

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

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M.M., Appellant)	
)	
and)	Docket No. 24-0867
)	Issued: October 16, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
MALCOM RANDALL VA MEDICAL CENTER,)	
Gainesville, FL, Employer)	
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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
JANICE B. ASKIN, Judge

JURISDICTION

On August 23, 2024 appellant filed a timely appeal from a July 26, 2024 merit decision 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 The Board notes that on his Application for Review (AB-1) form, appellant indicated an appeal from an August 1, 2024 decision of OWCP. The caserecord contains a notice of proposed termination dated August 1, 2024. The Board has jurisdiction to review final adverse decisions of OWCP issued under FECA. *Id.*; 20 C.F.R. §§ 501.2(c) and 501.3(a). This jurisdiction encompasses any final adverse decision issued by OWCP within 180 days of the date appellant filed his/her appeal. 20 C.F.R. § 501.3(e). The Board concludes that the August 1, 2024 notice of proposed termination is not a final adverse decision, as OWCP afforded appellant an opportunity to submit additional evidence prior to issuing a final decision. As such, the Board lacks jurisdiction to review the August 1, 2024 notice of proposed termination. The most recent OWCP decision within the Board's jurisdiction is OWCP's July 26, 2024 merit decision.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the July 26, 2024 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish intermittent disability from work for the period February 23 through July 22, 2024 causally related to the accepted employment injury.

FACTUAL HISTORY

On January 24, 2024 appellant, then a 63-year-old nutrition and food service project cook, filed an occupational disease claim (Form CA-2) alleging that he sustained a pinched nerve in the right arm due to factors of his federal employment. He noted that he first became aware of his condition and realized its relation to his federal employment on November 21, 2023. On May 2, 2024 OWCP accepted the claim for right carpal tunnel syndrome.

An x-ray report dated February 2, 2024 indicated a diagnosis of mild osteoarthritis, predominantly in the first carpal metacarpal joint.

In a March 1, 2024 consultation note, Dr. Loretta Coady-Fariborzian, a Board-certified general, hand, and plastic surgeon, related that appellant was seen for evaluation of right hand/forearm pain and diminished sensation, with grip weakness, four weeks in duration. She noted that appellant indicated his pain/weakness of the right arm prohibited his performance of work-related duties. Dr. Coady-Fariborzian related physical examination findings of right-hand decreased grip, no thenar wasting, no intrinsic wasting, negative Froment, negative Wartenburg, negative Tinel's at wrist, and provocative elbow flexion testing. Some tenderness to palpation lateral forearm, no ulnar nerve subluxation. Dr. Coady-Fariborzian diagnosed right hand pain.

On April 5, 2024 Dr. Coady-Fariborzian noted that a March 5, 2024 electromyogram (EMG) study indicated findings of bilateral (borderline left and mild right) carpal tunnel syndrome. A March 20, 2024 magnetic resonance imaging (MRI) scan demonstrated mild degenerative changes of the central disc of the triangular fibrocartilage complex, partial-thickness tear of the dorsal radioulnar ligament, and mild multifocal degenerative changes with scattered subchondral cystic change throughout the carpal bones. Dr. Coady-Fariborzian related that appellant questioned the time frame for recovery. In response she indicated that tendonitis and mild carpal tunnel can resolve; however, arthritis was a chronic condition, that needed to be managed. Dr. Coady-Fariborzian further indicated that appellant's ulnar nerve symptoms may require reasonable accommodation for an indefinite time period.

Appellant underwent injections of the right wrist carpal tunnel, and tendon sheath on April 5, 2024.

On May 23, 2024 appellant filed a claim for compensation (Form CA-7) for intermittent disability from work for the period February 23 through May 17, 2024.

In a development letter dated June 11, 2024, OWCP informed appellant of the deficiencies of his disability claim. It advised him of the type of medical evidence needed and afforded him 30 days to submit the necessary evidence.

In an undated note received by OWCP on June 12, 2024, Dr. Coady-Fariborzian related that she had treated appellant nonoperatively for right wrist/hand arthritis, tendonitis, and nerve compression, and was last seen by her on May 7, 2024. She recommended that he could return to

work with restrictions of frequent 30-minute rest breaks, no lifting over five pounds with the right hand, and use of a splint at work.

