

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

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<b>T.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket Nos. 20-1177 &amp; 20-1296</b>
	)	<b>Issued: May 28, 2021</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, North Houston, TX, Employer</b>	)	
	)	

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 18, 2020 appellant filed a timely appeal from a December 30, 2019, and from two May 15, 2020 merit decisions of the Office of Workers' Compensation Programs (OWCP)<sup>1</sup> and the Clerk of the Appellate Boards assigned Docket No. 20-1177. On June 11, 2020 she filed a timely appeal from a May 8, 2020 merit decision of OWCP and the Clerk of the Appellate Boards assigned Docket No. 20-1296. Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> The Board notes that, during the pendency of this appeal, OWCP issued two separate decisions dated July 8, 2020 affirming the denial of wage-loss compensation for the period February 22 through 27, 2020 and vacating the May 15, 2020 decision denying wage-loss compensation beginning March 15, 2020. The Board, however, finds that the decisions are null and void as the Board and OWCP may not simultaneously have jurisdiction over the same issue. 20 C.F.R. § 501.2(c)(3); see *Terry L. Smith*, 51 ECAB 182 (1999); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the issuance of the May 15, 2020 decisions, appellant submitted additional evidence to OWCP. 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.*

## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of disability for the period November 8 through 16, 2019 causally related to her accepted February 3, 2019 employment injury; and (2) whether appellant has met her burden of proof to establish total disability from work for the periods February 8 through 11, 2020, February 22 through 27, 2020, and commencing March 15, 2020 causally related to her accepted February 3, 2019 employment injury.

## **FACTUAL HISTORY**

This case has previously been before the Board on a separate issue.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 9, 2019 appellant, then a 42-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 3, 2019 she strained her back when she lifted a stack of magazines and turned awkwardly while in the performance of duty. She stopped work on February 3, 2019 and returned on March 30, 2019.

By decision dated March 29, 2019, OWCP accepted appellant's claim for thoracic spine ligament sprain.

On April 29, 2019 appellant stopped work again. OWCP paid her wage-loss compensation on the supplemental rolls as of April 29, 2019 and on the periodic rolls, as of July 21, 2019.

On June 12, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. James E. Butler, III, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of her accepted February 3, 2019 employment injury and ability to work. In a July 1, 2019 report, Dr. Butler noted his review of the SOAF and her accepted thoracic spine condition. Upon physical examination, he observed normal gait and tenderness upon palpation of the lumbar spine at L4-S1 levels and SI joints bilaterally. Neurological testing revealed no sensory deficits at the lower extremities. Dr. Butler diagnosed lumbar facet sprain with sacroiliac joint dysfunction, lumbar spondylosis, and obesity. He opined that appellant continued to suffer residuals of her accepted injury, as well as preexisting degenerative changes. Dr. Butler reported that she was unable to return to work as a mail processing clerk, but could work in a sedentary-duty capacity. On July 23, 2019 he completed a work capacity evaluation form (Form OWCP-5c) indicating that appellant could work full-time, sedentary duty with restrictions of bending/stooping for two hours per day, pushing, pulling, and lifting up to 10 pounds for two hours per day, and no squatting, kneeling, or climbing.

By decision dated August 13, 2019, OWCP subsequently expanded the acceptance of appellant's claim to include lumbar spine sprain, sacroiliac (SI) joint sprain, and lesion of sciatic nerve of the bilateral lower limb.

On September 18, 2019 appellant returned to full-time, limited-duty work as a modified mail processing clerk. The duties of her modified assignment required working the "primary line" for 1 to 6.5 hours intermittently. The physical requirements involved intermittent lifting, carrying,

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<sup>4</sup> Docket No. 19-1228 (issued December 9, 2019).

pushing, and pulling up to 10 pounds for one to two hours per day, intermittent bending/stooping for one to two hours per day, intermittent sitting, standing, reaching, walking, and simple grasping for one to six and a half hours per day, and no climbing, kneeling, and squatting.

