

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

A.S., Appellant)	
)	
and)	Docket No. 24-0822
)	Issued: September 20, 2024
U.S. POSTAL SERVICE, PARKTON POST)	
OFFICE, Parkton, MD, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 8, 2024 appellant filed a timely appeal from a May 29, 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 May 29, 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 met her burden of proof to establish disability from work commencing February 12, 2024, causally related to the accepted March 27, 2023 employment injury.

FACTUAL HISTORY

On April 24, 2023 appellant, then a 52-year-old assistant rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 27, 2023 she dislocated her left collar bone when the postal truck she was parked in was rear-ended by a speeding vehicle while in the performance of duty. She stopped work on March 30, 2023 and has not returned. OWCP accepted the claim for left acromioclavicular (AC) joint dislocation. It paid appellant wage-loss compensation on the supplemental rolls from June 3, 2023 through February 11, 2024.

On February 26, 2024 OWCP received a progress report dated February 15, 2024 from Dr. David Trigg Streets, a Board-certified orthopedic surgeon. Dr. Streets noted that he had examined appellant on January 15, 2024 for a diagnoses of left shoulder primary arthritis.

On March 26, 2024 appellant filed claims for compensation (Form CA-7) for disability from work from February 24 through March 22, 2024.³

In a letter dated March 27, 2024, OWCP informed appellant of the deficiencies of her claim for compensation for the period through March 22, 2024 and continuing. It advised her of the type of factual and medical evidence required to support her claim, and afforded her 30 days to provide the necessary evidence.

In response to OWCP's development letter, appellant submitted an October 30, 2023 report from Dr. Streets, diagnosing closed left AC dislocation, subluxation of left acromioclavicular joint, right acromioclavicular arthritis, and primary right shoulder osteoarthritis.

On March 21 2024 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions, to Dr. David Lumsden, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of appellant's accepted condition. Dr. Lumsden's office informed appellant on April 12, 2024 that her appointment was cancelled due to a personal emergency.

On April 16, 2024 OWCP rescheduled appellant's appointment with Dr. Lumsden for April 26, 2024.

Appellant subsequently filed Form CA-7 claims for disability from work for the period February 10 through May 17, 2024.

³ Appellant also filed a claim for compensation (Form CA-7) claiming wage-loss compensation from January 13 to February 26, 2024. The record contains evidence that OWCP paid appellant wage-loss compensation on the supplemental rolls for the period January 13 to February 11, 2024.

By decision dated May 29, 2024, OWCP denied appellant's claim for disability from work commencing February 12, 2024.⁴

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim,⁶ including that any disability or specific condition for which compensation is claimed is causally related to the employment 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 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.⁹

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 appellant, 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 this case is not in posture for decision.

⁴ OWCP noted the commencement date as February 10, 2024, which appears to be a typographical error. The case record establishes that OWCP paid appellant wage-loss compensation from January 29 through February 11, 2024.

⁵ *Supra* note 1.

⁶ *See A.M.*, Docket No. 24-0413 (issued July 31, 2024); *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

⁷ *See A.M., id.*; *S.F.*, Docket No. 20-0347 (issued March 31, 2023); *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).

⁸ *A.M., id.*; *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁹ *A.M., id.*; *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

¹⁰ *See A.M., id.*; *B.P.*, Docket No. 23-0909 (issued December 27, 2023); *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹¹ *See A.M., id.*; *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 9.

On March 21 and April 16, 2024, OWCP referred appellant, along with a SOAF, and a copy of the case record to Dr. Lumsden, for a second opinion evaluation regarding the nature of appellant's employment-related conditions, the extent of her disability, and appropriate treatment recommendations. However, before Dr. Lumsden provided a second opinion report, OWCP issued its May 29, 2024 decision denying appellant's claimed period of disability.

It is well established that, proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹² It has an obligation to see that justice is done.¹³ Accordingly, once OWCP undertakes to develop the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.¹⁴

Thus, the case shall be remanded for further development. On remand, OWCP obtained the requested second opinion report in order to determine whether appellant's disability from work beginning February 12, 2024 and continuing was due to her accepted March 27, 2023 employment injury.¹⁵ Following this, and other such further development as deemed necessary, it shall issue a *de novo* decision regarding appellant's disability claim.

CONCLUSION

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

¹² See *D.W.*, Docket No. 22-0136 (issued October 10, 2023); *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹³ See *D.W.*, *id.*; *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁴ See *D.W.*, *id.*; *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *William J. Cantrell*, *id.*

¹⁵ See *D.W.*, *id.*; *A.H.*, Docket No. 17-0035 (issued June 22, 2018); *M.N.*, Docket No. 17-1729 (issued June 22, 2018); *M.A.*, Docket No. 17-0331 (issued June 15, 2018) (as OWCP referred appellant to a second opinion physician, it had the responsibility to obtain a report to resolve the issue).

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2024 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 20, 2024
Washington, DC

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

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

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