

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

K.M., Appellant)	
)	
and)	Docket No. 24-0260
)	Issued: November 8, 2024
U.S. POSTAL SERVICE, PLAINFIELD POST)	
OFFICE, Plainfield, IN, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 21, 2024 appellant filed a timely appeal from a December 14, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal

¹ The Board notes that during the pendency of this appeal, OWCP issued a February 22, 2024 merit decision denying modification of the December 14, 2023 decision. The Board and OWCP may not simultaneously exercise jurisdiction over the same issue in the same case at the same time. Thus, OWCP's February 22, 2024 decision is null and void. 20 C.F.R. §§ 501.2(c)(3), 10.626; *see M.S.*, Docket No. 23-0502 (issued September 20, 2023); *M.S.*, Docket No. 22-0530 (issued August 16, 2022); *D.P.*, Docket No. 20-1330 (issued February 19, 2021); *J.C.*, Docket No. 19-1849, n.2 (issued November 17, 2020); *A.C.*, Docket No. 18-1730 (issued July 23, 2019); *M.C.*, Docket No. 18-1278, n.1 (issued March 7, 2019); *Jacqueline S. Harris*, 54 ECAB 139 (2002); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

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

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work commencing November 30, 2023, causally related to her accepted May 18, 2022 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 14, 2022 appellant, then a 49-year-old rural delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on May 18, 2022 she pulled muscles in her forearm and developed tennis elbow and golf elbow during a food drive while in the performance of duty. She stopped work on May 18, 2022.

By decision dated October 20, 2022, OWCP accepted appellant's claim for lateral epicondylitis of the right elbow.

On October 10, 2023 OWCP referred appellant, the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Norman Mindrebo, a Board-certified orthopedic surgeon, for a supplemental second opinion report regarding whether she was medically capable of performing the duties of her date-of-injury job.⁵

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the December 14, 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.*

⁴ Docket No. 23-0446 (issued September 26, 2023).

⁵ On July 6, 2023 Dr. Mindrebo evaluated appellant for the purpose of the second opinion evaluation. In his report, he documented her physical examination findings, discussed history of injury, and summarized various diagnostic studies. Dr. Mindrebo diagnosed lateral epicondylitis of the right elbow and opined that appellant was medically able to perform her duties as a rural carrier for four hours per day with restrictions of no repetitive movement of her right elbow and no pushing, pulling or lifting greater than 10 pounds. He explained that she needed to regain her strength in the right arm as she had not worked in over a year. Dr. Mindrebo reported that after three months, appellant should be reassessed to return to full-time, regular-duty work without restrictions. In a work capacity evaluation (Form OWCP-5c) of even date, he noted the diagnosis of lateral epicondylitis of the right elbow and opined that appellant could return to light-duty work for four hours per day for a period of three months, after which he anticipated she could return to full-duty work. On August 2, 2023 appellant accepted an offer for a limited-duty modified assignment as a supervisor intern. She returned to light-duty work on August 7, 2023.

In an October 19, 2023 addendum report, Dr. Mindrebo opined that appellant was capable of returning to her date-of-injury job, full duty, without restrictions. He reported that because she was off work for a year, he thought it was reasonable to return to limited-duty work for a period of three months, but from a strictly physical examination perspective, and upon review of the medical record, he opined that she had a resolving lateral epicondylitis of the right elbow, and there was no contraindication for her to return to full-time regular-duty work as a rural mail carrier. In a Form OWCP-5c of even date, Dr. Mindrebo reported that appellant could return to her date-of-injury job, full duty, without restrictions.

In an October 27, 2023 report, Sarah Clark, a nurse practitioner, provided appellant work restrictions of four hours per day through November 8, 2023, following which she was released to eight hours per day. She noted restrictions including no heavy lifting over 10 pounds, avoid repetitive motion, no carrying heavy mail, and performing basic office duties through May 1, 2024.

In an October 30, 2023 report, Dr. Andrew Campbell, Board-certified in family medicine, provided appellant work restrictions of four hours per day through November 8, 2023, after which she could be released to eight hours per day. He further noted restrictions of no heavy lifting over 10 pounds, to avoid repetitive motion, and no carrying heavy mail. Dr. Campbell explained that appellant was still struggling with arm pain and swelling in spite of conservative treatment, noting that movement and heavy lifting (which are required by her mail carrying job) make the pain/swelling worse. He opined that she could perform basic office duties, and that her restrictions applied through May 1, 2024.