In a November 8, 2019 report and Letter of Medical Necessity, Dr. Steven B. Inbody, a Board-certified neurologist, noted diagnoses of thoracic and lumbar spine sprains, SI joint sprain, and lesion of sciatic nerve. He described the February 3, 2019 employment injury and referenced appellant's current cervical, thoracic, lumbar, and bilateral lower extremity symptoms. Dr. Inbody reported a stable neurological examination without objective changes. He completed a duty status report (Form CA-17), which indicated that appellant could work full time with restrictions of lifting and carrying up to 10 pounds for two hours per day, bending, stooping, pulling, and pushing for two hours per day, reaching above the shoulder, standing, and sitting for four hours per day, walking and simple grasping for eight hours per day, and no climbing, kneeling, or twisting.

On November 16, 2019 appellant filed a claim for compensation (Form CA-7) for disability for the period November 8 through 16, 2019, for leave without pay (LWOP), including night differential. In an attached time analysis (Form CA-7a), she claimed six hours of LWOP each on November 8, 9, 10, 11, 12, and 13, 2019 and eight hours of LWOP each on November 14, 15, and 16, 2019. Appellant noted that her reason for leave use was "[physician] had me out."

In a November 25, 2019 development letter, OWCP provided appellant with the definition of a recurrence of disability and requested that she submit additional factual and medical evidence supporting that she was disabled from employment for the period November 8 through 16, 2019. It provided a questionnaire for her completion and specifically requested that she submit a physician's opinion explaining how the claimed disability was due to the February 3, 2019 employment injury. OWCP afforded appellant 30 days to provide the requested evidence.

Appellant submitted a November 8, 2019 return to work status note and work restriction slip from Dr. Inbody who reported diagnoses of thoracic spine sprain, cervical spine sprain, bilateral brachial plexopathy, traumatic lumbar disc rupture, and sequelae of traumatic lumbar disc rupture. Dr. Inbody indicated that she was totally incapacitated from November 8 through 16, 2019 and could return to work on November 17, 2019.

On November 17, 2019 appellant returned to work.<sup>5</sup> She stopped work again on December 2, 2019 and received wage-loss compensation on the supplemental rolls until she returned to work on January 8, 2020.

In a December 30, 2019 decision, OWCP denied appellant's claimed recurrence of disability for the period November 8 through 16, 2019. It found that the medical evidence of

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<sup>5</sup> A November 14, 2019 modified job offer indicated that duties of the modified mail processing clerk assignment required her to work the delivery bar code sorter for one to eight hours per day. The physical requirements of the job included intermittent lifting and carrying up to 10 pounds for one to two hours per day, pushing and pulling for one to two hours per day, intermittent standing and reaching above the shoulder for one to four hours per day, and intermittent walking and simple grasping for one to eight hours per day.

record was insufficient to establish that she had a return or increase of disability due to a change or worsening of her February 3, 2019 employment injury.<sup>6</sup>

On January 6, 2020 the employing establishment offered appellant a modified-duty job offer as a full-time mail processing clerk. The duties of the job position required casing mail (sedentary) and waste mail (sedentary). The physical requirements of the modified assignment included intermittent lifting, carrying, pushing, and pulling up to 10 pounds for 1 to 2 hours per day, intermittent bending and stooping for 1 to 2 hours per day, intermittent grasping, sitting, walking, and standing for 1 to 8 hours per day, and no climbing, kneeling, or squatting.

On January 8, 2020 OWCP referred appellant, along with an updated SOAF, a copy of the case record, and a series of questions, to Dr. Steven M. Croft, a Board-certified neurologist, for a second opinion evaluation regarding the status of her accepted February 3, 2019 employment injury.

In a January 17, 2020 progress note, Dr. Hai Nguyen, an osteopath Board-certified in anesthesiology and pain medicine, noted appellant's complaints of mid and low back pain and difficulty working due to her pain. He indicated that she worked an 8-hour shift sitting on a stool without back support and experienced moderately severe-to-severe low back pain with muscle spasms after sitting for a long period of time. Upon examination of appellant's lumbar spine, Dr. Nguyen observed point tenderness with deep palpation over the bilateral L4-S1 facet joints and pain with range of motion (ROM) testing. He diagnosed lumbar radiculopathy, lumbar intervertebral disc displacement, thoracic spine sprain, and chronic pain syndrome.

