

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

V.P., Appellant)	
)	
and)	Docket No. 24-0734
)	Issued: September 3, 2024
U.S. POSTAL SERVICE, PRINCETON POST)	
OFFICE, Princeton, NJ, Employer)	
)	

Appearances: *Case Submitted on the Record*
Michael D. Overman, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 28, 2024 appellant, through counsel, filed a timely appeal from a January 19, 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 disability from work for the period March 8, 2018 through November 2, 2020 causally related to his accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On September 15, 2015 appellant, then a 50-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed cervical radiculopathy and lumbar radiculopathy due to factors of his federal employment, including engaging in constant repetitive movements. He noted that he first became aware of his condition in April 2014 and realized its relationship to his federal employment in August 2014. Appellant did not stop work.

By decision dated February 18, 2016, OWCP denied appellant's claim finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted factors of employment. Following a May 26, 2016 oral hearing, by decision dated August 4, 2016, a representative of OWCP's Branch of Hearings and Review affirmed the February 18, 2016 decision with modification. He accepted that appellant was diagnosed with cervical and lumbar conditions, but denied the claim finding insufficient medical evidence to establish that appellant's medical conditions were causally related to the accepted employment factors. Appellant disagreed with the decision and requested reconsideration on October 21, 2016 and March 15, 2017. By decisions dated January 6 and May 30, 2017, OWCP denied modification of its prior decisions.

Appellant, through counsel, appealed to the Board. By decision dated March 1, 2018,⁴ the Board affirmed the May 30, 2017 OWCP decision, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's cervical and lumbar conditions and the accepted factors of his federal employment.

On May 25, 2018 appellant, through counsel, requested reconsideration and submitted medical evidence, including a May 4, 2018 report of Dr. Steven J. Valentino, an osteopath Board-certified in orthopedic surgery. By decision dated October 16, 2018, OWCP denied modification of its prior decision.

On May 8, 2019 appellant, through counsel, requested reconsideration and submitted medical evidence. By decision dated August 7, 2019, OWCP denied modification of the October 16, 2018 decision.

³ Docket No. 17-1925 (issued March 1, 2018); Docket No. 20-0415 (issued July 30, 2020); Docket No. 22-0706 (issued November 3, 2022).

⁴ Docket No. 17-1925 (issued March 1, 2018).

Appellant, through counsel, appealed to the Board. By decision dated July 30, 2020,⁵ the Board set aside the August 7, 2019 decision and remanded the case for further development of the medical evidence to determine whether appellant sustained cervical and lumbar conditions causally related to the accepted factors of his federal employment.

OWCP subsequently referred appellant, along with a copy of the case record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Kevin S. White, an osteopath Board-certified in orthopedic surgery, for a second opinion evaluation regarding his occupational disease claim. In a report dated November 2, 2020, Dr. White discussed appellant's medical history, reported physical examination findings, and diagnosed cervical and lumbar strains superimposed on preexisting degenerative disc disease. In response to OWCP's questions, he noted that appellant did not sustain a specific injury to his cervical and lumbar spine, but suffered a repetitive, overuse injury while working as a mail carrier for the employing establishment. Dr. White opined that appellant's cervical and lumbar degenerative disc disease with facet syndrome and cervical and lumbar radiculopathy were causally related to his accepted employment factors. He explained that appellant sustained a temporary aggravation of his preexisting cervical and lumbar disc disease and that these conditions had ceased after completion of his physical therapy sessions. Dr. White reported that appellant's "period of disability due to the work-related condition most likely began at the said date of injury, which is 4/01/14." He noted that "the disability ceased after the completion of physical therapy and injections." Dr. White concluded that appellant had reached maximum medical improvement and no longer suffered residuals of his employment conditions.

By decision dated December 31, 2020, OWCP accepted appellant's claim for temporary aggravations of cervical and lumbar disc disorder with radiculopathy, resolved.

On March 8, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period March 8, 2018 through November 2, 2020. On the reverse side of the claim form, the employing establishment noted that appellant had retired due to disability on March 7, 2018.

In a March 9, 2021 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish total disability from work for the period March 8, 2018 through November 2, 2020. It requested that he submit additional factual and medical evidence to establish that he was unable to work during the period claimed due to his employment injury. OWCP afforded appellant 30 days to provide the necessary evidence. No additional evidence was received.

By decision dated April 12, 2021, OWCP denied appellant's claim for compensation for disability for the period March 8, 2018 through November 2, 2020.

On April 19, 2021 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

⁵ Docket No. 20-0415 (issued July 30, 2020).

On July 21, 2021 OWCP received an April 20, 2021 report by Dr. Valentino, who reported that appellant's symptoms began on April 1, 2014 as a result of constant bending, twisting, picking up mail, and carrying a mailbag. He explained that the bending, lifting, twisting, and picking up mail during the course of his employment resulted in torsional injuries, which created damage to the intervertebral discs. Dr. Valentino recounted that appellant attempted to return to work, but his symptoms worsened such that he retired in March 2018. He opined that appellant remained symptomatic and required ongoing treatment.

