon Kharabi*, 52 ECAB 291 (2001).

¹⁵ *Supra* note 11.

¹⁶ *See D.M.*, Docket No. 18-0527 (issued July 29, 2019); *J.G.*, Docket No. 17-0910 (issued August 28, 2017); *M.A.*, Docket No. 16-1602 (issued May 22, 2017).

It is well established that, proceedings under FECA are not adversarial in nature and, while the employee has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁷ Accurate information regarding whether appellant was provided a limited-duty assignment, and whether it remained available, is essential to determine whether she sustained a period of or recurrence of disability. OWCP must, therefore, make proper factual findings of whether she was offered or denied a limited-duty assignment, and if so whether it was still available, and resulted in a recurrence of disability.¹⁸ This evidence is of the character normally obtained from the employing establishment and is more readily accessible to OWCP than to appellant.¹⁹ On remand, OWCP shall request that the employing establishment clarify whether she was offered a modified-duty assignment which remained available, or her position had been withdrawn on or about May 22, 2018.²⁰ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

LEGAL PRECEDENT -- ISSUE 2

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.²¹

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.²² 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 diagnosed condition and the specific employment factors identified by the claimant.²³ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.²⁴

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for decision with regard as to whether the expansion of the acceptance of the claim should include additional conditions.

¹⁷ *D.M., id.*; *Donald R. Gervais*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233 (1983).

¹⁸ *See D.M., id.*; *Y.R.*, Docket No. 10-1589 (issued May 19, 2011).

¹⁹ *D.M., id.*; *J.T.*, Docket No. 15-1133 (issued December 21, 2015); *J.S.*, Docket No. 15-1006 (issued October 9, 2015).

²⁰ *J.W.*, *supra* note 11; *K.T.*, Docket No. 17-0009 (issued October 8, 2019).

²¹ *S.B.*, Docket No. 19-0634 (issued September 19, 2019).

²² *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

²³ *R.P.*, Docket No. 18-1591 (issued May 8, 2019).

²⁴ *Id.*

Dr. Valentino's May 29, 2019 narrative medical report explained that the lifting, bending and twisting appellant performed at work caused a torsional mechanism of injury that aggravated previously quiescent cervical and lumbar degenerative disc changes. He reasoned that the bending, lifting, and twisting associated with her job activities as a mail handler caused her pain, inflammation, swelling, stiffness, and decreased range of motion. Dr. Valentino opined that, along with age, injuries, and her underlying osteoarthritis, her employment activities aggravated her neck and back conditions.

Dr. Valentino rendered an opinion on the issue of causal relationship, provided a pathophysiological explanation of the mechanism of the injury, and demonstrated a comprehensive understanding of the medical record and case history. Therefore, although his opinion is insufficiently rationalized to establish causal relationship, it is sufficient to require that OWCP further develop the medical evidence in the claim.²⁵

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.²⁶ OWCP has an obligation to see that justice is done.²⁷

On remand, OWCP shall refer appellant, a statement of accepted facts, and the medical record to a specialist in the appropriate field of medicine for an evaluation and a well-rationalized opinion as to whether the diagnosed conditions are causally related to the accepted employment factors which either caused or aggravated her diagnosed conditions.²⁸ If the second opinion physician disagrees with the explanation provided by Dr. Valentino, he or she must explain, with rationale, how or why the opinion differs from that of Dr. Valentino. Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision regarding the expansion of the acceptance of appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for a decision regarding whether appellant has met her burden of proof to establish disability from work commencing April 23, 2018 causally related to the accepted July 19, 2017 employment injury. The Board further finds this case is not

²⁵ *A.D., id.*; *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

²⁶ *See id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

²⁷ *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

²⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

in posture for decision with regard as to whether the expansion of the acceptance of the claim should include additional conditions.

ORDER

IT IS HEREBY ORDERED THAT the September 23 and October 23, 2019 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 4, 2022
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