

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

M.A., Appellant	)	
	)	
and	)	Docket No. 23-0713
	)	Issued: April 26, 2024
U.S. POSTAL SERVICE, SANFORD STATION,	)	
Los Angeles, CA, 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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 24, 2023 appellant filed a timely appeal from a March 14, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the March 14, 2023 decision, OWCP received additional evidence. 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.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability from work for the period December 17, 2022 through January 16, 2023, causally related to her accepted September 5, 2013 employment injury.

## FACTUAL HISTORY

On December 6, 2013 appellant, then a 44-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 5, 2013 she sustained injuries to her hands, shoulders, and neck when carrying a large parcel, missed a step, and fell while in the performance of duty. She did not immediately stop work. OWCP assigned the claim OWCP File No. xxxxxx415 and accepted it for sprain of the right shoulder and upper arm, acromioclavicular (AC) region. It paid appellant wage-loss compensation on the supplemental rolls, effective May 22, 2014, and on the periodic rolls, effective June 1, 2014.

On March 18, 2022 OWCP expanded the acceptance of appellant's claim to include unspecified sprain of the right shoulder joint and impingement syndrome of the left shoulder.

OWCP further developed appellant's claim. On March 18, 2022, it referred her for a second opinion evaluation with Dr. Arash Dini, a Board-certified orthopedic surgeon. In a May 5, 2022 report, Dr. Dini diagnosed status post right shoulder surgery and status post left shoulder surgery. He indicated that, with regard to appellant's right shoulder, she was capable of returning to her duties as a mail carrier without restrictions. In an accompanying work capacity evaluation (Form OWCP-5c), Dr. Dini noted that appellant reached maximum medical improvement (MMI) with regard to her right shoulder only, and opined that she could return to her usual job without restrictions.

On May 24, 2022 OWCP requested clarification from Dr. Dini as he had not specified on the Form OWCP-5c whether appellant was capable of performing light-duty work with regard to her left shoulder.

In an addendum report dated May 26, 2022, Dr. Dini noted that, with regard to her left and right shoulders, appellant was capable of performing modified-duty work. In a Form OWCP-5c, he advised that she could work sedentary-duty eight hours a day. Dr. Dini noted that appellant had not reached MMI with regard to the left shoulder.

On September 9, 2022 Dr. Kouros Shamlou, a Board-certified orthopedist, prepared a Form OWCP-5c and noted that appellant could work at the medium strength level up to eight hours a day with restrictions on reaching and reaching above the shoulder up to four hours a day, and pushing, pulling, and lifting up to 10 pounds four hours a day. He advised that she did not have any restrictions on sitting, walking, and standing. Dr. Shamlou further noted that appellant could case mail and service post office boxes, but could not carry mail sacks.

On September 13, 2022 appellant requested a light-duty job from the employing establishment. She attached the September 9, 2022 Form OWCP-5c from Dr. Shamlou.

On September 14, 2022 the employing establishment offered appellant a modified position as a full-time carrier, effective September 15, 2022. The duties of the position were casing mail up to four hours a day, data entry and answering telephone calls up to one hour a day, and lobby assistance up to three hours a day. The physical requirements were walking and standing up to four hours; reaching and reaching above the shoulder up to four hours, twisting and bending up to one hour, and pushing, pulling, lifting no more than 10 pounds up to one hour a day. On September 15, 2022 appellant accepted the position and returned to work.

On November 11, 2022 Dr. Shamlou provided a date of injury of September 5, 2013 and referenced an attached Form OWCP-5c; however, no such document was attached.

Appellant stopped work on December 17, 2022.

In a December 28, 2022 e-mail, W.N., an employing establishment manager, advised appellant that he did not believe he had any work available at the present time.

On January 13, 2023 Dr. Shamlou provided a Form OWCP-5c and noted that appellant could work at the medium strength level up to eight hours a day with restrictions on reaching and reaching above the shoulder up to four hours a day and pushing, pulling, and lifting up to four hours a day with lifting restricted to 10 pounds. He noted the same restrictions provided in the previous note were applicable.

On January 13, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work for the period December 17 through 30, 2022.

In a January 19, 2023 development letter, OWCP advised the employing establishment that appellant filed a Form CA-7, claiming compensation for the period December 17 through 30, 2022 because no work was available. It requested that the employing establishment confirm that no work was available under the job offer signed by appellant on September 15, 2022. OWCP referenced the work restrictions from Dr. Shamlou provided in Forms OWCP-5c dated September 9, 2022 and January 13, 2023.

Appellant filed a Form CA-7 claim for disability from work for the period December 31, 2022 through January 16, 2023. The employing establishment advised that appellant returned to a light-duty job eight hours a day on January 17, 2023.

In response to the development letter, on January 25, 2023, the employing establishment indicated that there was work available within appellant's restrictions during the period September 9, 2022 through January 18, 2023.

In a January 25, 2023 development letter, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of additional factual and medical evidence required and afforded her 30 days to submit the necessary evidence.