In a February 13, 2020 follow-up visit report, Dr. Inbody noted appellant's accepted conditions of thoracic spine sprain, lumbar spine sprain, SI joint sprain, and lesion of sciatic nerve of the bilateral lower limb. He noted that she complained of persistent sciatic symptoms and continued to work with restrictions. In a work status note, Dr. Inbody requested that appellant be excused from work from February 6 through 13, 2020. He also completed a Form CA-17 indicating that she could resume work with restrictions on that date and noted that she needed a chair with back support.

On February 14, 2020 appellant filed a Form CA-7 claiming disability for the period February 8 through 13, 2020. On the reverse side of the claim form, D.T., a health and resource management specialist for the employing establishment, verified that appellant used 32 hours of LWOP from February 8 to 10, 2020. In an attached Form CA-7a, appellant claimed 8 hours of LWOP each on February 8, 9, 10, and 11, 2020. She noted that her reason for leave use was "Doctor has me out until next visit."

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<sup>6</sup> In a December 31, 2019 letter, OWCP informed the employing establishment that the weight of the medical evidence rested with the work restrictions as outlined in the July 1, 2019 second-opinion report and July 23, 2019 Form OWCP-5c of Dr. Butler, who opined that appellant was capable of working sedentary duty. It requested that the employing establishment provide a light-duty job offer within these medical restrictions. OWCP subsequently issued a payment on the supplemental rolls for wage-loss compensation for the period November 8 through 16, 2019. The payroll printout noted "job offer not suitable."

On February 15, 2020 appellant returned to full-time, modified-duty work.<sup>7</sup> She stopped work again and OWCP paid her wage-loss compensation on the supplemental rolls from February 18 to 21, 2020.

In a February 24, 2020 development letter, OWCP advised appellant that it had not received any evidence to support her claim for wage-loss compensation claim for the period February 8 through 11, 2020. It informed her of the type of evidence needed to establish her wage-loss compensation claim and afforded her 30 days to submit the necessary evidence.

On March 1, 2020 appellant filed a Form CA-7 claiming disability for the period February 21 through 27, 2020. On the reverse side of the claim form, D.T., a health and resource management specialist for the employing establishment, indicated that appellant stopped work on February 22, 2020 and returned to work on February 29, 2020. In an attached Form CA-7a, appellant noted that she worked 8 hours on February 21, 2020 and claimed 6.6 hours of LWOP each on February 22, 24, 25, 26, and 27, 2020. She noted that her reason for her LWOP use was “[physician] had me out.”

In a March 9, 2020 development letter, OWCP advised appellant that it had not received any evidence to support her claim for wage-loss compensation for the period February 22 through 27, 2020. It informed her of the type of evidence needed to establish her wage-loss compensation claim and afforded her 30 days to submit the necessary evidence.

OWCP received a report dated February 18, 2020 from Dr. Nguyen who described the February 3, 2019 employment injury and noted appellant’s current complaints of low back pain radiating down the bilateral legs and into her bilateral ankles, right greater than left. Upon physical examination, Dr. Nguyen observed point tenderness with deep palpation over the bilateral L4-S1 facet joints and taut and tender muscle bands along the lumbar paraspinals consistent with muscle spasms. Straight leg raise testing was positive bilaterally. Dr. Nguyen diagnosed lumbar radiculopathy, chronic pain syndrome, thoracic spine sprain, and other intervertebral disc displacement of the lumbar region. He completed a Form CA-17, which indicated that appellant could work full time with restrictions.

A March 9, 2020 lumbar spine magnetic resonance imaging (MRI) scan report revealed normal alignment and disc desiccation at L4-5 with mild disc narrowing at L4-5, central disc protrusion and mild bilateral foraminal narrowing without nerve root compression at L5-S1, moderate facet arthropathy at L4-5, and mild bilateral facet arthropathy at L3-4.

