

³ The Board notes that, following the issuance of the November 20, 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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish entitlement to continuation of pay (COP); (2) whether appellant has met her burden of proof to expand the acceptance of her claim to include closed displaced fracture of neck of left radius with nonunion causally related to her accepted June 14, 2023 employment injury; and (3) whether appellant has met her burden of proof to establish disability from work for the period June 5 through 12, 2024, causally related to her accepted June 14, 2023 employment injury.

FACTUAL HISTORY

On April 12, 2024 appellant then a 62-year-old secretary, filed a traumatic injury claim (Form CA-1) alleging that on June 14, 2023 she fractured the left radius head of her left elbow when she slipped on water on the floor while in the performance of duty. She later clarified that she also bruised her right knee and right shoulder and elbow, and sustained abrasions on both elbows and right knee. Appellant stopped work on July 26, 2023 and returned to work on July 28, 2023.

Prior to the filing of her traumatic injury claim, appellant had submitted medical evidence addressing her right and left knee, right elbow, and right shoulder conditions, medical treatment, and work capacity.

In an April 12, 2024 note, Dr. Michael J. O'Brien, an attending Board-certified orthopedic surgeon, indicated that appellant was scheduled to undergo left elbow arthroscopy, debridement, contractor release, ulnar nerve decompression, and radial head resection.

Dr. O'Brien, in an attending physician's report (Form CA-20) dated April 12, 2024, noted a history that appellant fell in about November 2023 and sustained a left radial neck and nondisplaced fracture. He diagnosed closed displaced fracture of the neck, left radius, with nonunion contracture of the left elbow. Dr. O'Brien advised that appellant's injury was not work related. He further advised that she was disabled from work commencing May 28, 2024, the date she was scheduled to undergo surgery. Dr. O'Brien anticipated that appellant could return to work on November 28, 2024.

In a progress note also dated April 12, 2024, Dr. O'Brien noted appellant's history of injury that she sustained a periarticular left elbow fracture in 2001 for which she underwent surgery. He also noted that she was doing very well until she fell again six months ago and sustained a radial neck fracture. Dr. O'Brien indicated that appellant currently had worsening left elbow pain and stiffness. He discussed his findings on physical examination and reviewed diagnostic test results. Dr. O'Brien assessed that appellant was a right-hand dominant female with left elbow pain with a left radial neck nonunion and elbow contracture.

In a procedure note dated May 28, 2024, Dr. O'Brien noted preoperative diagnoses of traumatic closed displaced fracture of neck of radius, left, with nonunion, subsequent encounter; contracture of left elbow; left elbow secondary osteoarthritis; left cubital tunnel syndrome; retained orthopedic hardware left elbow; and heterotopic ossification, left elbow. He indicated that appellant underwent an arthroscopy of the left elbow with extensive debridement, contracture release, radial head resection, open ulnar nerve decompression, open contracture release, and resection of heterotopic ossification.

In June 5, 2024 postoperative and progress notes, Dr. O'Brien reiterated his prior diagnoses of contracture of left elbow; traumatic closed displaced fracture of neck of radius, left, with nonunion, subsequent encounter; left elbow pain; closed displaced fracture of neck of left radius with nonunion; and heterotopic ossification. He noted that appellant's postoperative course was stable. Dr. O'Brien advised that she was unable to return to work at that time.

In a July 19, 2024 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, it requested that the additional information from the employing establishment regarding appellant's claim, including comments from a knowledgeable supervisor. OWCP afforded the employing establishment 30 days to respond.

In a follow-up development letter dated July 29, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the July 19, 2024 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No additional evidence was received.

OWCP subsequently received a July 26, 2023 emergency department report, wherein Dr. Erin H. McVey, Board-certified in emergency medicine, noted that appellant presented with a complaint of right shoulder, right elbow, and right knee pain following her slip and fall on water on the floor. She discussed findings on physical examination and reviewed diagnostic test results. Dr. McVey provided differential diagnoses of musculoskeletal strain, sprain, fracture, and dislocation.

A July 26, 2023 employing establishment rapid response note cosigned by Dr. Sara Bond and Dr. Supat Thammasitboon, employing establishment Board-certified internists, noted a history of injury that appellant fell onto the floor when she tried to step over water on the floor. The physicians also noted her complaint of right shoulder and right knee pain. Dr. Bond and Dr. Thammasitboon reported their essentially-normal findings on physical examination with the exception of limited range of motion in the right shoulder and right hip and pain in the knee.

