

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

M.S., Appellant)	
)	
and)	Docket No. 23-1125
)	Issued: June 10, 2024
U.S. POSTAL SERVICE, WATFORD CITY)	
POST OFFICE, Watford City, ND, 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
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On August 21, 2023 appellant filed a timely appeal from a May 8, 2023 merit decision 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period January 25, 2018 through June 19, 2020 causally related to his accepted October 6, 2014 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 30, 2014 appellant, then a 53-year-old postmaster, filed a traumatic injury claim (Form CA-1) alleging that on October 6, 2014 he sustained a right shoulder rotator cuff tear when reaching over his head to open a stuck rural mailbox while in the performance of duty. He stopped work on October 7, 2014. By decision dated August 3, 2015, OWCP accepted the claim for temporary aggravation of right shoulder rotator cuff tear and right shoulder impingement. Appellant underwent OWCP-authorized right arthroscopic surgery with debridement on July 20, 2016. OWCP paid appellant wage-loss compensation on the supplemental rolls from July 20, 2016 through June 9, 2017. It also paid appellant intermittent wage-loss compensation on the supplemental rolls from January 25, 2018 to July 19, 2020.

By decision dated October 25, 2018, OWCP granted appellant a schedule award for 24 percent permanent impairment of the right upper extremity. The award ran for 74.88 weeks, from February 6, 2018 through July 15, 2019.

By decision dated June 28, 2019, OWCP expanded the acceptance of his claim to include temporary aggravation of chronic regional pain syndrome (CRPS) type 1, and right shoulder impingement.

On June 29, 2020 appellant filed a claim for wage-loss compensation (Form CA-7) for disability from work for the period January 25, 2018 through June 19, 2020.

In support thereof, appellant submitted a July 17, 2019 report, wherein Dr. John W. Ellis, a Board-certified family practitioner, related appellant's history of injury and medical course, reviewed medical evidence, and provided physical examination findings. He diagnosed CRPS 1, right rotator cuff sprain and right shoulder region dislocation. Dr. Ellis opined that appellant had been totally disabled from work commencing March 29, 2018 when appellant developed angina and heart problems, which he attributed to the accepted CRPS. He related that appellant's CRPS caused an outpouring of stress chemicals, which caused vasoconstriction of appellant's coronary arteries, which then caused his angina.

By development letter dated June 30, 2020, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation. It noted that he had been paid a schedule award for the period February 6, 2018 through July 15, 2019, and was not entitled to concurrently receive schedule award and wage-loss compensation. OWCP also noted that appellant had resigned from the employing establishment on May 26, 2018. It advised him of the type of medical evidence necessary to establish his claim and afforded him 30 days to respond. No further evidence was received.

² Docket No. 21-0626 (issued January 24, 2022).

By decision dated August 27, 2020, OWCP denied appellant's claim for wage-loss compensation for the period January 25, 2018 through June 16, 2020.

Appellant appealed the August 27, 2020 OWCP decision to the Board. By decision dated January 24, 2022,³ the Board set aside the August 27, 2020 decision, and remanded the case to OWCP for further development. The Board found that the July 17, 2019 report from Dr. Ellis was sufficient to require further development with respect to the question of whether appellant's claimed disability was causally related to his accepted October 6, 2014 employment injury.

On April 26, 2022 OWCP referred appellant, together with a statement of accepted facts (SOAF), medical record, and list of questions, for a second opinion evaluation with Dr. Allen L. Gee, a physician specializing in neurology, as to whether appellant's claimed disability was causally related to his accepted October 6, 2014 employment injury.

In a report dated May 23, 2022, Dr. Gee reviewed appellant's history of injury, medical record and SOAF. On examination, he observed decreased bilateral upper extremity range of motion, right forearm posterior lateral aspect skin discoloration, bilateral upper extremity symmetric reflexes, and righthand decreased temperature, vibration, and pinprick. Dr. Gee diagnosed complex region pain syndrome of the right upper limb and right shoulder injury. He agreed with Dr. Ellis' opinion that appellant's disability during the claimed period was causally related to appellant's accepted employment injury. Dr. Gee noted that appellant had a nerve stimulator in place for his accepted conditions, but that the placement of the leads would be changed in the plexus to address his right upper extremity pain. He concluded that, due to appellant's decreased use of his right upper extremity, his prognosis for recovery was poor.

