

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

C.W., Appellant)

and)

U.S. POSTAL SERVICE, CROCKETT POST)
OFFICE, Crockett, CA, Employer)
-----)

**Docket No. 24-0394
Issued: June 5, 2024**

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 February 28, 2024 appellant filed a timely appeal from an October 20, 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.²

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period April 4 through May 9, 2023, causally related to the accepted May 17, 2021 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the October 20, 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.*

FACTUAL HISTORY

On June 9, 2021 appellant, then a 53-year-old lead sales and services associate, filed a traumatic injury claim (Form CA-1) alleging that on May 17, 2021 she injured her right shoulder and arm when raising the flag outside the employing establishment while in the performance of duty. OWCP accepted the claim for right shoulder and upper arm strain of the muscles, fascia, and tendons. It paid appellant wage-loss compensation.

Beginning April 14, 2023, appellant filed claims for compensation (Form CA-7) for disability from work commencing April 4, 2023.

In a disability note dated April 4, 2023, Dr. Craig Wiseman, a Board-certified orthopedic surgeon, advised that appellant was totally disabled from work, but could return to work on July 4, 2023.

Dr. Wiseman, in an April 18, 2023 visit note, provided examination findings and diagnosed chronic right shoulder impingement. He related that appellant had been seen for a preoperative visit for a scheduled May 10, 2023 right shoulder surgical procedure.

In a development letter dated April 24, 2023, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of factual and medical evidence needed and afforded her 30 days to respond.

On May 10, 2023 appellant underwent right shoulder arthroscopic surgery, shoulder debridement, and arthroscopic lysis of adhesions.

Dr. Wiseman added an addendum on May 11, 2023 to his April 18, 2023 report, relating that appellant would remain off work status post-surgery to allow for healing. In a work status note dated May 16, 2023, Dr. Wiseman related that appellant was slowly improving with an estimated return to work date of August 28, 2023.

By decision dated June 27, 2023, OWCP accepted appellant's claim for disability from work commencing May 10, 2023. However, it denied his claim for disability from work for the period April 4 through May 9, 2023.

Thereafter, OWCP received reports dated July 26, September 6, and December 20, 2022, February 7, and March 21, 2023 from Dr. Wiseman diagnosing right shoulder impingement, shoulder weakness, and status post right shoulder rotator cuff repair. In the March 21, 2023 note, Dr. Wiseman recounted appellant's complaints of worsening pain which affected her activities of daily living.

In a July 18, 2023 work status report, Dr. Wiseman noted a May 17, 2021 injury date and the May 10, 2023 right shoulder surgery, and estimated return to work date of October 2, 2023. He diagnosed status post right arthroscopic surgery and right shoulder adhesive capsulitis. Dr. Wiseman reported that he had held appellant off work beginning April 4, 2023 due to her complaints of severe pain prior to surgery.

Dr. Wiseman, in a report dated July 18, 2023, reiterated the findings from his July 18, 2023 work status report.

On July 24, 2023 appellant requested reconsideration.

By decision dated October 20, 2023, OWCP denied modification.

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 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 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.⁵

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.⁶ 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.⁷

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.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period April 4 through May 9, 2023, causally related to the accepted May 17, 2021 employment injury.

Appellant submitted April 4 and 18, 2023 reports wherein Dr. Wiseman advised that appellant was totally disabled beginning April 4, 2023 due to chronic right shoulder impingement, pending a May 10, 2023 surgical procedure. In March 21, and July 18, 2023 reports, Dr. Wiseman

³ *S.F.*, Docket No. 22-1034 (issued February 28, 2024); *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); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

⁴ *See S.F., id.; B.K.*, Docket No. 18-0386 (issued September 14, 2018).

⁵ *See A.S.*, Docket No. 20-0406 (issued August 18, 2021); *B.K.*, Docket No. 18-0386 (issued September 14, 2018); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

⁶ *A.S., id.; Amelia S. Jefferson, id.; William A. Archer*, 55 ECAB 674 (2004).

⁷ *T.L.*, Docket No. 20-0978 (issued August 2, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

⁸ *K.G.*, Docket No. 22-1358 (issued June 27, 2023); *B.M.*, Docket No. 19-1075 (issued February 10, 2021); *R.A.*, Docket No. 19-1752 (issued March 25, 2020); *A.W.*, Docket No. 18-0589 (issued May 14, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

related that appellant was disabled from April 4, 2023 due to worsening shoulder pain. He did not provide any objective findings which would explain why appellant was totally disabled as of April 4, 2023, and unable to perform the work she had performed since September 6, 2022. The Board has held that findings on examination are needed to support a physician's opinion that an employee is disabled from work, along with medical rationale explaining why work cannot be performed due to the accepted employment injury.⁹ These records do not explain, with rationale, how or why appellant was unable to perform her work during the claimed period of disability due to her accepted right shoulder conditions.¹⁰ Therefore, this evidence is insufficient to establish appellant's disability claim.

The remaining medical evidence fails to address the claimed period of disability from April 4 through May 9, 2023 and, thus, is of no probative value and is insufficient to establish appellant's disability claim.¹¹

As the medical evidence of record is insufficient to establish disability from work during the claimed period due to the accepted 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 the October 20, 2023 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 April 4 through May 9, 2023, causally related to the accepted May 17, 2021 employment injury.

⁹ *T.S.*, Docket Nos. 20-1177, 20-1296 (issued May 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹⁰ *See A.G.*, Docket No. 23-0045 (issued February 15, 2024); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *K.R.*, Docket No. 20-0681 (issued January 12, 2021); *M.A.*, Docket No. 19-1119 (issued November 25, 2019), *L.B.*, *id.*, *D.K.*, *id.*

ORDER

IT IS HEREBY ORDERED THAT the October 20, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 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