A telephonic hearing was held before a representative of OWCP's Branch of Hearings and Review on August 6, 2021.

On September 16, 2021 OWCP received an August 17, 2021 progress note by Dr. Valentino who indicated that appellant was treated for complaints of low back pain localized at the bilateral L3 through S1 region. On examination of appellant's lumbar spine, Dr. Valentino observed that range of motion was significantly limited. He reported that the motor and sensory examinations were normal and diagnosed low back pain.

By decision dated October 21, 2021, OWCP's hearing representative affirmed the April 12, 2021 decision.

Appellant, through counsel, appealed to the Board. By decision dated November 3, 2022,⁶ the Board set aside the October 21, 2021 decision and remanded the case to OWCP for further development to obtain a supplemental opinion by Dr. White to determine whether appellant had disability from work for the period March 8, 2018 through November 2, 2020 which was causally related to his accepted employment conditions. The Board directed OWCP to issue a *de novo* decision following its development of the case.

On March 16, 2023 OWCP requested that Dr. White provide a supplemental report regarding whether appellant's disability from work for the period March 8, 2018 through November 2, 2020 was causally related to his accepted employment conditions.

In a June 5, 2023 report, Dr. White discussed appellant's medical history and reported physical examination findings. He noted normal examination of the cervical and thoracolumbar spine and diagnosed cervical and lumbar strains superimposed on preexisting degenerative disc disease. Dr. White opined that appellant's work-related condition had resolved, but advised that he had partial disability unrelated to a work-related condition. In response to a question regarding whether appellant sustained disability from work for the period March 8, 2018 through November 2, 2020 causally related to his accepted employment injury, he stated, "[t]he issue of disability from work, what appears to be from March 18, 2018 through November 2, 2020, is not causally related to the current accepted employment condition." Dr. White further noted, "[s]pecifically, his condition has remained stable throughout this time with no evidence of any intervention." He indicated that, if there were any new clinical notes presented, he would review them and provide an amendment to his report. In a June 5, 2023 work capacity evaluation (Form OWCP-5c), Dr. White recommended various work restrictions.

⁶ Docket No. 22-0706 (issued November 3, 2022).

By decision dated June 30, 2023, OWCP denied appellant's recurrence of disability claim, finding that he failed to meet his burden of proof to establish that he sustained disability from work for the period March 8, 2018 through November 2, 2020 causally related to his accepted employment injury. In making this determination, it relied on the opinion of Dr. White.

On July 6, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on November 7, 2023 and, by decision dated January 19, 2024, OWCP's hearing representative affirmed the June 30, 2023 decision.

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.⁷

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.⁸ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁹ 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.¹⁰ 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.¹¹

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.¹²

ANALYSIS

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

⁷ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ 20 C.F.R. § 10.5(f).

⁹ *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹⁰ *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

¹¹ *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹² *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

Per the Board's instructions, OWCP referred appellant to Dr. White to determine whether he sustained disability from work for the period March 8, 2018 through November 2, 2020 causally related to his accepted employment injury.

The Board has held that, while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹³ Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.¹⁴ Once OWCP starts to procure medical opinion, it must do a complete job in securing from its referral physician an opinion, which adequately addresses the relevant issues.¹⁵

The Board finds that Dr. White's opinion is in need of clarification as he did not adequately address the issue of whether appellant sustained disability from work for the period March 8, 2018 through November 2, 2020 causally related to his accepted employment injury. He noted that the period of disability from work from March 18, 2018 through November 2, 2020, was not causally related to the current accepted employment condition. However, Dr. White did not provide a sufficient explanation for his opinion. He merely noted that appellant's condition had remained stable throughout this time with no evidence of any intervention.

The case must therefore be remanded for clarification from Dr. White as to whether appellant sustained disability from work for the period March 8, 2018 through November 2, 2020 causally related to his accepted employment injury.¹⁶ If Dr. White is unable to clarify or elaborate on his previous reports, or if the supplemental report is also vague, speculative, or lacking rationale, OWCP must submit the case record and a detailed SOAF to a new second opinion physician for the purpose of obtaining a rationalized medical opinion on the issue.¹⁷ After this and such other 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.

¹³ See *D.V.*, Docket No. 17-1590 (issued December 12, 2018); *Russell F. Polhemus*, 32 ECAB 1066 (1981).

¹⁴ See *A.K.*, Docket No. 18-0462 (issued June 19, 2018); *Robert F. Hart*, 36 ECAB 186 (1984).

¹⁵ *T.B.*, Docket No. 20-0182 (issued April 23, 2021); *L.V.*, Docket No. 17-1260 (issued August 1, 2018); *Mae Z. Hackett*, 34 ECAB 1421, 1426 (1983).

¹⁶ See *J.H.*, Docket No. 19-1476 (issued March 23, 2021); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Talmadge Miller*, 47 ECAB 673 (1996).

¹⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2024 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 3, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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