A March 16, 2020 electromyography (EMG) and nerve conduction velocity (NCV) study report showed normal needle examination and no evidence of lumbar radiculopathy.

On March 20, 2020 appellant filed another Form CA-7 claiming wage-loss compensation for the period March 18 through April 22, 2020. In an attached Form CA-7a, she noted that her reason for leave use was “[physician] has me out until next visit.” Appellant continued to file Forms CA-7 for continuing disability from work.

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<sup>7</sup> On January 25, 2020 appellant accepted a modified-duty job offer as a full-time modified mail processing clerk. The duties of the job required casing mail for 1 to 6 hours intermittently and wasting mail for 1 to 2 hours intermittently. The physical requirements of the job included intermittent lifting and carrying, pushing and pulling, and bending and stooping for 1 to 2 hours and intermittent sitting, walking, standing, and simple grasping for 1 to 8 hours.

In a March 18, 2020 second opinion neurological evaluation report, Dr. Croft described the February 3, 2019 employment injury and noted appellant's current complaints of low back pain with radiation to both lower extremities and numbness and tingling in her feet. Upon physical examination, he observed that she was unable to stand without pushing off, unable to perform tandem gait, and unable to walk on her heels. Regarding whether appellant had continuing residuals of her February 3, 2019 employment injury, Dr. Croft reported that she would likely require continued medical treatment for her lumbar spine and SI joint sprains. He noted that no additional treatment was needed for lesion of sciatic nerve.

In a March 18, 2020 examination report, Dr. Inbody described the February 3, 2019 employment injury and recounted appellant's current complaints of cervical, thoracic, lumbar, and bilateral lower extremity symptoms. He reported that she was working with restrictions from a chair, which required significant bending forward. Dr. Inbody explained that this position had "led to a flare-up where [appellant's] sciatica is now in constant spasm with hamstring/calf spasms, making ambulation difficult." He indicated that he was taking appellant off work as of March 15, 2020, when her symptoms escalated.

In a March 18, 2020 work restrictions note, Dr. Inbody reported diagnoses of cervical spine sprain, lumbar spine sprain, brachial neuritis/radiculitis, and left leg sciatica. He indicated that appellant had been under his care since February 19, 2019 and would be off work beginning March 18, 2020 due to "total incapacitation." Dr. Inbody also completed a Form CA-17 indicating that she was unable to work.

In a March 19, 2020 report, Kimberly Molitor, a nurse practitioner, cosigned by Dr. Phong Le, an osteopath Board-certified in anesthesiology and pain medicine, indicated that appellant was seen for mid and low back pain. Dr. Le reviewed appellant's history and noted physical examination findings of point tenderness with deep palpation over the L4-S1 bilateral facet joints and pain on ROM. He diagnosed chronic pain syndrome, intervertebral lumbar disc displacement, thoracic and lumbar spine sprains, and lumbar inflammatory spondylopathy.

In an April 2, 2020 letter, Dr. Inbody requested that OWCP approve appellant's claim for disability benefits. He noted that her claim was accepted for thoracic spine sprain, lumbar spine sprain, SI joint sprain, and lesion of the sciatic nerve. Dr. Inbody recounted that he examined appellant on February 13 and March 18, 2020 and provided excerpts from his examination reports. He advised that she was disabled from February 18 through 21, 2020 and beginning March 15, 2020 due to her diagnosed conditions. Dr. Inbody explained that inherent in appellant's injuries was the presence of annular tears within the herniated lumbar disc, which represented evidence of delayed healing potential due to ongoing aggravation of downward pressures on these discs. As well, he opined that the appellant's current incapacitation was the result of activities such as standing walking, lifting, pushing, and pulling which create a downward axial pressure on the thoracic and lumbosacral spine.

Appellant submitted a March 26, 2019 lumbar spine MRI scan and an April 10, 2019 EMG/NCV study report.

