

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

E.P., Appellant)	
)	
and)	Docket No. 25-0038
)	Issued: December 20, 2024
SOCIAL SECURITY ADMINISTRATION,)	
DALLAS REGION, Sherwood, AR, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 16, 2024 appellant filed a timely appeal from August 9 and September 27, 2024 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 27, 2024 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish the remaining claimed intermittent disability from work for the period August 1, 2023 through May 20, 2024, causally related to her accepted employment injury.

FACTUAL HISTORY

On March 12, 2024 appellant, then a 52 year-old claims adjudicator, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome due to factors of her federal employment, including continuous typing, making inputs in the system daily, causing her fingers, hands, wrists, and forearms to go numb. She noted that she first became aware of her claimed conditions on August 1, 2023, and realized their relationship to factors of her federal employment on February 28, 2024. Appellant stopped work on March 13, 2024, and did not return.

In a September 27, 2023 report, Dr. Stanley C. Burns, Board-certified in family medicine, reported that due to the lack of reasonable accommodations including assistive technology and devices approved for appellant, it had become more difficult for her to effectively perform her job duties. He explained that she had diseases and condition such as three kidney diseases, sarcoidosis, sclerosis, acute bilateral lower back pain with sciatica, increased vision loss, elevated liver functions, high blood pressure, migraines, dizzy spells, compromised immune system, continuous curvature in spine, severe pain, and loss of use of her hand and vein damage to her left leg, numbness, and sarcoid all of which require medication, therapy, and adjustments to her work conditions. The medications caused fatigue, loss of concentration, and required less interaction with the public and a reduction in workload. Dr. Burns opined that appellant required reasonable accommodations for her health, safety, and overall quality of life as her current work environment was detrimental to her health.

On March 26, 2024, appellant underwent a right carpal tunnel release.

In a medical report dated April 10, 2024, Dr. Jeffrey Grynwald, a Board-certified surgeon, noted that appellant underwent bilateral hand injection on February 28, 2024 as her bilateral carpal tunnel syndrome was supported by involvement of her entire hand bilaterally. He explained that appellant sustained an exacerbation of symptoms through her extensive clerical work responsibilities, likely causing flexor tenosynovitis and subsequent compression of the median nerve due to the flexor tenosynovium at the carpal tunnel. Dr. Grynwald also diagnosed bilateral cubital tunnel syndrome explaining that the diagnosis was supported by changing dexterity of the hands, the change in appellant's handwriting, and decreased typing speed and work. He further discussed a March 8, 2024 nerve conduction velocity (NCV) study, which revealed mild bilateral carpal tunnel syndrome. Dr. Grynwald reported that appellant underwent right carpal tunnel release on March 26, 2024 and was scheduled to undergo left carpal tunnel release.

By decision dated May 15, 2024, OWCP accepted appellant's claim for bilateral carpal tunnel syndrome, and bilateral cubital tunnel syndrome of the upper limbs.

On May 30, 2024 appellant filed a claim for compensation (Form CA-7) for intermittent disability from work for the period August 1, 2023 through May 20, 2024.

In a development letter dated June 4, 2024, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation for the period August 1, 2023 through May 20, 2024. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

In a September 27, 2023 return to work/school certificate, Dr. Burns reported that appellant was under his care on September 27, 2023 and could return to work on September 28, 2023.

In a December 19, 2023 return to work/school certificate, Dr. Joel C. Cobb, Board-certified in family medicine, reported that appellant was under his care on December 19, 2023 and could return to work on December 20, 2023.

Dr. Burns, in a February 27, 2024 return to work/school certificate, reported that appellant was under his care on February 27, 2024 and could return to work on February 28, 2024.

In a February 28, 2024 return to work/school certificate, Dr. Grynwald reported that appellant was under his care on that date and was excused from work.

Dr. Burns, in a March 20, 2024 return to work/school certificate, reported that appellant was under his care on March 20, 2024 and could return to work on March 21, 2024.

In a March 27, 2024 return to work/school certificate, Dr. Burns reported that appellant was under his care on March 27, 2024 and could return to work on March 28, 2024.

In April 10 and June 13, 2024 reports, Dr. Grynwald reported that appellant was under his care since February 28, 2024 and was scheduled for surgery on April 19, 2024.

