

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

M.C., Appellant	)	
	)	
and	)	Docket No. 24-0731
	)	Issued: September 6, 2024
U.S. POSTAL SERVICE, POST OFFICE,	)	
Milwaukee, WI, 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  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On June 21, 2024 appellant filed a timely appeal from a December 28, 2023 merit decision and a May 13, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish disability from work on May 26 and 27, 2023 causally related to her accepted March 1, 2016 employment

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the May 13, 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 caserecord 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.*

injury; and (2) whether OWCP properly determined that appellant abandoned her request for an oral hearing before an OWCP hearing representative.

### **FACTUAL HISTORY**

On March 1, 2016 appellant, then a 43-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 1, 2016 she injured her pelvis and thighs when she slipped on snow and fell over a pipe opening in the sidewalk while in the performance of duty. She stopped work on March 2, 2016. Appellant returned to modified work on March 15, 2016. OWCP accepted the claim for right hip contusion, strain of lower back, low back pain, pelvic and perineal pain, and strain of muscle, fascia and tendon of abdomen. It paid appellant wage-loss compensation on the supplemental rolls from April 30, 2016.

On February 4, 2022 OWCP referred appellant, along with the medical record, a February 2, 2022 statement of accepted facts (SOAF), and a series of questions to Dr. Mysore S. Shivaram, a Board-certified orthopedic surgeon, for a second opinion to determine the status of appellant's accepted conditions and the extent of disability.

In a May 2, 2022 report, Dr. Shivaram reviewed the SOAF and medical record and answered a series of questions from OWCP. He recounted appellant's history of injury and noted that she was diagnosed with arthritis in the back. A magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated the presence of facet arthritis of the lumbar spine and mild compression of L5 nerve root on the right side; however, Dr. Shivaram found that as there were no clinical findings on examination to correlate with the MRI scan findings, it could be an age-related arthritic condition of the lower back. On examination, Dr. Shivaram found that except for subjective complaints of chronic lower back pain, appellant had no objective findings to correlate the subjective complaints of lower back pain. He diagnosed chronic lower back pain, contusion, right hip resolved, strain of muscle, fascia and tendon of lower back resolved, pelvic and perineal pan resolved, and strain of muscle, fascia and tendon of abdomen resolved. Dr. Shivaram indicated that appellant was not receiving any treatment and was currently working on light-duty status for two hours a day outside the building. He opined that there was satisfactory resolution of the lower back injury appellant sustained at work, as there were no objective findings to correlate with the MRI scan findings, and recommended that appellant return to work on regular duty as a city carrier without any restrictions. Dr. Shivaram also completed a work capacity evaluation (Form OWCP-5c).

In a June 29, 2022 report, Dr. Christina C. Moore, a Board-certified anesthesiologist, noted the history of appellant's March 1, 2016 work injury. She reviewed diagnostic testing and noted examination findings, and provided an assessment of right lumbar radiculopathy, neural foraminal stenosis of lumbar spine, and lumbosacral spondylosis without myelopathy.

On June 7, 2023 appellant filed a claim for compensation (Form CA-7) for the period May 20 through June 2, 2023.

In a June 8, 2023 development letter, OWCP notified appellant of the deficiencies of her claim. It requested that she provide medical evidence explaining why she was not able to work for the time claimed and afforded her 30 days to submit the requested information.

OWCP received multiple reports from Dr. Sunitha Gundamraj, an internist. In a May 17, 2023 narrative report, Dr. Gundamraj related that appellant had a work-related injury in March 2016 with continued chronic low back pain. She summarized appellant's medical care and indicated that the MRI scan of the lumbar spine showed degenerative disc disease. Dr. Gundamraj opined that appellant's current symptoms were consistent with a worsening of her chronic condition related to her injury. She recommended permanent restrictions of working indoors. In a June 16, 2023 note, Dr. Gundamraj excused appellant from work on May 26 and 27, 2023 due to work-related exacerbation of back pain related to her lumbar spondylosis. In a June 17, 2023 duty status report (Form CA-17), she noted a March 1, 2016 date of injury, and provided restrictions for a diagnosed exacerbation of degenerative disc disease work-related lumbosacral spondylosis.

By decision dated July 11, 2023, OWCP denied appellant's claim for disability on May 26 and 27, 2023 finding that the medical evidence of record was insufficient to establish a well-reasoned explanation based upon objective findings to support that appellant was incapable of working on the dates claimed.

On July 19, 2023 appellant requested a review of the written record before OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated September 29, 2023, a hearing representative vacated OWCP's July 11, 2023 decision, finding that further development was necessary. The hearing representative found that despite Dr. Shivaram's well-reasoned report that the work injury had resolved, OWCP continued to pay wage-loss compensation and medical benefits and that Dr. Gundamraj's reports were sufficient to present a *prima facie* claim. The hearing representative remanded the case to OWCP for an updated statement of accepted facts (SOAF) to include information about appellant's work duties since the March 1, 2016 work injury, and a second opinion examination with an appropriate Board-certified specialist to provide a rationalized opinion addressing whether appellant continued to exhibit symptomatology related to her 2016 work injury or its effects, and whether she was disabled due to the effects of her work injury on May 26 and 27, 2023.

