

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

_____)	
L.H., Appellant)	
)	
and)	Docket No. 24-0589
)	Issued: November 8, 2024
U.S. POSTAL SERVICE, DOMINICK V.)	
DANIELS PROCESSING & DISTRIBUTION)	
CENTER, Kearney, NJ, 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 May 11, 2024 appellant filed a timely appeal from December 22, 2023 merit and April 16, 2024 nonmerit decisions of the Office of Workers' Compensation Programs (OWCP).¹ 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 Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of her oral argument request, appellant asserted that she wished to explain the circumstances of the accepted employment incident and the nature of her injuries as she could not submit new evidence on appeal. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the April 16, 2024 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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish intermittent disability from work during the period January 1, 2022 through October 20, 2023, causally related to her September 10, 2021 employment injury; and (2) whether OWCP properly determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

FACTUAL HISTORY

On September 20, 2021 appellant, then a 26-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 10, 2021 she sustained injuries to her head and the left side of her body when the breakroom bench chair that she was seated on collapsed, causing her to fall backward and strike her head and left side against a wall while in the performance of duty. She stopped work on the date of injury. OWCP paid appellant wage-loss compensation on the supplemental rolls for the period January 21 through February 11, 2022.

On January 21, 2022 appellant accepted a limited-duty job offer working four hours a day as a modified mail processing clerk with restrictions. She began work on January 22, 2022.

In a March 18, 2022 report, Dr. Kathyann S. Duncan, Board-certified in family practice, recounted treating appellant for the September 10, 2021 injury commencing September 13, 2021. She noted appellant's symptoms of chronic headaches, poor short-term memory, back pain with radiculopathy, neck pain, restricted cervical spine motion, pain on ambulation, left-sided weakness, and an antalgic gait. Dr. Duncan returned appellant to limited-duty work effective January 22, 2022, for four hours a day. She diagnosed postconcussion syndrome.

On March 22, 2022 OWCP accepted the claim for postconcussion syndrome and concussion without loss of consciousness, initial encounter.

In a June 8, 2023 report, Dr. Alan A. Saber, a Board-certified surgeon, noted that appellant underwent bariatric surgery on May 31, 2023. He held her off work for the period May 31 through June 27, 2023, and returned her to full-duty work with no restrictions, effective June 28, 2023.

In an August 3, 2023 duty status report (Form CA-17), Dr. Duncan restricted appellant to working four hours a day, with lifting/carrying limited to 10 pounds, pulling, pushing, bending, and stooping limited to one hour a day, and no kneeling, operating a vehicle, or operating machinery.

Commencing November 8, 2023, appellant filed a series of claims for compensation (Form CA-7) for intermittent disability from work for the period October 26, 2021 through October 20, 2023.

In a development letter dated November 13, 2023, OWCP informed appellant of the deficiencies of her disability claim. It advised her of the type of medical evidence needed and afforded her 30 days to provide the necessary evidence. No additional evidence was received.

By decision dated December 22, 2023, OWCP denied appellant's claim for intermittent disability from work during the period January 1, 2022 through October 20, 2023. It found that the medical evidence of record was insufficient to establish that she was disabled from work during the claimed period due to the accepted employment injury.

On January 16, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a March 5, 2024 notice, OWCP's hearing representative informed appellant that her oral hearing would be conducted by telephone, and was scheduled for April 5, 2024 at 1:00 p.m. Eastern Standard Time (EST). The hearing representative provided the toll-free number and passcode for access to the hearing and mailed the notice to appellant's last known address of record, as well as to the employing establishment. Appellant did not appear for the hearing and no request for postponement was made.

By decision dated April 16, 2024, OWCP found that appellant had abandoned her request for an oral hearing as she had received written notification of the hearing 30 days in advance, but failed to appear. It further noted that there was no indication in the record that she had contacted the Branch of Hearings and Review either prior to, or subsequent to, the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ 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.⁵ 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.⁶ 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 opinion evidence.⁷ Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.⁸

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.⁹ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹⁰ An employee who has a physical impairment causally related to a federal employment

⁴ *Supra* note 2.

