

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

S.R., Appellant)	
)	
and)	Docket No. 24-0880
)	Issued: October 31, 2024
DEPARTMENT OF THE AIR FORCE, 562 nd)	
AIRCRAFT MAINTENANCE SQUADRON,)	
ROBINS AIR FORCE BASE, GA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 30, 2024 appellant filed a timely appeal from a July 12, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the July 12, 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 disability from work commencing November 11, 2022, causally related to his accepted July 16, 2022 employment injury.

FACTUAL HISTORY

On July 29, 2022 appellant, then a 46-year-old aircraft mechanic, filed a traumatic injury claim (Form CA-1) alleging that on July 16, 2022, he sustained a slight concussion, neck, and back injuries, and four vertebral compression injuries when an aircraft spoiler fell on his head while in the performance of duty. He did not stop work but was placed on modified duty. On August 11, 2022 OWCP accepted the claim for contusion of unspecified part of head, and sprain of ligaments of cervical spine.³

In a November 16, 2022 report, Dr. Derek Woessner, Board-certified in family practice, recounted a history of injury and diagnosed cervicalgia, concussion without loss of consciousness, sprain of ligaments of cervical spine, left shoulder pain, unspecified bilateral visual loss, cervical spondylosis, and tendinitis of the left shoulder. He prescribed physical therapy. Dr. Woessner closed the narrative portion of his report with the general assertion that, “[m]edicine is both an art and a science, and although the patient may appear to be fit to work with the abilities and restrictions described above, there is no guarantee that he/she will not be injured or sustain a new injury if he/she chooses to return to work.”⁴

In a December 15, 2022 work slip, Dr. Woessner held appellant off work.

On December 20, 2022 OWCP expanded the acceptance of appellant’s claim to include the additional conditions of concussion without loss of consciousness, unspecified visual loss, cervical spondylosis without myelopathy or radiculopathy, and unspecified left shoulder lesion.

Commencing December 31, 2022, appellant submitted a series of claims for compensation (Form CA-7) for disability from work for the period September 19, 2022 through May 1, 2023.

In development letters dated January 12, April 4, and May 11, 2023, OWCP indicated that the medical evidence of record was insufficient to support appellant’s claimed total disability for all work for the claimed period. It advised him of the type of evidence required to establish his claim and afforded him 30 days to provide the necessary evidence.

OWCP received a series of reports by Dr. Woessner dated December 21, 2022 through June 28, 2023, wherein he diagnosed cervicalgia, concussion without loss of consciousness, sequela of unspecified intercranial injury without loss of consciousness, postconcussion syndrome,

³ A November 10, 2022 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated moderate to severe left neural foraminal stenosis at C3-4, mild to moderate canal stenosis and severe right neural foraminal stenosis at C5-6, and additional multilevel spondylosis.

⁴ Dr. Woessner’s chart notes throughout the remainder of the case record contain the same language.

sprain of ligaments of cervical spine, left shoulder pain, unspecified visual loss, cervical spondylosis without radiculopathy or radiculopathy, left shoulder tendinitis, unspecified disorder of bilateral vestibular function, visual convergence issues, headaches, dizziness, and giddiness.⁵ Dr. Woessner held appellant off work commencing November 2022.

OWCP also received a series of reports by Dr. Gilbert Gomez, an osteopath specializing in orthopedic surgery, dated January 4 through March 30, 2023, wherein he recounted a history of injury and treatment and related appellant's symptoms of neck pain, dizziness, and frequent or severe headaches. Dr. Gomez administered a series of intra-articular injections. He diagnosed neck pain, cervical spondylosis without myelopathy or radiculopathy, and cervical spinal stenosis. Dr. Gomez opined that the employment injury likely exacerbated appellant's baseline facet arthropathy. He noted that appellant had reached maximum medical improvement (MMI) and had no restrictions regarding his neck as it had been six months since the injury. Dr. Gomez maintained appellant on light duty.⁶

By decision issued August 7, 2023, OWCP denied appellant's claim for disability for the period commencing November 11, 2022. It found that the evidence of record was insufficient to establish that he was disabled from work due to the accepted July 16, 2022 employment injury.

Thereafter, OWCP received additional reports by Dr. Woessner dated August 9 through October 4, 2023, wherein he provided diagnoses and held appellant off work. In a September 6, 2023 letter, Dr. Woessner opined that appellant's headaches and visual acuity problems prevented him from meeting the requirements of his date-of-injury position.

In an August 10, 2023 work slip, Dr. Marvin E. Taylor, Board-certified in occupational medicine, held appellant off work through September 6, 2023.

On November 6, 2023 appellant requested reconsideration.

Thereafter, OWCP received reports by Dr. Woessner dated November 1, 2023 through January 3, 2024, wherein he recounted appellant's continuing postconcussive symptoms and held him off work. In a report dated December 6, 2023, Dr. Woessner assigned sedentary-duty work with restrictions.

By decision dated January 9, 2024, OWCP denied modification of its August 7, 2023 decision.