In a June 19, 2024 report, Dr. Grynwald reported that appellant was under his care since February 28, 2024 and was having normal postoperative symptoms six to eight weeks after successful carpal tunnel release. He reported that she had been unable to work off and on due to bilateral carpal tunnel syndrome.

Dr. Burns, in a July 9, 2024 report, reported that appellant was diagnosed with bilateral carpal tunnel syndrome and underwent bilateral carpal tunnel surgery. He reported that she requested assistance technology with reasonable accommodations to help her work from home.

In a July 23, 2024 report, Dr. Grynwald reported that appellant began experiencing bilateral carpal tunnel syndrome around August 2023 and was first diagnosed on February 28, 2024.

Appellant also submitted a reasonable accommodation request and reasonable accommodation decisions issued by the employing establishment dated April 19 and August 26, 2022.

In a July 25, 2024 statement of accepted facts (SOAF), OWCP noted appellant's accepted conditions of carpal tunnel syndrome, left upper limb; carpal tunnel syndrome, right upper limb;

lesion of ulnar nerve, left upper limb; lesion of ulnar nerve, right upper limb. Other pertinent medical treatment included injections and right carpal tunnel syndrome performed on March 26, 2024 by Dr. Jeffrey Grynwald. OWCP further reported that appellant was intermittently off work, but stopped work altogether on March 26, 2024, and has not returned.

On August 6, 2024 OWCP referred appellant, the medical record, a SOAF, and a series of questions to Dr. Jason Stewart, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the extent and degree of any employment-related conditions and resultant disability. The evaluation was scheduled for September 23, 2024.

By decision dated August 9, 2024, OWCP reported that wage-loss compensation had been paid for eight hours of disability on December 19, 2023, eight hours of disability on February 27, 2024, eight hours of disability on February 28, 2024, four hours for a medical appointment on March 8, 2024, four hours for a medical appointment on March 14, 2024, and wage-loss compensation for disability due to surgery from March 26 through August 2, 2024. However, it denied the remaining claimed intermittent disability from work for the period August 1, 2023 through May 20, 2024. It found that the medical evidence of record was insufficient to establish the remaining claimed intermittent disability from work due to the accepted employment injury.

On August 26, 2024 appellant requested reconsideration.

In support of her claim, appellant submitted an August 19, 2024 medical report, wherein Dr. Burns reported that appellant had been off work intermittently since August 2023. Dr. Burns related that appellant had been diagnosed with carpal tunnel by Dr. Grynwald and had been unable to type as she had been denied voice recognition software for work. He reported that reasonable accommodations were needed for work, appellant continued to undergo occupational therapy, and underwent surgical correction performed by Dr. Grynwald.

The record reflects that appellant attended a second opinion evaluation with Dr. Stewart on September 23, 2024.

By decision dated September 27, 2024, OWCP denied modification of the August 9, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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.³

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.⁴ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn

³ *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).

⁴ 20 C.F.R. § 10.5(f).

wages.⁵ 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.⁶ 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.⁷

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 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.⁸

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work causally related to the accepted employment injury.⁹ 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.¹⁰

ANALYSIS

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

On August 6, 2024 OWCP referred appellant to Dr. Stewart for a second opinion evaluation to determine the extent and degree of any employment-related conditions and resultant disability, and to determine appellant's work capacity. While OWCP began to develop the claim and referred appellant for a second opinion evaluation, it issued its September 27, 2024 decision prior to the receipt of Dr. Stewart's report.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that

⁵ See *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁶ See *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

⁷ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

⁸ *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

⁹ See *B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁰ *Id.*

justice is done.¹¹ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹²

As OWCP failed to complete the development it undertook when it referred the case to Dr. Stewart, the case must be remanded for further development. On remand, OWCP shall review the report from Dr. Stewart, and if necessary, request a clarifying report on whether appellant sustained intermittent disability from work during the period August 1, 2023 through May 20, 2024 causally related to the accepted employment injury. 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.

ORDER

IT IS HEREBY ORDERED THAT the August 9 and September 27, 2024 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: December 20, 2024
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

¹¹ See *M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

¹² *Id.*; see also *R.M.*, Docket No. 16-0147 (issued June 17, 2016).