The employing establishment advised that appellant returned to a light-duty job on January 17, 2023. It noted that the job offer on file was accepted by appellant on September 15, 2022.

In a statement dated January 31, 2023, appellant noted that on November 4, 2022 she injured her back while lifting trays at work. She indicated that her restrictions for the new injury were almost the same as the restrictions provided by Dr. Shamlou, but the more recent restrictions had additional limitations on bending. Appellant maintained that her supervisor, K.E., could not accommodate the work restrictions for her new injury and instructed her to stay home. She was treated by Dr. Shamlou on November 11, 2022 and was returned to work with the same restrictions. Appellant reported providing this information to K.E., and asserted she told her that there was no work for her at that time.

OWCP received priority for assignment worksheets dated December 28 and 30, 2022. In these worksheets, K.E. noted that, with regard to the injury associated with the current file, OWCP File No. xxxxxx415, she was unable to identify adequate/tangible work on December 30, 2022 within medical restrictions dated November 11, 2022.<sup>3</sup> She further indicated that, with regard to the injury associated with OWCP File No. xxxxxx613, she was unable to identify adequate/tangible work on December 28, 2022 within medical restrictions dated December 22, 2022. K.E. listed medical restrictions dated December 22, 2022 of bending at the waist up to 10 cumulative minutes an hour, torso/spine twisting up to 10 cumulative minutes an hour, and pushing, pulling, and lifting no more than 10 pounds.

By decision dated March 14, 2023, OWCP denied appellant's claims for wage-loss compensation, finding that she had not established disability from work for the period December 17, 2022 through January 16, 2023 causally related to the accepted September 5, 2013 employment injury.

### **LEGAL PRECEDENT**

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.<sup>4</sup> 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.<sup>5</sup> 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. The 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

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<sup>3</sup> The case record does not contain medical restrictions dated November 11, 2022. K.E. listed the medical restrictions as reaching up to one hour, reaching above the shoulder up to one hour, operating a motor vehicle up to one hour, repetitive movement with the elbow up to one hour, and pushing, pulling, and lifting no more than five pounds up to 30 minutes.

<sup>4</sup> 20 C.F.R. § 10.5(x); *T.J.*, Docket No. 18-0831 (issued March 23, 2020); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

<sup>5</sup> *Id.*

does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>6</sup>

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position, or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability, and to show that he or she cannot perform such limited-duty work.<sup>7</sup> As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty job requirements.<sup>8</sup>

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.<sup>9</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>10</sup>

### ANALYSIS

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

In support of her claim OWCP received priority for assignment worksheets dated December 28 and 30, 2022. In these worksheets appellant's supervisor, K.E. noted that, with regard to the injury associated with the current file, OWCP File No. xxxxxx415, she was unable to identify adequate/tangible work on December 30, 2022 within medical restrictions dated November 11, 2022. Although the case record does not contain medical restrictions dated November 11, 2022, K.E. listed the medical restrictions as reaching up to one hour, reaching above the shoulder up to one hour, operating a motor vehicle up to one hour, repetitive movement with the elbow up to one hour, and pushing, pulling, and lifting no more than five pounds up to 30 minutes.

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<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

<sup>7</sup> *C.L.*, Docket No. 20-1631 (issued December 8, 2021); *D.W.*, Docket No. 19-1584 (issued July 9, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>8</sup> *Id.*

<sup>9</sup> *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *C.C.*, Docket No. 18-0719 (issued November 9, 2018); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>10</sup> *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

The Board finds that, in this case, the factual evidence of record is insufficient to determine whether the employing establishment withdrew a light-duty position, which would indicate a recurrence of disability.<sup>11</sup> As noted above, a recurrence of disability can be established under this scenario.<sup>12</sup> Appellant alleged that her supervisor K.E., told her that there was no work for her at that time and K.E. acknowledged that she was unable to identify adequate/tangible work on December 30, 2022 within medical restrictions dated November 11, 2022. However, the record does not contain the purported medical restrictions dated November 11, 2022, which K.E. relied on to indicate there was no work available.<sup>13</sup>

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>14</sup> It has an obligation to see that justice is done.<sup>15</sup> Thus, the Board will remand the case for OWCP to request the employing establishment to confirm that there was no work available within appellant's restrictions. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>16</sup>

### CONCLUSION

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

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<sup>11</sup> See *L.F.*, Docket No. 19-0519 (issued October 24, 2019); see also *M.S.*, Docket No. 18-0130 (issued September 17, 2018).

<sup>12</sup> 20 C.F.R. § 10.5(x); *T.J.*, Docket No. 18-0831 (issued March 23, 2020); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

<sup>13</sup> See *T.R.*, Docket No. 19-1611 (issued October 26, 2020); see also *P.H.*, Docket No. 20-0039 (issued April 23, 2020).

<sup>14</sup> See *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

<sup>15</sup> See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

<sup>16</sup> On remand, OWCP shall administratively combine the case records for OWCP File Nos. xxxxxx415 and xxxxxx613 for a full and fair adjudication.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 14, 2023 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: April 26, 2024  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board