

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

P.L., Appellant	)	
	)	
and	)	<b>Docket No. 24-0131</b>
	)	<b>Issued: May 7, 2024</b>
U.S. POSTAL SERVICE, HONOLULU POST	)	
OFFICE, Honolulu, HI, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Michael J. Watson, Esq., for the appellant<sup>1</sup>*  
*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 November 27, 2023 appellant, through counsel, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs (OWCP) dated August 23, 2023. Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the August 23, 2023 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 disability from work commencing May 20, 2023 causally related to her accepted March 6, 2023 employment injury.

## FACTUAL HISTORY

On March 6, 2023 appellant, then a 49-year-old general expeditor, filed a traumatic injury claim (Form CA-1) alleging that on March 6, 2023 she sustained an injury to her right little finger when it became caught between two wire containers she was pulling while in the performance of duty. She stopped work on March 6, 2023. OWCP accepted appellant's claim for nondisplaced closed fracture of the distal phalanx of the right little finger, and laceration without foreign body of the right little finger with damage to the nail.

On March 27, 2023 the employing establishment offered appellant a position as a modified general expeditor for eight hours per day effective the same day. Appellant accepted the position and returned to work.

In industrial work status reports dated May 16 and June 6, 2023, Dr. Neelesh Fernandes, a Board-certified physiatrist, diagnosed nondisplaced distal phalanx fracture of the right little finger, and right little finger laceration with nail damage. He noted that appellant was off work from May 16 through June 27, 2023 due to incapacitating injury or pain.

On June 7, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work for the period May 20 through June 2, 2023. She continued to file claims for compensation for periods thereafter.

In development letters dated June 13 and 22, 2023, OWCP informed appellant of the deficiencies of her claim for compensation. It advised her of the type of medical evidence required and afforded her 30 days to submit the requested evidence.

Dr. Fernandes continued to treat appellant on May 16 and June 6, 2023 and noted slightly decreased swelling, flatness of nail bed growth, tenderness to palpation, and improved range of motion of the distal right little finger phalanx. He diagnosed nondisplaced distal phalanx fracture of the right little finger, and right little finger laceration with nail damage. Dr. Fernandes opined that the injury was more likely caused by the alleged employment injury and was an industrial-related injury. He noted that appellant was off duty.

On June 27, 2023 Dr. Fernandes treated appellant in follow up for a work-related right little finger injury. He provided a summary of her treatment commencing March 20, 2023. Dr. Fernandes noted slight decreased swelling, tenderness to palpation, and limited range of motion of the distal right little finger phalanx. He observed that the nailbed of the right little finger was growing in flat. Dr. Fernandes diagnosed distal phalanx fracture of the right little finger, and right little finger laceration with nail damage. He opined that the injury was more likely caused by the alleged employment injury and was an industrial-related injury. Dr. Fernandes noted that appellant was off duty.

In a work status report dated June 27, 2023, Dr. Fernandes provided diagnoses for the right little finger and advised that appellant was off work from June 27 through July 18, 2023. In a work

capacity evaluation (Form OWCP-5c) dated July 11, 2023, he placed appellant off work pending magnetic resonance imaging (MRI) scan results.

A June 29, 2023 MRI scan of the right hand revealed a healing mildly displaced fracture through the tuft of the fifth distal phalanx.

Appellant was seen again on July 18, 2023 and Dr. Fernandes noted markedly decreased swelling, flatness of the nailbed, and improved range of motion of the right little finger. He diagnosed nondisplaced distal phalanx fracture of the right little finger, and right little finger laceration with nail damage. Dr. Fernandes opined that this injury was more than likely caused by the employment injury and was an industrial-related injury. He released appellant to work light duty. In a work status report of even date, Dr. Fernandes provided diagnoses for the right little finger and advised that appellant was off work from July 18 through 23, 2023 and released to modified duty from July 24 through August 8, 2023.

By decision dated July 26, 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 commencing May 20, 2023 causally related to the accepted March 6, 2023 employment injury.

On July 31, 2023 appellant indicated that upon returning to work on July 24, 2023 her supervisor informed her that she was unable to work "due to paperwork." She reported clocking out and not receiving any information regarding a return to work.

OWCP received an August 4, 2023 Form CA-7 requesting leave without pay for the period May 20 through July 24, 2023.

On August 6, 2023 appellant requested reconsideration.

In a work status report dated August 8, 2023, Dr. Fernandes diagnosed nondisplaced distal phalanx fracture of the right little finger, and right little finger laceration with nail damage. He released appellant to modified duty from August 8 through 29, 2023.

By decision dated August 23, 2023, OWCP denied modification of the July 26, 2023 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> Whether a particular injury causes an

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *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).

<sup>6</sup> *S.B.*, Docket No. 23-0999 (issued March 28, 2024); *William A. Archer*, 55 ECAB 674 (2004).

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 evidence.<sup>7</sup> Findings on examination are generally needed to support a physician’s opinion that an employee is disabled from work.<sup>8</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>9</sup> Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period commencing May 20, 2023 causally related to the accepted March 6, 2023 employment injury.

Dr. Fernandes treated appellant on May 16, June 6 and 27, and July 18, 2023 and diagnosed nondisplaced distal phalanx fracture of the right little finger, and right little finger laceration with nail damage. He opined that the injury was “more likely” caused by the alleged employment injury on March 6, 2023 and noted that appellant was off work. The Board finds that Dr. Fernandes’ opinion is speculative in nature.<sup>13</sup> Medical opinions that are speculative or equivocal in character are of diminished probative value.<sup>14</sup> Therefore, these reports are insufficient to establish her claim.

In industrial work status reports dated May 16, June 6 and 27, July 18 and August 8, 2023, Dr. Fernandes diagnosed nondisplaced distal phalanx fracture of the right little finger, and right

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<sup>7</sup> *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, *id.*

<sup>8</sup> *G.P.*, Docket No. 23-1133 (issued March 19, 2024); *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>9</sup> 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>10</sup> *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>11</sup> *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>12</sup> *See B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, *supra* note 7; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *see also C.S.*, Docket No. 17-1686 (issued February 5, 2019).

<sup>13</sup> *See P.D.*, Docket No. 18-1461 (issued July 2, 2019); *E.B.*, Docket No. 18-1060 (issued November 1, 2018); *Leonard J. O Keefe*, 14 ECAB 42 (1962).

<sup>14</sup> *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001).

little finger laceration with nail damage. In these reports, he noted that appellant was off work from May 16 through July 18, 2023 due to incapacitating injury or pain. In a Form OWCP-5c dated July 11, 2023, Dr. Fernandes placed appellant off work pending an MRI scan. These reports do not contain an opinion that appellant was disabled from work during the claimed period due to the accepted March 6, 2023 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's disability is of no probative value on the issue of causal relationship.<sup>15</sup> Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also submitted an MRI scan. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the employment incident caused any of the diagnosed conditions.<sup>16</sup> This evidence is therefore insufficient to establish appellant's claim.

As the medical evidence is insufficient to establish disability from work for the period commencing May 20, 2023 causally related to the accepted March 6, 2023 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 commencing May 30, 2023 causally related to the accepted March 6, 2023 employment injury.

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<sup>15</sup> See *F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>16</sup> *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 23, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 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