

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

G.H., Appellant)	
)	
and)	Docket No. 25-0008
)	Issued: November 4, 2024
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE,)	
Los Angeles, CA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Sally LaMacchia, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 3, 2024 appellant, through counsel, filed a timely appeal from a June 10, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish intermittent disability from work for the period May 8 to October 4, 2023, causally related to his accepted May 1, 2023 employment injury.

FACTUAL HISTORY

On September 26, 2023 appellant, then a 64-year-old internal revenue officer, filed an occupational disease claim (Form CA-2) alleging that he exacerbated his carpal tunnel syndrome (CTS) due to factors of his federal employment, including repetitive typing. He noted that he first became aware of his condition and realized its relation to his federal employment on May 1, 2023. Appellant did not stop work.

OWCP accepted the claim for bilateral CTS.

Appellant filed claims for compensation (Form CA-7) for intermittent disability from work for the period May 7 to October 4, 2023.

By development letter dated December 19, 2023, OWCP informed appellant of the deficiencies of his wage-loss claim. It advised him of the type of medical evidence necessary to establish his claim and afforded 30 days for submission of the necessary evidence.

OWCP received appellant's May 31, 2023 electrodiagnostic (EMG) and nerve conduction velocity (NCV) study which related abnormal findings of moderate bilateral median neuropathy across the bilateral wrists (CTS).

OWCP received receipts for medical office visits on June 6, 12, 14, 15, and 21, 2023.

In a September 14, 2023 report, Dr. Morris Baumgarten, Board-certified in orthopedic surgery, diagnosed chronic CTS, joint inflammation, osteomyelitis, and arthropathy. He opined that the job duties appellant described contributed to his diagnosed conditions by direct cause, precipitation, aggravation, or acceleration. Dr. Baumgarten explained that the cumulative trauma of repetitive activities such as writing, typing, and computer mouse clicking contributed to the CTS which was the most common industrial injury. He advised that appellant could return to work if he was provided with a modern robust computer to support speech software, an ergonomic mouse and keyboard, an ergonomic office chair, and a modified workload. Dr. Baumgarten recommended surgery, noting that physical therapy and anti-inflammatory treatment had failed, and appellant's prognosis was poor.

On December 20, 2023 appellant provided a narrative statement describing his claim. He related that he spent 80 percent of his work week typing reports. Appellant explained that he noticed tingling in his fingers in 2017, which progressed and led to bilateral CTS release in March 2020. After this procedure, he was granted a reasonable accommodation request for use of dictation software. The software did not work on his employing establishment computer, but he purchased it for his home computer, and it worked perfectly. Since the software did not work on his employing establishment computer, he had to continue using his hands to type, slowly his pain and tingling wrist symptoms returned, and he was taken off work.

By letter dated December 26, 2023, OWCP informed appellant that additional evidence was needed to establish disability from work during the entire period claimed. It advised him of the type of factual and medical evidence necessary to establish his claim and afforded him 30 days to submit the necessary evidence.

In a letter dated January 10, 2024, counsel for appellant requested that Dr. Baumgarten answer questions regarding appellant's CTS condition.

In a letter dated January 16, 2024, counsel for appellant argued that a January 11, 2024 report from Dr. Baumgarten supported disability from work from May 5 to October 4, 2023, and referred to an undated and unsigned report which counsel indicated was Dr. Baumgarten's response to counsel's January 10, 2024 letter. Counsel argued that Dr. Baumgarten explained that the appropriate course of action was to alleviate the repetitive conditions that caused the trauma that resulted in the pain and numbness and tingling of the hands due to the compression of the medial nerve. He explained that his treatment plan was restrictive in nature, to keep appellant away from the repetitive movements and conditions that aggravated the injury to appellant's median nerve. Dr. Baumgarten noted that appellant underwent rotator cuff repair surgery to his shoulder during the time he was off work; however, appellant's CTS was a contributing factor for his time off from work from May 5 through October 4, 2023. He opined that the rotator cuff surgery was beneficial to the treatment of appellant's CTS as it required immobilization for a short period of time. Dr. Baumgarten also opined that the rotator cuff surgery did not change or extend his treatment plan for appellant's CTS condition and that it was likely the shoulder surgery allowed him to return to work earlier.

By decision dated January 19, 2024, OWCP denied wage-loss compensation for the period May 7 through to October 4, 2023, finding that the medical evidence was insufficient to establish that appellant was disabled from work during the claimed period due to the accepted work-related conditions.

On June 6, 2024 appellant, through counsel, requested reconsideration.