On August 28, 2024 appellant responded to OWCP's development questionnaire. She contended that her fall at work on June 14, 2023 resulted in abrasions on her right elbow and pain in her left elbow. Appellant noted that Dr. O'Brien subsequently diagnosed her as having a fracture of the left radial head. She also noted that she sustained left elbow and right ankle injuries due to a non-work-related 2001 accident. Additionally, appellant noted that she fell out of her bed in November 2023 and experienced pain from her osteoarthritis.

By decision dated September 12, 2024, OWCP accepted appellant's June 14, 2023 claim for abrasion of the right elbow and effusion of the right knee.

In another decision dated September 12, 2024, OWCP denied appellant's claim for COP. It found that she had not reported the injury on a form approved by OWCP within 30 days of the injury.

Appellant subsequently filed claims for compensation (Form CA-7) for disability from work during the periods June 3 through 7, 2024 and June 5 through 12, 2024.⁴

In development letters dated September 20 and October 15, 2024, OWCP informed appellant of the deficiencies of her claims for disability from work. It advised her of the type of medical evidence needed to establish her claim. OWCP afforded appellant 30 days to respond.

Appellant submitted additional evidence. In a September 30, 2024 note, Dr. O'Brien opined that she may return to work on June 12, 2024.

In a report of work status (Form CA-3) dated October 1, 2024, the employing establishment indicated that appellant had stopped work on June 5, 2024 and had returned to full-time, regular-duty work on June 13, 2024.

By decision dated October 29, 2024, OWCP denied appellant's request to expand acceptance of her claim to include a closed displaced fracture of the neck of the left radius with nonunion causally related to her June 14, 2023 employment injury. It found that the reports of Dr. O'Brien were insufficient to establish that she sustained a left elbow condition causally related to her accepted June 14, 2023 employment injury.

By separate decision also dated October 29, 2024, OWCP denied appellant's claim for compensation for disability from work for the period June 5 through 7, 2024, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period causally related to her June 14, 2023 employment injury.

By decision dated November 20, 2024, OWCP denied appellant's claim for compensation for disability from work for the period June 5 through 12, 2024, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period causally related to her June 14, 2023 employment injury.

LEGAL PRECEDENT -- ISSUE 1

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.⁵ This latter section provides that written notice of injury shall be given within 30 days.⁶ The context of section 8122 makes clear that this means within 30 days of the injury.⁷

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the

⁴ On the reverse side of the Form CA-7 for disability during the period June 3 through 7, 2024, the employing establishment noted that appellant worked on June 3 and 4, 2024.

⁵ 5 U.S.C. § 8118(a).

⁶ *Id.* at § 8122(a)(2).

⁷ *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish entitlement to COP.

The record reflects that appellant first filed written notice of her traumatic injury on a Form CA-1 on April 12, 2024 alleging that on June 14, 2023 she fractured the left radius head of her left elbow when she slipped on water on the floor. As noted above, to be eligible for COP, a claimant must file a Form CA-1 within 30 days of the date of injury.⁹ As appellant filed her Form CA-1 on April 12, 2024, more than 30 days after the June 14, 2023 date of injury, the Board finds that she is not entitled to COP.

LEGAL PRECEDENT -- ISSUE 2

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.¹⁰

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.¹¹ 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.¹² 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.¹³

⁸ 20 C.F.R. § 10.205(a)(1-3); *see also* *T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

⁹ *Id.*

¹⁰ *See A.M.*, Docket No. 22-0707 (issued October 16, 2023); *V.P.*, Docket No. 21-1111 (issued May 23, 2022); *S.B.*, Docket No. 19-0634 (issued September 19, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

¹¹ *K.B.*, Docket No. 22-0842 (issued April 25, 2023); *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

¹² *R.P.*, Docket No. 18-1591 (issued May 8, 2019).

¹³ *Id.*

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include closed displaced fracture of neck of left radius with nonunion causally related to her accepted June 14, 2023 employment injury.

In reports dated April 12, May 28, and June 5, 2024, Dr. O'Brien opined that appellant had closed displaced fracture of the neck, left radius, with nonunion contracture of the left elbow for which she underwent surgery on May 28, 2024. In his April 12, 2024 Form CA-20 report, he attributed the diagnosed left elbow condition to her November 2023 nonwork-related fall. Moreover, in his remaining reports dated April 12 and June 5, 2024, Dr. O'Brien did not offer an opinion as to the cause of appellant's medical condition. The Board has held that medical evidence that does not provide an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁴ For these reasons, the Board finds that this evidence is of no probative value and insufficient to establish expansion of appellant's claim.