On June 21, 2024 appellant submitted Form CA-7 claims for intermittent disability from work for the period May 22 through June 1, 2024 and June 5 through 15, 2024.

On July 9, 2024 appellant submitted Forms CA-7 for disability from work from June 19 through July 6, 2024. On July 23, 2024 he submitted a Form CA-7 for disability from work from July 10 through 22, 2024.

By decision dated July 26, 2024, OWCP denied appellant's claims for intermittent disability from work for the period February 23 through July 22, 2024 causally related to the accepted 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.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 probative and reliable medical opinion evidence.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. 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.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 their disability and entitlement to compensation.⁹

⁴ See *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

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

⁷ *Id.* at § 10.5(f); see *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

⁸ *Id.*

⁹ *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish intermittent disability from work for the period February 23 through July 22, 2024 causally related to the accepted employment injury.

OWCP received a report dated March 1, 2024 from Dr. Coady-Fariborzian wherein she noted appellant's right wrist complaints, examination findings, and diagnosed right wrist pain. The Board has held that pain is a symptom, not a diagnosis of a medical condition.¹⁰ Medical reports lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship are of no probative value.¹¹

On April 5, 2024 Dr. Coady-Fariborzian reviewed appellant's diagnostic studies, and noted that the EMG study on March 5, 2024 indicated findings of bilateral (borderline left and mild right) carpal tunnel syndrome. A magnetic resonance imaging (MRI) scan of the right wrist dated March 20, 2024 demonstrated mild degenerative changes of the central disc of the triangular fibrocartilage complex, partial-thickness tear of the dorsal radioulnar ligament, and mild multifocal degenerative changes with scattered subchondral cystic change throughout the carpal bones. Dr. Coady-Fariborzian concluded that appellant's ulnar nerve symptoms may require reasonable accommodation for an indefinite time period. This note did not specifically address whether appellant's accepted condition of right carpal tunnel syndrome caused disability from February 23 through July 22, 2024. As noted above, 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.¹² As such, this report is of no probative value with regard to the issue of appellant's disability for the claimed period and are insufficient to establish his claim for wage-loss compensation.

In an undated note received by OWCP on June 12, 2024, Dr. Coady-Fariborzian noted that she had treated appellant nonoperatively for right wrist/hand arthritis, tendonitis, and nerve compression, and was last seen on May 7, 2024. She advised that appellant could return to work with restrictions of frequent 30-minute rest breaks, no lifting over five pounds with the right hand, and use of a splint at work. However, this report did not explain, with rationale, how or why appellant was unable to perform his regular work duties during the claimed period of disability due to his accepted condition of right carpal tunnel syndrome. 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 period of disability has an employment-related cause.¹³ Therefore, this report is insufficient to establish appellant's disability claim.

OWCP also received diagnostic studies. However, the Board has held that diagnostic studies, standing alone, lack probative value because they do not address whether the employment

¹⁰ *R.P.*, Docket No. 24-0002 (issued January 24, 2024); *K.S.*, Docket No. 19-1433 (issued April 26, 2021); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

¹¹ *See A.C.*, Docket No. 20-1510 (issued April 23, 2021); *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹² *Id.*

¹³ *See S.S.*, Docket No. 21-0763 (issued November 12, 2021); *A.G.*, Docket No. 21-0756 (issued October 18, 2021); *T.S.*, Docket No. 20-1229 (issued August 6, 2021).

injury caused any of the diagnosed conditions or associated disability.¹⁴ Therefore, this evidence is also insufficient to establish appellant's disability claim.

As the medical evidence of record is insufficient to establish intermittent disability from work during the claimed period causally related to the accepted employment injury, the Board finds that appellant has not met his 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 his burden of proof to establish intermittent disability from work for the period February 23 through July 22, 2024 causally related to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 26, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁴ *T.V.*, Docket No. 23-0803 (issued December 22, 2023); *see T.W.*, Docket No. 20-1669 (issued May 6, 2021); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).