⁵ *See M.T.*, Docket No. 21-0783 (December 27, 2021); *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁷ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *C.S.*, Docket No. 20-1621 (issued June 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

⁹ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

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

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.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 his or her disability and entitlement to compensation.¹³

To establish causal relationship between the condition, as well as any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence.¹⁴ 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 diagnosed condition and the specific employment factors identified by the claimant.¹⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work during the period January 1, 2022 through October 20, 2023, causally related to her September 10, 2021 employment injury.

Dr. Duncan, in reports dated March 18, 2022 and August 3, 2023, found appellant able to perform light-duty work commencing January 22, 2022 for only four hours a day. However, she did not provide an opinion on causal relationship between the claimed disability and the accepted employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁷ This evidence is, therefore, insufficient to establish appellant's claim.

In a June 8, 2023 report, Dr. Saber held appellant off work for the period May 31 through June 27, 2023 for recuperation from bariatric surgery. As his report attributes appellant's disability

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

¹² See *S.M.*, Docket No. 22-1209 (issued February 27, 2024); *B.B.*, Docket No. 18-1321 (issued April 5, 2019).

¹³ See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *William A. Archer*, 55 ECAB 674 (2004).

¹⁴ *K.B.*, Docket No. 22-0842 (issued April 25, 2023); *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

¹⁵ *S.S.*, Docket No. 24-0814 (issued September 27, 2024); *R.P.*, Docket No. 18-1591 (issued May 8, 2019).

¹⁶ *Id.*

¹⁷ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

from May 31 through June 27, 2023 to a nonoccupational cause, his opinion is thus insufficient to establish her disability claim.¹⁸

Because appellant has not submitted rationalized medical opinion evidence to establish employment-related disability for the period January 1, 2022 through October 20, 2023, causally related to her September 10, 2021 employment injury, the Board finds that she 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.

LEGAL PRECEDENT -- ISSUE 2

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.¹⁹ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.²⁰ OWCP has the burden of proving that it properly mailed notice of the scheduled hearing to a claimant and any representative of record.²¹

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.²² The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.²³

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

¹⁸ *Id.*, see also *D.M.*, Docket No. 19-0947 (issued October 9, 2019); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

¹⁹ 20 C.F.R. § 10.616(a).

²⁰ *Id.* at § 10.617(b).

²¹ *C.M.*, Docket No. 24-0895 (issued September 30, 2024); *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *L.T.*, Docket No. 20-1539 (issued August 2, 2021); *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

²² 20 C.F.R. § 10.622(f).

²³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (September 2020); see also *C.M.*, *L.L.*, and *V.C.*, *supra* note 22; *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

Following OWCP's December 22, 2023 decision denying intermittent disability from work during the period January 1, 2022 through October 20, 2023, she filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a March 5, 2024 notice, OWCP's hearing representative informed appellant that her oral hearing would be conducted by telephone, and that the hearing was scheduled for April 5, 2024 at 1:00 p.m. EST. The hearing representative mailed the notice to appellant's last known address of record, providing instructions on how to participate.²⁴

Appellant did not appear for the scheduled hearing. She did not request a postponement or provide an explanation to OWCP for failure to appear for the hearing within 10 days of the scheduled hearing. As appellant failed to call in to the scheduled hearing or provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining failure to appear, the Board finds that OWCP properly determined that she abandoned her request for an oral hearing.²⁵

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work during the period January 1, 2022 through October 20, 2023, causally related to her September 10, 2021 employment injury. The Board further finds that OWCP properly

²⁴ The Board has held that, absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule. *See C.M., L.L., V.C., and L.T., supra* note 22.

²⁵ *Id.*

determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2023 and April 16, 2024 decisions of the Office of Workers' Compensation Programs are 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