Thereafter, OWCP received additional reports by Dr. Woessner dated August 24, 2023 through April 3, 2024, wherein he noted appellant's continued postconcussion syndrome, cervical spine sprain, and left shoulder tendinitis. Dr. Woessner held appellant off work.

In an April 2, 2024 telephone memorandum (Form CA-110), OWCP informed appellant that as Dr. Woessner's reports were insufficient to support that the accepted employment injury

⁵ OWCP received a January 18, 2023 electroencephalogram (EEG) report.

⁶ OWCP also received a February 16, 2023 report by Maria D. Negrón, whose credentials are not of record, holding appellant off work.

disabled him from work for the claimed period, he would be referred to a neurologist for a second opinion examination to determine the nature and extent of any injury-related residuals and disability.

On April 9, 2024 OWCP referred appellant, the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Peter P. Lee, a Board-certified neurologist, for a second opinion examination regarding the nature and extent of the accepted employment condition and appellant's work capacity. The examination was scheduled for May 14, 2024.

Thereafter, OWCP received an April 3, 2024 report by Dr. Woessner, wherein he recounted appellant's continued postconcussion syndrome and held him off work. Dr. Woessner prescribed additional physical therapy.

On April 22, 2024 appellant requested reconsideration.

Thereafter, OWCP received May 1 and June 5, 2024 reports by Dr. Woessner wherein he diagnosed postconcussion syndrome, held appellant off work, and prescribed physical therapy.

In a July 3, 2024 e-mail, QTC Medical Services (QTC), OWCP's scheduling service, advised OWCP that it had contacted Dr. Lee and that his report was expected by the following week.

In a July 11, 2024 Form CA-110, OWCP noted that QTC advised that Dr. Lee's second opinion report was expected by the end of the current week.

By decision issued July 12, 2024, OWCP denied modification of its January 9, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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.⁸ 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.⁹ 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

⁷ *Supra* note 1.

⁸ *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).

⁹ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

evidence.¹⁰ Findings on examination are generally needed to support a physician’s opinion that an employee is disabled from work.¹¹

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.¹² Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹³ 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.¹⁴

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.¹⁵ 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.¹⁶

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 based on a complete factual and medical background, supporting such a causal relationship.¹⁷ 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.¹⁸ 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.¹⁹

¹⁰ *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, 293 (2001).

¹¹ *C.S.*, Docket No. 20-1621 (issued June 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹² 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).

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

¹⁴ *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹⁵ *See S.M.*, Docket No. 22-1209 (issued February 27, 2024); *B.B.*, Docket No. 18-1321 (issued April 5, 2019).

¹⁶ *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); *Fereidoon Kharabi*, *supra* note 10.

¹⁷ *K.B.*, Docket No. 22-0842 (issued April 25, 2023); *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

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

¹⁹ *Id.*

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP determined that Dr. Woessner's reports were insufficient to establish that appellant was disabled from work for the claimed period due to sequelae of the accepted employment-related conditions. To address the deficiencies in the medical evidence, OWCP referred appellant for a second opinion examination by Dr. Lee. It determined that the second opinion report was necessary to determine the nature and extent of any injury-related residuals and disability.

OWCP noted in a July 11, 2024 Form CA-110 that Dr. Lee's report was expected by the end of that week. However, although it anticipated receiving the report imminently, OWCP issued its July 12, 2024 decision denying appellant's disability claim without first receiving and reviewing Dr. Lee's second opinion report.

The Board notes that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.²⁰ Once it undertakes development of the record by referring appellant for a second opinion examination, it had an obligation to do a complete job in procuring medical evidence that will resolve the relevant issues in the case.²¹ While OWCP began to develop the evidence by referring appellant to Dr. Lee for a second opinion examination, it failed to complete its obligation to secure the second opinion evaluation prior to issuing its July 12, 2024 decision.²² Therefore, OWCP failed to resolve the issue in the case.²³

On remand OWCP shall consider all evidence of record, including Dr. Lee's report if received, to determine whether appellant was disabled from work commencing November 11, 2022, causally related to his accepted July 16, 2022 employment injury. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

²⁰ *K.B.*, Docket No. 23-0272 (issued October 26, 2023); *see E.W.*, Docket No. 17-0707 (issued September 18, 2017).

²¹ *J.M.*, Docket No. 21-0569 (issued December 6, 2021); *see R.L.*, Docket No. 20-1069 (issued April 7, 2021); *W.W.*, Docket No. 18-0093 (issued October 9, 2018); *Peter C. Belkind*, 56 ECAB 580 (2005).

²² *K.B.*, *supra* note 20; *M.A.*, Docket No. 19-1732 (issued September 9, 2020).

²³ *K.B.*, *id.*; *see X.Y.*, Docket No. 19-1290 (issued January 24, 2020); *K.G.*, Docket No. 17-0821 (issued May 9, 2018).

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2024 decision of the Office of Workers' Compensation Program is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 31, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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