

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period January 18, 2021 through April 8, 2022, causally related to his accepted December 3, 2020 employment injury.

FACTUAL HISTORY

On December 7, 2020 appellant, then 36-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on December 3, 2020 he sustained injuries to his back, neck, ankle, and elbows when he was on board an elevator that malfunctioned by jerking sharply downward, upward, and then dropping him to the floor while in the performance of duty. He stopped work on that date. By decision dated March 30, 2022, OWCP accepted the claim for bilateral elbow sprains and left ankle sprain.⁴

In notes dated January 18 and February 24, 2021, Dr. Allen Wilkins, a Board-certified physiatrist, related appellant's history of a December 3, 2020 injury, and listed his symptoms of neck and low back pain, bilateral elbow pain. He diagnosed spasm of the thoracic back muscle, sprain of the left ankle, cervicalgia, arthropathy of the elbows, lateral epicondylitis of the right elbow, and effusion of the right elbow. Dr. Wilkins opined that appellant should stop work until his pain/symptoms of each of the diagnosed conditions improved.

Commencing December 14, 2020, Gail Ocampo, a physical therapist, provided treatment.

On February 3, 2021 appellant underwent a left elbow magnetic resonance imaging (MRI) scan, which demonstrated cartilage loss, cystic changes, osteophyte formation, and marrow edema. He underwent a right elbow MRI scan of even date, which demonstrated cartilage loss, osteophyte formation, marrow edema, tendinosis, and ossicle which could reflect an intraarticular body or old fracture. On February 23, 2021 appellant underwent a lumbar MRI scan which demonstrated disc bulges at L3-5, a disc herniation at L5-S1, and straightening of the lumbar lordosis. A cervical MRI scan of even date demonstrated disc herniations at C3-4, C4-5, C5-6, and C7-T1.

In notes dated April 6 through October 2, 2021, Dr. Wilkins described the December 3, 2020 employment injury, performed a physical examination, and reviewed appellant's diagnostic studies. He diagnosed cervicalgia, acute low back pain without sciatica, spasm of the thoracic back muscle, sprain of the left ankle, arthropathy of both elbows, lateral epicondylitis of the right elbow, effusion right elbow, and bilateral elbow sprains. Dr. Wilkins related that appellant drove to his appointment but had not returned to work since the December 3, 2020 employment injury.

On May 10 and June 28, 2021 Dr. Kenneth McCulloch, an orthopedic surgeon, described appellant's accepted December 3, 2020 employment injury and his neck, back, and bilateral elbow pain. He performed a physical examination and reviewed diagnostic studies, finding significant chondral damage of the elbows with overlapping radicular pathology resulting in limitations on range of motion and the inability to perform simple daily grooming and daily life habits. Dr. McCulloch related that appellant was totally disabled and unable to return to his job duties secondary to the December 3, 2020 employment injury.

⁴ OWCP further found, however, that that the medical evidence of record was insufficient to establish a diagnosed medical condition for either the neck or back in connection to the accepted December 3, 2020 employment injury.

In May 26 and July 15, 2021 form reports, Dr. Boleslav Kosharsky, a Board-certified anesthesiologist specializing in pain medicine, recounted appellant's December 3, 2020 employment injury, performed a physical examination, and diagnosed cervical disc displacement, muscle spasm, lumbar disc displacement, bilateral elbow olecranon bursitis, and low back pain. He indicated by checking boxes marked "Yes" that the employment injury was the competent medical cause of appellant's conditions, and that appellant's history of injury was consistent with objective findings. Dr. Kosharsky found that appellant was totally disabled. He also provided a narrative report dated May 26, 2021, in which he repeated his diagnoses and opined that there was a direct causal relationship between the accepted employment injury and the diagnosed conditions.