In an April 18, 2020 letter, Dr. Inbody expressed his disagreement with Dr. Croft's March 18, 2020 report, which indicated that appellant's lower back pain was the result of muscle spasm. He discussed her diagnostic testing and physical examination findings and explained the mechanism of injury of how lifting a heavy tray of mail caused an acute right paracentral disc herniation. Dr. Inbody reported that appellant's symptoms would continue indefinitely without

ongoing treatment of the somatic lumbar spine injuries. He opined that her level of function would continue to deteriorate and lead to an “incapacitation for a return to work.” Dr. Inbody indicated that, with medical treatment and restricted activities, appellant could continue in a sedentary position at the employing establishment.

In an April 22, 2020 work restrictions note, Dr. Inbody reported diagnoses of cervical spine sprain, lumbar spine sprain, brachial neuritis, and left leg sciatica. He indicated that appellant would be off work as of April 22, 2020 due to “total incapacitation.”

In CA-17 forms dated April 22 and 28, 2020, Dr. Inbody noted diagnosed conditions of lumbar and lumbosacral sprain. He indicated that appellant could not return to work.

By decision dated May 8, 2020, OWCP denied appellant’s claim for wage-loss compensation due to total disability for the period February 8 through 11, 2020. It found that the medical evidence of record was insufficient to establish that she was disabled from work due to a material change or worsening of her accepted February 3, 2019 employment injury.

By decision dated May 15, 2020, OWCP denied appellant’s claim for wage-loss compensation due to total disability for the period February 22 through 27, 2020. It found that the medical evidence of record was insufficient to establish that she was disabled from work due to a material change or worsening of her accepted February 3, 2019 employment injury.

In a separate decision of even date, OWCP also denied appellant’s wage-loss compensation claim for disability commencing March 15, 2020. It found that the medical evidence of record was insufficient to establish that she was disabled from work due to a material change or worsening of February 3, 2019 employment injury.

### **LEGAL PRECEDENT -- ISSUE 1**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.<sup>8</sup> This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee’s physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee’s physical limitations.<sup>9</sup>

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to employment

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<sup>8</sup> 20 C.F.R. § 10.5(x); *T.J.*, Docket No. 18-0831 (issued March 23, 2020); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

<sup>9</sup> *Id.*

injury, and supports that conclusion with medical reasoning.<sup>10</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>11</sup>

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

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

On June 12, 2019 OWCP referred appellant to Dr. Butler for a second opinion evaluation regarding the status of her accepted February 3, 2019 employment injury and her ability to work. In a July 1, 2019 report, Dr. Butler opined that she continued to suffer residuals of her accepted injury, as well as degenerative changes. He indicated that appellant could return to work in a sedentary duty capacity and completed a Form OWCP-5c with specific restrictions.

On September 18, 2019 appellant returned to full-time, limited-duty work as a modified mail processing clerk. The offer of modified assignment indicated that the physical requirements involved intermittent lifting, carrying, pushing, and pulling up to 10 pounds for 1 to 2 hours per day, intermittent bending/stooping for 1 to 2 hours per day, intermittent sitting, standing, reaching, walking, and simple grasping for 1 to 6.5 hours per day, and no climbing, kneeling, and squatting.

Appellant stopped work on November 8, 2019 and filed a wage-loss compensation claim for total disability for the period November 8 through 16, 2019. In a December 30, 2019 decision, OWCP denied her claimed recurrence of disability finding that the medical evidence of record was insufficient to establish that she had a return or increase of disability due to a change or worsening of her February 3, 2019 employment injury.

In the case of *William A. Couch*,<sup>12</sup> the Board held that when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. In its December 30, 2019 decision, OWCP failed to consider Dr. Butler's July 1, 2019 second-opinion report and new work restrictions and the employing establishment's September 2019 modified job offer when denying appellant's claimed recurrence of disability. As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim properly submitted to OWCP be reviewed and addressed.<sup>13</sup> Since a claim for disability can be established when a limited-duty assignment exceeds an employee's physical limitations, OWCP must consider whether the modified-job assignment that appellant was working at the time that she stopped work on November 8, 2019 exceeded her medical restrictions.<sup>14</sup> The case will therefore be remanded to OWCP to enable a proper consideration of the evidence that was of record at the time of its December 30, 2019

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<sup>10</sup> *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *C.C.*, Docket No. 18-0719 (issued November 9, 2018); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>11</sup> *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

<sup>12</sup> 41 ECAB 548, 553 (1990).

