

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

D.F., Appellant)	
)	
and)	Docket No. 24-0623
)	Issued: July 26, 2024
U.S. POSTAL SERVICE, BEDFORD PARK)	
POST OFFICE, Bedford Park, IL, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 20, 2024 appellant, through counsel, filed a timely appeal from a January 18, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' 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

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the January 18, 2024 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 disability from work for the period November 17, 2022 through January 3, 2023, causally related to her accepted August 12, 2022 employment injury.

FACTUAL HISTORY

On November 28, 2022 appellant, then a 55-year-old rural delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on August 12, 2022 she sustained a supraspinatus tear of the right shoulder when transferring a parcel from the back of the truck to the front of the truck while in the performance of duty. The employing establishment reported that appellant stopped work on August 12, 2022, and returned to full-time, full-duty work on August 23, 2022. She stopped work again on November 17, 2022. By decision dated May 31, 2023, OWCP accepted the claim for full thickness right rotator cuff tear.

A November 6, 2022 magnetic resonance imaging (MRI) scan of appellant's right shoulder demonstrated a full-thickness tear of the distal supraspinatus tendon in the background of supraspinatus tendinosis; moderate acromioclavicular degeneration; and small glenohumeral joint effusion, with fluid throughout the subacromial subdeltoid bursa.

In November 16 and 21, 2022 notes, Jared W. Schiefer, a physician assistant, indicated that he was referring appellant to an orthopedic surgeon for treatment of her supraspinatus tear of the right shoulder.

On January 4, 2023 appellant was treated by Dr. William C. Kostman, a Board-certified orthopedic surgeon. Dr. Kostman recounted appellant's history of injury at work while lifting a heavy package. Following review of appellant's right shoulder x-ray and November 6, 2022 MRI scan, he diagnosed right shoulder full-thickness rotator cuff tear. On March 6, 2023 Dr. Kostman performed a right shoulder arthroscopy with subacromial decompression and arthroscopic rotator cuff repair.

On June 12, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work for the period November 17, 2022 through June 11, 2023.

In a development letter dated June 15, 2023, OWCP noted that the employing establishment was unable to certify that she was in a leave without pay (LWOP) status for the period November 17, 2022 through June 11, 2023. It indicated that appellant would be paid wage-loss compensation for the period February 7 through June 2, 2023.⁴ OWCP informed her of the deficiencies in her claim for compensation for the period November 17, 2022 through February 6, 2023. It advised appellant of the type of medical evidence required to show how her condition worsened such that she was no longer able to perform the duties of her position when

⁴ On June 15, 2023 OWCP processed a payment in the amount of \$15,167.38 for wage-loss compensation for the period February 7 through June 2, 2023.

she stopped work from November 17, 2022 through February 6, 2023 and afforded her 30 days to submit the requested evidence. No evidence relevant to the claim was received.⁵

By decision dated July 18, 2023, OWCP denied appellant's claim for wage-loss compensation, finding that the medical evidence of record was insufficient to establish disability from work for the period November 17, 2022 through February 6, 2023.⁶

On July 26, 2023 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held telephonically on November 9, 2023. During the hearing, appellant's counsel agreed there was no medical evidence from a qualified physician to establish that appellant was totally disabled from November 17, 2022 through January 4, 2023.⁷

By decision dated January 18, 2024, OWCP's hearing representative modified the July 18, 2023 decision to reflect November 17, 2022 through January 3, 2023 as the period of disability. She found that OWCP had paid the other claimed disability after that date through February 6, 2023.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁸ has the burden of proof to establish the essential elements of their claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁹ For each period of disability claimed, the employee has the burden of proof to establish that they were disabled from work as a result of the accepted employment injury.¹⁰ Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues, which must be proven by a preponderance of the reliable, probative, and substantial medical

⁵ OWCP received physical therapy notes dated July 6, 7, 10, and 12, 2023.

⁶ OWCP paid appellant wage-loss compensation for the period February 7 through June 30, 2023.

⁷ On July 31, 2023 OWCP paid the 40 hours claimed LWOP from January 7 to 13, 2023 and the 48 hours claimed from January 28 to February 4, 2023. On December 19, 2023 it also paid wage-loss compensation from January 14 to 27, 2023.

⁸ *Supra* note 2.

⁹ *See S.F.*, Docket No. 20-0347 (issued March 31, 2023); *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *S.B.*, Docket No. 23-0999 (issued March 28, 2024); *William A. Archer*, 55 ECAB 674 (2004).

evidence.¹¹ Findings on examination are generally needed to support a physician’s opinion that an employee is disabled from work.¹²

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.¹³ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹⁴ 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.¹⁵

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence 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.¹⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period November 17, 2022 through January 3, 2023, causally related to her accepted August 12, 2022 employment injury.

On January 4, 2023 appellant began treatment with Dr. Kostman. In this report Dr. Kostman did not discuss appellant’s work restrictions or disability status. As he did not address appellant’s disability status during the specific dates of disability for which compensation was claimed, this report is insufficient to establish appellant’s claim.¹⁷

OWCP received November 16 and 21, 2022 notes from Mr. Schiefer, a physician assistant who referred appellant to an orthopedic surgeon for treatment. However, the Board has held that medical reports signed solely by a physician assistant are of no probative value as such healthcare providers are not considered physicians as defined under FECA, and are therefore, not competent

¹¹ *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, *id.*

¹² *G.P.*, Docket No. 23-1133 (issued March 19, 2024); *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹³ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹⁴ *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

¹⁵ *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹⁶ *See C.S.*, Docket No. 17-1686 (issued February 5, 2019); *B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, *supra* note 12; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁷ *Id.*

to provide medical opinions.¹⁸ Consequently, their medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits. This report is therefore insufficient to establish the claim.

Appellant also submitted results from an MRI scan. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused her to be disabled during the claimed period.¹⁹ This evidence is therefore insufficient to establish appellant's claim.

As the medical evidence is insufficient to establish disability from work for the period November 17, 2022 through January 3, 2023 causally related to the accepted August 12, 2022 employment injury, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work for the period November 17, 2022 through January 3, 2023, causally related to her accepted August 12, 2022 employment injury.

¹⁸ Section § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also J.D.*, Docket No. 23-0993 (issued January 3, 2024) (physician assistants and medical assistants are not considered physicians as defined by FECA).

¹⁹ *See L.B.*, Docket No. 24-0381 (issued May 20, 2024); *V.A.*, Docket No. 21-1023 (issued March 6, 2023).

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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