On July 19 and September 20, 2021 Dr. Steven Orr, an orthopedic surgeon, recounted appellant's history of injury on December 3, 2020 and performed a physical examination. He reviewed appellant's diagnostic studies and found bilateral elbow cartilage loss and osteophyte formation of the anterior coronoid process with ulnar neuropathy. Dr. Orr diagnosed cervicalgia, acute low back pain without sciatica, spasm of the thoracic back muscle, sprain of the left ankle, arthropathy of both elbows, lateral epicondylitis of the right elbow, effusion right elbow, and bilateral elbow sprains. He opined that appellant had been unable to return to his job duties secondary to the December 3, 2020 employment injury and that he continued to be 100 percent disabled.

In notes dated October 30, 2021 through May 14, 2022, Dr. Wilkins, repeated his previous findings and diagnoses and recommended surgery. He reported that the fall may have exacerbated appellant's bilateral elbow arthritis. Dr. Wilkins noted that appellant had not returned to work following the December 3, 2020 employment injury.

Dr. Orr examined appellant on March 1 and April 26, 2022. He recounted the history of injury, and diagnosed post-traumatic osteoarthritis of the elbows, with loose bodies, and lesions of the ulnar nerves. Dr. Orr continued to find that appellant was totally disabled from work due to pain in both elbows and loss of range of motion caused by elbow arthritis. Dr. Orr recommended surgery.

On April 8, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period January 18, 2021 through April 8, 2022.

In a May 18, 2022 development letter, OWCP advised appellant that the evidence submitted was insufficient to establish disability from work during the claimed period and requested that he submit additional factual and medical evidence to establish that he was unable to work during the period claimed due to his accepted December 3, 2020 employment injury. It afforded him 30 days to respond.

OWCP continued to receive medical evidence. Dr. Orr performed an arthroscopy of the right elbow on June 1, 2022 with transposition of the ulnar nerve and removal of a foreign body. On June 14, 2022 he reported that appellant continued to experience left elbow pain and that he wished to undergo left elbow surgery. Beginning June 15, 2022, Michael C. Jordhamo, a physical therapist, provided additional treatment.

By decision dated June 29, 2022, OWCP denied appellant's claim for disability from work for the period January 18, 2021 through April 8, 2022.

OWCP continued to receive medical evidence. Appellant resubmitted Dr. McCulloch's May 10, 2021 report.

In a June 25, 2022 report, Dr. Wilkins described the December 3, 2020 employment injury and recounted that appellant's bilateral elbow symptoms began the following day. He performed a physical examination and reiterated his diagnoses. Dr. Wilkins noted that appellant had not returned to work since the employment injury.

On July 6, 2022 Dr. Orr performed a left elbow arthroscopic debridement and removal of loose body and left ulnar nerve decompression. In a September 2, 2022 note, he diagnosed bilateral post-traumatic elbow osteoarthritis and bilateral loose bodies.

Appellant provided a series of notes dated July 12 through October 20, 2022 from Brian Samaniego and Laura M. Stevens, physical therapists.

In notes dated August 6, September 17, and October 29, 2022, Dr. Wilkins examined appellant following bilateral elbow surgery and repeated his previous diagnoses. He noted that appellant's left ankle was significantly improved. Dr. Wilkins related that appellant had not worked since the December 3, 2020 employment injury.

On August 19 and October 10, 2022 Dr. Kosharsky examined appellant due to neck pain, bilateral elbow pain, mid-back pain, and lower back pain. He recounted the accepted December 30, 2020 employment injury, noted that appellant attributed his symptoms to that injury, and diagnosed lumbar intervertebral disc displacement, lumbar radiculopathy, cervical disc displacement, cervical radiculopathy, lumbar spondylosis, post-traumatic osteoarthritis of the elbows with loose bodies, and lesions of the bilateral ulnar nerves. Dr. Kosharsky recommended a lumbar endoscopic discectomy due to nerve root compensation. He opined that there was a direct causal relationship between the employment injury and appellant's current injuries. Dr. Kosharsky found that his symptoms and clinical findings were consistent with musculoskeletal injuries to the described areas.