On June 17, 2022 OWCP requested that Dr. Gee provide medical rationale for his conclusory opinion that appellant had been disabled from work from 2018 to 2020 due to his accepted employment conditions.

On September 27, 2022 OWCP received an undated addendum from Dr. Gee, opining that appellant's work-related condition had not resolved. He reiterated his agreement with Dr. Ellis regarding the right upper extremity CRPS diagnosis.

On November 7, 2022 OWCP requested additional clarification from Dr. Gee.

On February 10, 2023 OWCP received a second addendum from Dr. Gee reiterating his agreement with Dr. Ellis regarding the diagnosis of right upper extremity CRPS and appellant's disability. Dr. Gee explained that CRPS can limit the function of an extremity.

On March 30, 2023 OWCP referred appellant for a second opinion evaluation with Dr. Alan Nadel, a physician Board-certified in internal medicine and neurology, to determine whether appellant's disability from work during the period in question was causally related to the accepted October 6, 2014 employment injury.

³ *Id.*

In an April 24, 2023 report, Dr. Nadel reviewed the SOAF and appellant's medical record. He related appellant's history of injury and physical examination findings, which included good left arm strength, 1-2+ reflexes, normal left arm and bilateral legs sensory examination, normal right arm sensory examination with areas of decreased sensation. Dr. Nadel attributed appellant's chronic pain and right arm CRPS to his accepted shoulder injury, 2014 rotator cuff surgery, and aggravation of CRPS after surgery. He explained that appellant's right arm CRPS limited the use of his arm. Dr. Nadel noted that, at times, appellant's arm would freeze and he would have trouble moving or raising it, but his primary limitation was severe pain. Based on his review of the medical record and examination findings, he opined that appellant "is indeed [totally] disabled because of the [CRPS] and chronic pain of the right arm." Dr. Nadel related that appellant could not use his right arm or perform any lifting with his right arm. Appellant's pain impacted his ability to function because it interfered with his cognitive function. As to appellant's cardiac disease, Dr. Nadel opined that appellant's morbid obesity and inactivity were probably greater factors and not his right arm pain. In an attached work capacity evaluation (Form OWCP-5c), he checked a box marked "No" indicating that appellant could not work 8 hours a day with restrictions, but also checked a box marked "Yes" indicating that appellant could perform sedentary work.

By decision dated May 8, 2023, OWCP denied appellant's claim for wage-loss compensation.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ 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.⁶ 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.⁷ 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.⁸

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

⁴ *Supra* note 1.

⁵ *C.B.*, Docket No. 20-0692 (issued May 26, 2021); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

⁶ 20 C.F.R. § 10.5(f); *C.B., id.*; *S.T.*, Docket No. 18-412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁷ *C.B., id.*; *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

⁸ *C.B., id.*; *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

nature of the relationship between the claimed disability and the specific employment factors identified by the claimant.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 his or her disability and entitlement to compensation.¹⁰

ANALYSIS

The Board finds this case not in posture for decision.

Following the Board's January 24, 2022 decision, OWCP referred appellant to Dr. Nadel for a second opinion evaluation regarding his claim for wage-loss compensation for disability from work during the period January 25, 2018 through June 19, 2020. Dr. Nadel, in an April 24, 2023 report, recounted appellant's medical course, and attributed appellant's chronic pain and right arm CRPS to his accepted shoulder injury, 2014 rotator cuff surgery, and aggravation of CRPS after surgery. He opined that appellant "is indeed [totally] disabled because of the [CRPS] and chronic pain of the right arm." However, Dr. Nadel did not address the specific claimed period of disability.

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 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

On remand, OWCP shall request a supplemental opinion from Dr. Nadel clarifying whether appellant was disabled from work during the period January 25, 2018 through June 19, 2020 causally related to the accepted employment injury.¹³ Following this, and other such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds this case not in posture for decision.

⁹ *C.B., id.*; *K.H.*, Docket No. 19-1635 (issued March 5, 2020); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

¹⁰ *C.B., id.*; *K.A.*, Docket No. 19-1564 (issued June 3, 2020); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *William A. Archer, supra* note 7.

¹¹ *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).

¹³ *See E.B., supra* note 11; *S.G.*, Docket No. 22-0014 (issued November 3, 2022); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *P.S.*, Docket No. 17-0802 (issued August 18, 2017).

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2023 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 10, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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