On October 26, 2023 OWCP referred appellant to Dr. Shivaram for a supplemental opinion. In pertinent part, Dr. Shivaram was asked to address whether appellant continued to exhibit symptomatology related to her 2016 work injury or its effects and whether she was disabled due to the effects of her work injury on May 26 and 27, 2023.

In a November 21, 2023 report, Dr. Shivaram noted that during appellant's previous examination of May 2, 2022, he had found that all of her accepted conditions (contusion of the right hip, strain of muscle, fascia and tendon on the lower back, pelvic and perineal pain, low back pain, strain of muscle, fascia and tendon of the abdomen) had resolved. He also noted that he had recommended that appellant return to regular-duty work without restrictions as there were no objective findings for her subjective complaints of lower back pain. Dr. Shivaram noted appellant's medical course of treatment after his May 2, 2022 evaluation and presented examination findings, finding that her range of motion (ROM) was severely restricted due to voluntary restriction. He found no objective findings to correlate her complaint of severe pain in the lower back with periodic radiation along the lateral aspect of the right thigh up to the knee.

Overall, he found that appellant's clinical examination was limited because of her complaints of pain. Dr. Shivaram opined that her continued symptoms were probably secondary to multilevel degenerative disc disease of the lumbar spine and mild foraminal stenosis, which she had developed over the course of the last seven years with aging. He stated that those findings were not present at the time of his initial examination and therefore, the condition of her lower back was unrelated to the initial injury with satisfactory resolution of the accepted work-related conditions. Dr. Shivaram reiterated his opinion that all the diagnoses related to the accepted 2016 work-related injury had resolved. Dr. Shivaram completed an OWCP-5c form opining that appellant was capable of performing her usual job without restriction.

In a *de novo* decision dated December 28, 2023, OWCP denied appellant's claim for disability from work on May 26 and 27, 2023. It accorded the weight of the evidence to Dr. Shivaram's opinion.

By appeal request form dated January 19, 2024, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By letter dated March 22, 2024, OWCP's hearing representative notified appellant that a telephonic hearing was scheduled for April 30, 2024, at 10:00 a.m. Eastern Standard Time (EST). The notice included a toll-free number to call and provided the appropriate passcode. The hearing representative mailed the notice to appellant's last known address of record. Appellant did not appear at the scheduled time and no request for postponement was made.

By decision dated May 13, 2024, OWCP determined that appellant had abandoned her request for an oral hearing. It further found that there was no indication in the case record that appellant 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 FECA<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that

---

<sup>3</sup> *Supra* note 1.

<sup>4</sup> *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).

<sup>5</sup> *Id.*; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>6</sup>

Under FECA, the term “disability” means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.<sup>7</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.<sup>8</sup>

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 claimed disability and the accepted employment injury.<sup>9</sup>

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.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds this case not in posture for decision.

In a September 29, 2023 decision, OWCP’s hearing representative found that further development of the medical evidence was necessary to specifically address whether appellant was disabled on May 26 and 27, 2023 due to the accepted employment injury. OWCP thereafter referred appellant to Dr. Shivaram for a supplemental opinion regarding her claim for disability on May 26 and 27, 2023. Dr. Shivaram, in a November 21, 2023 report, indicated that when he had previously examined appellant on May 2, 2022, he had concluded that all of her accepted conditions of contusion of the right hip, strain of muscle, fascia and tendon on the lower back, pelvic and perineal pain, low back pain, strain of muscle, fascia and tendon of the abdomen had resolved, and he had recommended that she return to regular-duty work. Dr. Shivaram, thereafter, related appellant’s medical course of treatment following May 2, 2022. He attributed appellant’s continued worsening complaints to degenerative disc disease of the lumbar spine and facet arthritis with mild neural foraminal stenosis, which he concluded were age-related degenerative conditions of the lumbar spine unrelated to her reported work injury. However, while Dr. Shivaram addressed

---

<sup>6</sup> 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020).

<sup>7</sup> *Id.* at § 10.5(f); *see J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>8</sup> *J.T.*, *id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>9</sup> *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

<sup>10</sup> *D.M.*, Docket No. 21-0930 (issued February 8, 2023); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

appellant's condition on May 2, 2022, and on November 21, 2023, he did not address the specific period of disability claimed.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.<sup>11</sup> Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>12</sup>

On remand OWCP shall issue an updated SOAF, as outlined by the hearing representative in the September 29, 2023 decision, and shall request a supplemental opinion from Dr. Shivaram clarifying whether appellant was disabled from work on May 26 and 27, 2023 causally related to the accepted employment injury.<sup>13</sup> Following this, and other such further development as deemed necessary, it shall issue a *de novo* decision.<sup>14</sup>

### CONCLUSION

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

---

<sup>11</sup> *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

<sup>12</sup> *See M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B.*, *id.*; *see also R.M.*, Docket No. 16-0147 (issued June 17, 2016).

<sup>13</sup> *E.B.*, *supra* note 11; *S.G.*, Docket No. 22-0014 (issued November 3, 2022); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *P.S.*, Docket No. 17-0802 (issued August 18, 2017).

<sup>14</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 28, 2023 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded for further development consistent with this decision. The May 13, 2024 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: September 6, 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