On December 16, 2022 appellant, through counsel, requested reconsideration. In notes dated July 20, 2021 through July 20, 2022, Dr. Kosharsky described the December 3, 2020 employment injury and diagnosed cervical disc displacement, cervical radiculopathy, myalgia, muscle spasm, lumbar disc displacement, lumbar radiculopathy, lumbar spondylosis, bilateral olecranon bursitis, bilateral post-traumatic elbow osteoarthritis with loose bodies, and bilateral lesions of the ulnar nerves. He recommended additional treatment and found that appellant was totally disabled from work. Dr. Kosharsky opined that there was a direct causal relationship between the accepted employment injury and the diagnosed conditions. He noted that appellant's symptoms and clinical findings were consistent with musculoskeletal injuries to the described areas.

In a June 20, 2022 narrative report, Dr. Kosharsky recounted appellant's history of injury on December 3, 2020 asserting that, when appellant fell hard to the floor he landed on his back, and in an attempt to break the fall, his elbows struck the floor extremely hard. The incident caused injuries to appellant's back, neck, elbows, and ankle. Dr. Kosharsky reviewed appellant's medical treatment and diagnosed lumbar and cervical intervertebral disc displacement, lumbar and cervical facet arthropathy, lumbar spondylosis, and post-traumatic bilateral elbow osteoarthritis with nerve lesions. He opined that the December 3, 2020 employment injury was the definite

cause of the diagnosed conditions, that appellant's conditions were permanent, and that he was disabled from work.

In February 7, October 7, and November 11, 2022 reports, Dr. Orr described the December 3, 2020 employment injury and reviewed the medical records. He opined that appellant's bilateral elbow osteoarthritis with loose bodies and bilateral ulnar neuropathy were a direct result of the December 3, 2020 employment injury. On October 7, 2022 Dr. Orr found that appellant was totally disabled from work due to weakness, stiffness, and pain that would make his occupation dangerous to him were he to return to full duty.

In December 17, 2022 and January 14, 2023 notes, Dr. Wilkins recounted the December 3, 2020 employment injury and performed a physical examination. He repeated his diagnoses of cervicalgia, acute low back pain without sciatica, spasm of the thoracic back muscle, sprain of the left ankle, arthropathy of both elbows, lateral epicondylitis of the right elbow, effusion right elbow, and bilateral elbow sprains. Dr. Wilkins related that appellant had not returned to work since the December 3, 2020 employment injury.

On January 4, 2023 Dr. Kevin Wright, an orthopedic surgeon, described the December 3, 2020 employment injury and asserted that appellant fell traumatizing his elbows, cervical spine, and lumbar spine. He diagnosed cubital tunnel syndrome of the elbows following neuroplasty of the ulnar nerves without transposition, and bilateral elbow arthritis. Dr. Wright found that appellant was totally disabled from work.

By decision dated March 15, 2023, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 accepted employment injury.⁶ The term disability is defined as the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of the injury.⁷ 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.⁸

⁵ *Supra* note 3.

⁶ *J.P.*, Docket No. 22-0061 (issued January 13, 2023); *B.H.*, Docket No. 22-0383 (issued August 29, 2022); *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).

⁷ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁸ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence.⁹ The opinion of the physician must be based on a complete factual and medical background, 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.¹⁰

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.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period January 18, 2021 through April 8, 2022, causally related to his accepted December 3, 2020 employment injury.