In a May 15, 2024 report, Dr. Baumgarten noted that he had been treating appellant since 2017 for issues including bilateral CTS and right shoulder rotator cuff tear. He related that appellant had undergone bilateral CTS surgery in March 2020, eventually returned to work but was taken off work at the end of 2021 and again for a couple of months in 2022 due to bilateral wrist pain. Dr. Baumgarten noted that in May 2023 appellant reported that his hand numbness and tingling returned, and that the workplace accommodation of Dragon Speak Software was not working properly. He explained that he took appellant off work and ordered another EMG/nerve conduction study which indicated that appellant's repetitive work duties had aggravated his previously operated on CTS. Dr. Baumgarten noted that he advised appellant that eliminating his work duties would allow time for appellant's symptoms to ease or possibly heal; however, appellant did not follow his recommendation and continued to work as much as he could from May 7 to October 4, 2023. He opined that appellant should not have been working during that time period as he had been advised to be off work completely due to his symptoms. Dr. Baumgarten noted that in September 2023, he advised appellant that he could return to work if he was provided the previously requested appropriate accommodations. He noted that appellant underwent right shoulder surgery on June 28, 2023, however, the shoulder surgery was beneficial for appellant's CTS condition as the right upper extremity was immobilized for a period of time postoperatively.

By decision dated June 10, 2024, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴

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.⁵ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁶ 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.⁷ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.⁸

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.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish intermittent disability for the period May 8 to October 4, 2023, causally related to his accepted May 1, 2023 employment injury.

In support of his claim, appellant submitted several reports from Dr. Baumgarten. In a September 14, 2023 report, he diagnosed chronic CTS, joint inflammation, osteomyelitis, and arthropathy. The Board notes the only accepted condition is bilateral CTS. With regard to appellant being off work from May 8 to October 4, 2023, Dr. Baumgarten opined that appellant's CTS was caused by his work activities of writing, typing, and computer mouse clicking. In this

³ *Id.*

⁴ See *A.H.*, Docket No. 22-0001 (issued July 29, 2022); *A.R.*, Docket No. 20-0583 (issued May 21, 2021); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994).

⁵ 20 C.F.R. § 10.5(f); see *J.M.*, Docket No. 18-0763 (issued April 29, 2020); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁶ *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁷ See *M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

⁸ See *A.R.*, *supra* note 4; *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

⁹ 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).

report he advised that appellant could return to work if he was provided with a modern robust computer to support speech software, an ergonomic mouse and keyboard, ergonomic office chair and a modified workload. In a May 15, 2024 report, Dr. Baumgarten noted that appellant came to see him in May 2023 as his hand numbness and tingling had returned. An EMG/nerve conduction study indicated an aggravation of his previous CTS. Dr. Baumgarten noted that he advised appellant that his repetitive work duties of writing, typing, and computer mouse clicking had aggravated his previously operated on CTS and that eliminating these work duties would allow time for his symptoms to ease or possibly heal. In this report, he also related that appellant underwent right shoulder surgery on June 28, 2023, and opined that the timing of the shoulder surgery allowed the patient to return to work earlier than planned because this allowed the carpal tunnel syndrome symptoms to wean. As noted, to be entitled to compensation, the employee must provide medical evidence which establishes that the residuals or sequelae of an employment injury prevent him from continuing in his employment.¹⁰ The Board finds that although Dr. Baumgarten noted an EMG/NCV study, he has not explained based on objective findings why appellant's accepted CTS condition resulted in disability from work during the claimed period.¹¹ 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.¹² Dr. Baumgarten did not provide medical rationale, based on objective medical findings, to support his opinion that appellant could not perform his employment duties during the claimed period. The Board, therefore, concludes that his opinion is insufficient to establish that appellant was disabled from work during the claimed period due to his accepted employment injury.

On January 11, 2024 counsel provided a report which she indicated was from Dr. Baumgarten; however, this report was undated and unsigned. Reports that are unsigned cannot be considered probative medical evidence because they lack proper identification¹³ as the author cannot be identified as a physician.¹⁴ Thus, this report has no probative value and is insufficient to establish the claim.

OWCP also received May 31, 2023 EMG and NCV diagnostic reports. The Board has held that diagnostic reports, standing alone, lack probative value regarding causal relationship.¹⁵ As such, this evidence is insufficient to establish appellant's disability claim.

As the medical evidence of record is insufficient to establish intermittent disability from work during the period from May 8 to October 4, 2023, causally related to the accepted employment injury, the Board finds that appellant has not met his burden of proof.

¹⁰ *Supra* note 8.

¹¹ *T.S.*, Docket Nos. 20-1177, 20-1296 (issued May 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹² *Id.*

¹³ *W.L.*, Docket No. 19-1581 (issued August 5, 2020).

¹⁴ *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁵ *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

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 his burden of proof to establish intermittent disability for the period May 8 to October 4, 2023, causally related to his accepted May 1, 2023 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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