Dr. O'Brien, in his September 30, 2024 note, found that appellant could return to work on June 12, 2024. This evidence, however, contains no opinion on causal relationship, and thus is of no probative value.¹⁵

OWCP also received July 26, 2023 report, wherein Dr. McVey noted that appellant presented with a complaint of right shoulder, right elbow, and right knee pain following her slip and fall. A July 26, 2023 note cosigned by Dr. Bond and Dr. Thammasitboon also noted a history of injury that appellant fell onto the floor when she tried to step over water on the floor. These reports, however, did not address whether appellant's additional conditions were caused or aggravated by the accepted employment injury. As previously noted, the Board has held that medical evidence that does not provide an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁶ This evidence is, therefore, of no probative value and insufficient to establish expansion of appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between the additional diagnosed condition and the accepted employment injury, the Board finds that appellant has not met her burden of proof to establish expansion of her claim.

LEGAL PRECEDENT -- ISSUE 3

An employee seeking benefits under FECA¹⁷ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for

¹⁴ *A.M.*, Docket No. 24-0413 (issued July 31, 2024); *T.L.*, Docket No. 23-1039 (issued February 23, 2024); *A.P.*, Docket No. 18-1690 (issued December 12, 2019); *J.H.*, Docket No. 19-0383 (issued October 1, 2019).

¹⁵ *See J.P.*, Docket No. 23-0975 (issued April 25, 2024); *S.D.*, Docket No. 21-0085 (issued August 9, 2021); *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *J.M.*, Docket No. 18-0853 (issued March 9, 2020).

¹⁶ *Supra* note 14.

¹⁷ *Supra* note 2.

which compensation is claimed is causally related to the employment injury.¹⁸ Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹⁹ 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.²⁰

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 evidence.²¹ The medical evidence required to establish causal relationship between a claimed period of disability and an accepted 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.²²

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.²³

ANALYSIS -- ISSUE 3

The Board finds that appellant has not met her burden of proof to establish disability from work for the period June 5 through 12, 2024, causally related to her accepted June 14, 2023 employment injury.

In support of the claims for compensation, OWCP received medical evidence from Dr. O'Brien. In an April 12, 2024 Form CA-20 report, Dr. O'Brien opined that appellant was disabled from work as of May 28, 2024, the date she underwent surgery to treat her nonwork-related closed displaced fracture of the neck, left radius, with nonunion contracture of the left elbow. He anticipated that she could return to work on November 28, 2024. While Dr. O'Brien opined that appellant was disabled during the claimed period, he failed to attribute her disability to the June 14, 2023 employment injury. The Board has held that medical evidence that does not address whether the claimed disability during the relevant time period is causally related to the

¹⁸ See *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *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).

¹⁹ 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

²⁰ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

²¹ *A.S.*, Docket No. 20-0406 (issued August 18, 2021); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

²² *T.L.*, Docket No. 20-0978 (issued August 2, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

²³ See *C.T.*, Docket No. 20-0786 (issued August 20, 2021); *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*, 52 ECAB 291, 293 (2001).

accepted employment injury is of no probative value.²⁴ This evidence is, therefore, insufficient to establish appellant's disability claim.

Similarly, while Dr. O'Brien, in his postoperative note and progress note dated June 5, 2024 opined that appellant was disabled from work following her May 28, 2024 left elbow surgery, he did not attribute her claimed disability to the accepted June 14, 2023 employment injury.²⁵ Thus, this evidence is insufficient to establish her disability claim.

In a September 30, 2024 note, Dr. O'Brien opined that appellant may return to work on June 12, 2024. However, he did not offer an opinion that she was disabled from work during the claimed period causally related to the June 14, 2023 employment injury.²⁶ Therefore, this evidence is also insufficient to establish appellant's disability claim.

As the medical evidence of record is insufficient to establish that appellant was disabled from work during the claimed period causally related to the accepted June 14, 2023 employment injury, the Board finds that appellant has not met her 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish entitlement to COP. The Board further finds that appellant has not met her burden of proof to expand the acceptance of her claim to include closed displaced fracture of neck of left radius with nonunion causally related to her accepted June 14, 2023 employment injury. The Board also finds that appellant has not met her burden of proof to establish disability from work during the period June 5 through 12, 2024, causally related to her accepted June 14, 2023 employment injury.

²⁴ See *A.W.*, Docket No. 24-0382 (issued May 16, 2024); *M.K.*, Docket No. 22-0298 (issued August 10, 2022); *M.D.*, Docket No. 21-1270 (issued March 21, 2022); *M.A.*, Docket No. 20-0033 (issued May 11, 2020); *F.S.*, Docket No. 18-0098 (issued August 13, 2018); *P.W.*, Docket No. 17-0154 (issued June 9, 2017); see also *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²⁵ *Id.*

²⁶ See *R.P.*, Docket No. 25-0054 (issued December 9, 2024); *P.L.*, Docket No. 22-0337 (issued September 9, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the September 12, October 29, and November 20, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 28, 2025
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