



stopped work on October 27, 2022. OWCP accepted the claim for unspecified superficial injury of other specified part of neck, concussion without loss of consciousness, and strain of muscle(s) and tendon(s) of the rotator cuff of left shoulder.

In an October 26, 2022 report, Dr. David James T. Fujihara, an osteopath and emergency medicine specialist, reported the history of the injury, noted physical findings and reviewed diagnostic testing, including computerized tomography (CT) scans of the head, cervical and thoracic spines, and x-ray of the chest, which were interpreted as no fracture with age-appropriate degenerative changes. He provided diagnoses of neck contusion and closed head injury. Copies of the October 26, 2022 diagnostic tests were received along with an October 26, 2021 after-visit emergency discharge summary.

In an October 28, 2022 emergency department discharge note, a nurse practitioner diagnosed headache and back pain, noting that it was understandable that the headache, neck pain and back pain arose from the incident.

In a February 23, 2023 report, Dr. Nielesh Ghodadra, a Board-certified orthopedic surgeon, noted the history of appellant's October 26, 2022 work injury and that appellant had complaints of consistent headaches since the incident. He reported that appellant had not been working since the October 26, 2022 work incident as directed by the Department of Veterans Affairs. Dr. Ghodadra diagnosed concussion without loss of consciousness, cervical radiculopathy, and unspecified rotator-cuff tear/rupture of left shoulder, not trauma, and opined with supporting rationale that the diagnosed conditions were causally related to the work injury. He referred appellant to physical therapy. Dr. Ghodadra also noted a completed duty status report (Form CA-17) of even date noting appellant's work restrictions and relating that appellant was advised that he could not resume work activities.

In a March 30, 2023 work capacity evaluation (Form OWCP-5c), a family nurse practitioner advised that appellant could work two hours per workday in a sedentary or light-duty position with restrictions.

On April 24, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work for the period commencing October 27, 2022.

In an April 24, 2023 letter, J.L., from the employing establishment, indicated that appellant was a temporary mixed tour employee (seasonal) and attached a Form CA-17 noting appellant's work requirements. He advised that there was no modified work available for appellant as the season was over. J.L. further noted that appellant's doctor had completed a Form CA-17 on November 23, 2022.

In a development letter dated May 24, 2023, OWCP informed appellant of the deficiencies of his disability claim. It advised him of the type of medical evidence required to establish his claim, including a comprehensive report from his treating physician which addressed appellant's inability to work due to the work injury. OWCP afforded appellant 30 days to provide the necessary evidence.

OWCP received additional medical evidence. In a November 23, 2022 Form CA-17, a family nurse practitioner diagnosed trauma to the head, neck, shoulder and back from "incident" and opined appellant could not resume his normal work.

In a March 30, 2023 medical note and a March 30, 2023 Form OWCP-5c, a nurse practitioner advised that appellant could work only two hours a day. In a Form CA-17 dated June 22, 2023, which Dr. Ghodadra cosigned, appellant was again advised not to resume work.

A June 22, 2023 medical visit note from a nurse practitioner, co-signed by Dr. Ghodadra, related that appellant had been out of work since October 26, 2022 and that appellant was unable to continue with work. In a Form OWCP-5c dated “February 23 through July 20, 2023,” which Dr. Ghodadra cosigned, a family nurse practitioner opined that appellant was totally disabled. A July 20, 2023 report from Dr. Ghodadra reiterated that appellant was unable to return to work. An August 17, 2023 Form CA-17, co-signed by Dr. Ghodadra again indicated that appellant could not return to work.

By decision dated August 29, 2023, OWCP denied appellant’s claim for disability from work for the period October 27, 2022 and continuing. It found that he failed to provide any additional evidence in response to its May 24, 2023 development letter to establish that he was disabled as a result of his accepted work-related medical condition(s).

On a September 29, 2023 appeal request form postmarked October 2, 2023, appellant requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review. Additional evidence was provided.

By decision dated October 24, 2023, OWCP denied appellant’s hearing request, finding that it was untimely filed as it was not postmarked until October 2, 2023, more than 30 days after its August 29, 2023 merit decision. After exercising its discretion, it further found that the issue in the case could equally be well addressed through a reconsideration request.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>2</sup> 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.<sup>3</sup> The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.<sup>4</sup> 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.<sup>5</sup>

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. The Board will not require OWCP to pay

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<sup>2</sup> *Id.*

<sup>3</sup> 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); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

<sup>4</sup> 20 C.F.R. § 10.5(f); *A.N.*, Docket No. 20-0320 (issued March 31, 2021); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>5</sup> See *A.N., id.*; *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson, supra* note 3.

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.<sup>6</sup>

### ANALYSIS -- ISSUE 1

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

The issue in this case is whether appellant was disabled from work commencing October 27, 2022. In the case of *William A. Couch*<sup>7</sup> the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. While OWCP is not required to list every piece of evidence submitted, the Board notes that OWCP received a series of reports and CA-17 forms from Dr. Ghodadra dated from February 23 to August 17, 2023 which addressed appellant's disability status since October 27, 2022 and advised that appellant could not return to work.<sup>8</sup> The OWCP decision of August 29, 2023 does not consider or address this relevant evidence.

Because Board decisions are final with regard to the subject matter appealed,<sup>9</sup> it is crucial that OWCP consider and address all relevant evidence received prior to the issuance of its final decision.<sup>10</sup> As OWCP did not consider and address all evidence submitted prior to its August 29, 2023 decision, the Board finds that this case is not in posture for decision.<sup>11</sup>

On remand OWCP shall review all evidence of record. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

### CONCLUSION

The Board finds that this case is not in posture for decision.<sup>12</sup>

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<sup>6</sup> *W.C.*, Docket No. 19-1740 (issued June 4, 2020); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

<sup>7</sup> 41 ECAB 548 (1990); *see D.H.*, Docket No. 23-0918 (issued January 24, 2024); *J.R.*, Docket No. 21-1421 (issued April 20, 2022); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

<sup>8</sup> *See D.H., id.*; *C.D.*, Docket No. 20-0168 (issued March 5, 2020).

<sup>9</sup> 20 C.F.R. § 501.6(d).

<sup>10</sup> All evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5b(2) (November 2012). *See also E.D.*, Docket No. 20-0620 (issued November 18, 2020); *Linda Johnson*, 45 ECAB 439 (1994) (OWCP must review all evidence relevant to the subject matter and received by OWCP before issuance of its final decision, including medical reports received on the same day it issues its decision); *William A. Couch*, 41 ECAB 548, 553 (1990).

<sup>11</sup> *See D.H., supra* note 7; *M.N.*, Docket No. 20-0110 (issued July 7, 2020); *Y.B.*, Docket No. 20-0205 (issued July 7, 2020); *H.H.*, Docket No. 14-1985 (issued June 26, 2015).

<sup>12</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

**IT IS HEREBY ORDERED THAT** the August 29, 2023 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this order of the Board.

Issued: April 22, 2024  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board