In a separate report of even date, Dr. Campbell reported that appellant was restricted to working four hours per day through November 8, 2023, after which she could be released to eight hours per day. He reiterated restrictions of no heavy lifting over 10 pounds, and to avoid repetitive motion. Dr. Campbell explained that appellant had persistent lateral epicondylitis for which surgical correction was needed, as she has failed all conservative therapy. He reported that she was physically unable to achieve full extension at the right elbow or raise her right arm above the shoulder due to painful presence of supraclavicular lipoma, which was exacerbated by overhead reaching. Dr. Campbell reported that appellant was still struggling with arm pain and swelling in spite of conservative treatment, and surgery was the only recourse at this time as movement and heavy lifting make the pain/swelling worse. He reported that after more than a year attempting conservative treatment, it was clear that surgery, as recommended by an independent orthopedist, was medically necessary to be able to resume her usual work, and she would not be able to resume her usual duties until such surgery is approved. Dr. Campbell concluded that appellant was unable to carry heavy mail but was able to perform basic office duties, noting that her restrictions would apply through May 1, 2024.

On November 6, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work during the period October 30 through November 3, 2023. She continued to file CA-7 forms for additional periods of disability thereafter.

Appellant submitted narrative statements received on November 7 and 8, 2023.

In a development letter dated November 8, 2023, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation commencing October 30, 2023. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

In a November 3, 2023 reasonable accommodations request form, Dr. Campbell provided work restrictions pertaining to the right arm, noting that she could only use her right arm for light-duty office work.

In a November 15, 2023 report, Dr. Jerry R. Powell, Board-certified in family medicine, evaluated appellant for complaints to the right elbow and noted examination findings of mild swelling and lack of active range of motion (ROM). He diagnosed lateral epicondylitis of the right elbow and noted accompanying work restrictions.

In a November 15, 2023 duty status report (Form CA-17), Dr. Powell released appellant to full-time work with restrictions. In attending physician's report (Form CA-20) of even date, he indicated that appellant was partially disabled as a result of her diagnosed condition of lateral epicondylitis of the right elbow.

Appellant submitted narrative statements received on December 4 and 6, 2023.

By decision dated December 14, 2023, OWCP denied appellant's claim for disability from work commencing November 30, 2023. It found that the evidence of record was insufficient to establish that she was disabled from work during the claimed period due to her accepted May 18, 2022 employment injury.

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.⁶

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.⁷ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁸ 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.⁹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical

⁶ *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).

⁷ 20 C.F.R. § 10.5(f).

⁸ *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁹ *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.¹⁰

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.¹¹

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.¹² 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.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing November 30, 2023, causally related to her accepted May 18, 2022 employment injury.

In support of her claim for compensation, appellant submitted October 30 and November 3, 2023 medical reports and forms wherein Dr. Campbell opined that appellant could return to full-duty work with restrictions as of November 8, 2023. Therefore, Dr. Campbell's opinion does not provide support for disability from work commencing November 30, 2023, causally related to her accepted May 18, 2022 employment injury. The Board has held that an opinion is of limited probative regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/period of disability has an employment-related cause.¹⁴ Consequently, this evidence is insufficient to establish appellant's disability claim.¹⁵

While Dr. Powell's November 15, 2023 reports and medical forms provided support for work restrictions, the physician also indicated that appellant could return to full-duty work finding that she was not totally disabled.¹⁶ He did not provide medical rationale, based on objective

¹⁰ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹¹ *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹² 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).

¹³ *Id.*

¹⁴ *A.H.*, Docket No. 22-0001 (issued July 29, 2022); *L.M.*, Docket No. 21-0063 (issued November 8, 2021); *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

¹⁵ *E.F.*, Docket No. 20-1680 (issued November 20, 2021).

¹⁶ *H.K.*, Docket No. 23-0739 (issued September 27, 2023).

findings, supporting disability from work during the claimed period causally related to the accepted employment injury.¹⁷ As stated above, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/period of disability has an employment-related cause.¹⁸ This evidence is, therefore, insufficient to establish appellant's disability claim.

Appellant also submitted medical reports dated October 27, 2023 from Ms. Clark, a nurse practitioner. However, certain healthcare providers such as nurse practitioners are not considered qualified "physician[s]" as defined under FECA and thus their findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹⁹ This evidence is therefore insufficient to establish appellant's disability claim.²⁰

As appellant has not submitted medical evidence sufficient to establish disability commencing November 30, 2023, causally related to her accepted May 18, 2022 employment injury, the Board finds that she has not met her burden of proof.²¹

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 commencing November 30, 2023 causally related to her accepted May 18, 2022 employment injury.

¹⁷ *B.L.*, Docket No. 23-0551 (issued September 21, 2023).

¹⁸ *See R.H.*, Docket No. 22-0140 (issued August 12, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *S.K.*, Docket No. 19-0272 (issued July 21, 2020); *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁹ 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) (January 2013); *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 B.D.*, Docket No. 22-0503 (issued September 27, 2022) (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a nurse practitioner is not considered a physician as defined under FECA).

²⁰ *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

²¹ *J.M.*, Docket No. 21-1261 (issued September 11, 2023).

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2024
Washington, DC

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

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

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