<sup>13</sup> *T.J.*, Docket No. 14-1854 (issued February 3, 2015); *Yvette N. Davis*, 55 ECAB 475 (2004).

<sup>14</sup> *See D.S.*, Docket No. 19-1867 (issued January 26, 2021); *see also J.S.*, Docket No. 19-1073 (issued January 6, 2020).



decision to be followed by a *de novo* decision regarding appellant's claim for compensation for the period November 8 through 16, 2019.

### **LEGAL PRECEDENT -- ISSUE 2**

An employee seeking benefits under FECA<sup>15</sup> 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.<sup>16</sup> The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.<sup>17</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>18</sup>

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position, or the medical evidence establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. As part of this burden of proof, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.<sup>19</sup> This burden of proof includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>20</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>21</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 specific employment factors identified by the claimant.<sup>22</sup>

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<sup>15</sup> *Supra* note 2.

<sup>16</sup> *See 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).

<sup>17</sup> 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>18</sup> *See D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>19</sup> *S.F.*, Docket No. 19-1735 (issued March 12, 2020); *J.B.*, Docket Nos. 18-1752, 19-0792 (issued May 6, 2019); *C.G.*, Docket No. 16-1503 (issued May 17, 2017); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>20</sup> *H.T.*, *supra* note 11; *Ronald A. Eldridge*, *supra* note 10.

<sup>21</sup> *E.M.*, *supra* note 11; *Mary A. Ceglia*, *supra* note 11.

<sup>22</sup> *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

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>23</sup>

### ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish total disability from work for the periods February 8 through 11 and February 22 through 27, 2020 causally related to her accepted February 3, 2019 employment injury.

On January 6, 2020 the employing establishment offered appellant a modified-duty job offer as a full-time mail processing clerk, which required casing mail (sedentary) and waste mail (sedentary). The physical requirements of the modified assignment included intermittent lifting, carrying, pushing, and pulling up to 10 pounds for 1 to 2 hours per day, intermittent bending and stooping for 1 to 2 hours per day, intermittent grasping, sitting, walking, and standing for 1 to 8 hours per day, and no climbing, kneeling, or squatting. The Board notes that the January 6, 2020 modified-job assignment was within the restrictions provided in Dr. Butler's July 23, 2019 Form OWCP-5c and Dr. Inbody's November 8, 2019 Form CA-17. To establish her claim for total disability for the periods February 8 through 11 and February 22 through 27, 2020, appellant therefore must establish that she was unable to work her modified-job assignment due to her February 3, 2019 employment injury.<sup>24</sup>

In support of her claim, appellant submitted a series of reports, work status notes, and Forms CA-17 from Dr. Inbody. In a February 13, 2020 report, Dr. Inbody noted her accepted conditions and requested that she be excused from work from February 6 through 13, 2020. He indicated that appellant was unable to perform her duties due to pain, as well as her mental health from stress in the workplace. Although Dr. Inbody noted appellant's inability to work from February 8 through 11, 2020, he did not reference any physical examination findings or other objective evidence to support his opinion that she was unable to work modified duty nor did he attribute her disability to the accepted February 3, 2019 employment injury.<sup>25</sup> Instead, he attributed appellant's inability to work to increased pain and stress. The Board has found that findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.<sup>26</sup> For this reason, Dr. Inbody's report is insufficient to establish appellant's disability claim for the period February 8 through 11, 2020.