In support of his claim for wage-loss compensation commencing January 18, 2021, appellant submitted reports dated May 26, 2021 through July 20, 2022 from Dr. Kosharsky, describing the December 3, 2020 employment injury, reporting findings on physical examination, and diagnosing cervical disc displacement, muscle spasm, lumbar disc displacement, bilateral elbow olecranon bursitis, bilateral elbow osteoarthritis, and low back pain. Dr. Kosharsky opined that there was a direct causal relationship between the accepted employment injury and the diagnosed conditions. He found that appellant's symptoms and clinical findings were consistent with musculoskeletal injuries in the described areas. Dr. Kosharsky determined that appellant was totally disabled from work during the claimed period. While he related that appellant was totally disabled from work, his opinion was conclusory. Dr. Kosharsky did not provide objective medical findings explaining why appellant was totally disabled due to the accepted medical conditions of bilateral elbow sprains and left ankle sprain and did not explain why appellant could not perform his federal employment duties during the claimed period.¹² For this reason, these reports are insufficient to meet appellant's burden of proof to establish disability for the periods claimed.

On May 10 and June 28, 2021 Dr. McCulloch described appellant's accepted December 3, 2020 employment injury and diagnosed chondral damage of the elbows with overlapping radicular pathology. He related that appellant was totally disabled and unable to return to his job duties secondary to the December 3, 2020 employment injury. In reports dated July 19, 2021 through November 11, 2022, Dr. Orr described the December 3, 2020 employment injury, reviewed the

⁹ *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁰ *V.A.*, Docket No. 19-1123 (issued October 29, 2019); *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

¹¹ *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹² *See B.L.*, Docket Nos. 24-0204; 24-0292 (issued May 6, 2024); *L.M.*, Docket No. 23-0946 (issued December 18, 2023); *N.L.*, Docket No. 22-1001 (issued July 5, 2023); *E.M.*, Docket No. 20-0738 (issued June 22, 2022); *E.M.*, Docket No. 18-0454 (issued February 20, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *see also J.J.*, Docket No. 15-1329 (issued December 18, 2015).

medical records, and opined that appellant's bilateral elbow osteoarthritis with loose bodies and bilateral ulnar neuropathy were a direct result of the December 3, 2020 employment injury. On January 4, 2023 Dr. Wright described the December 3, 2020 employment injury and diagnosed cubital tunnel syndrome of the elbows and bilateral elbow arthritis. He found that appellant was totally disabled from work.

A physician's opinion on causal relationship between a claimant's employment injury and additional conditions or disability is not conclusive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.¹³ Therefore, the reports from Dr. McCulloch, Dr. Wright, and Dr. Orr are insufficient to establish claimed disability commencing January 18, 2021.

In notes dated January 18, 2021 through January 14, 2023, Dr. Wilkins described the December 3, 2020 employment injury, diagnosed cervicalgia, acute low back pain without sciatica, spasm of the thoracic back muscle, sprain of the left ankle, arthropathy of both elbows, lateral epicondylitis of the right elbow, effusion right elbow, and bilateral elbow sprains. He maintained that appellant had not returned to work since the December 3, 2020 employment injury without further elaboration on the cause of his disability from work. The Board has held that a medical report which does not offer an opinion on the cause of an employee's condition or disability is of no probative value.¹⁴

OWCP also received physical therapy notes. The Board, however, has held that certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians as defined under FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁵

The record also contains MRI scans. The Board has long held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions or associated disability.¹⁶ For this reason, these diagnostic reports of record are insufficient to establish appellant's disability claim.

¹³ *J.P.*, *supra* note 6; *W.S.*, *id.*; *G.H.*, *id.*; *L.N.*, *id.*

¹⁴ *See K.F.*, Docket No. 23-0749 (issued October 6, 2023); *C.H.*, Docket No. 22-1186 (issued December 22, 2022); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ Section 8101(2) of FECA provides that 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. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *see 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 V.R.*, Docket No. 19-0758 (issued March 16, 2021) (physical therapists are not considered a physician under FECA).

¹⁶ *See W.S.*, *supra* note 12.; *T.W.*, Docket No. 20-1669 (issued May 6, 2021); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

As the medical evidence of record is insufficient to establish disability from work during the claimed period due 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 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 disability from work for the period January 18, 2021 through April 8, 2022, causally related to his accepted December 3, 2020 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 6, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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