In a Form CA-17 dated February 13, 2020, Dr. Inbody indicated that appellant could resume work with restrictions. He failed, however, to provide an opinion that she was disabled from work from February 22 through 27, 2020, as a result of her accepted employment injuries.<sup>27</sup> Likewise, Dr. Nguyen's February 18, 2020 report and Form CA-17 are also insufficient to

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<sup>23</sup> See *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>24</sup> *Supra* notes 18 & 19.

<sup>25</sup> *F.S.*, Docket No. 18-0098 (issued August 13, 2018); *P.W.*, Docket No. 17-0514 (issued June 9, 2017).

<sup>26</sup> *R.C.*, Docket No. 17-0748 (issued July 10, 2018); *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>27</sup> *G.J.*, Docket No. 18-1335 (issued March 22, 2019); *K.A.*, Docket No. 16-0592 (issued October 26, 2016); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

establish that appellant was totally disabled from work from February 22 through 27, 2020, as he noted that she could work with restrictions.<sup>28</sup> Thus, the Board finds that Dr. Inbody's and Dr. Nguyen's reports are insufficient to establish that she was disabled from work during the claimed period of February 22 through 27, 2020.<sup>29</sup>

The medical evidence of record also contains additional medical reports, including Dr. Croft's March 18, 2020 second opinion evaluation report, Dr. Le's March 19, 2020 report, a March 16, 2020 EMG/NCV study report, and a March 20, 2020 lumbar spine MRI scan. None of these reports, however, addressed whether appellant was unable to work from February 8 through 22, 2020 or from February 22 through 27, 2020. As these reports did not address the relevant issue of whether she was disabled from employment during the claimed periods due to her accepted February 3, 2019 employment injury, they are insufficient to meet her burden of proof.<sup>30</sup>

The Board also finds that this case is not in posture for decision regarding whether appellant was totally disabled from work commencing March 15, 2020 causally related to her accepted February 3, 2019 employment injury.

In a March 18, 2020 report and work restriction note, Dr. Inbody described the February 3, 2019 work injury. He reported that appellant's current work duties required sitting on a chair and bending forward significantly. Dr. Inbody explained that this position had "led to a flare-up where [appellant's] sciatica is now in constant spasm with hamstring/calf spasms." He indicated that appellant would be off work beginning March 15, 2020 when her symptoms escalated. In an April 2, 2020 letter, Dr. Inbody also noted her accepted conditions of thoracic spine sprain, lumbar spine sprain, SI joint sprain, and lesion of the sciatic nerve. He reported that appellant was disabled from work beginning March 15, 2020 due to her diagnosed conditions. Dr. Inbody explained that inherit in her injuries was the presence of annular tears within the herniated lumbar disc, which represented evidence of delayed healing potential due to ongoing aggravation of downward pressures on these discs. As well, he opined that that the appellant's current incapacitation was the result of activities such as standing walking, lifting, pushing, and pulling, which create a downward axial pressure on the thoracic and lumbosacral spine.

The Board finds that, while the reports from Dr. Inbody are not fully rationalized, they support that appellant was unable to work beginning March 15, 2020 due to the deterioration of her accepted lumbar injuries and are not contradicted by any substantial medical or factual evidence of record.<sup>31</sup> Although the reports of Dr. Inbody are insufficient to meet her burden of proof to establish the claim, they strongly suggest and support a relationship between her current condition and disability from work commencing March 15, 2020, and the accepted February 13, 2019 employment injury. Accordingly, they are sufficient to require OWCP to further develop the medical evidence.<sup>32</sup>

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<sup>28</sup> See *S.K.*, Docket No. 18-1537 (issued June 20, 2019).

<sup>29</sup> See *A.F.*, Docket No. 20-0522 (issued November 4, 2020).

<sup>30</sup> See *K.E.*, Docket No. 19-1922 (issued July 10, 2020); *F.S.*, *supra* note 25; *P.W.*, *supra* note 25.

<sup>31</sup> See *D.H.*, Docket Nos. 20-0041 & 20-0261 (issued February 5, 2021); *D.G.*, Docket No. 18-0043 (issued May 7, 2019).

<sup>32</sup> See *J.S.*, Docket No. 19-0892 (issued November 4, 2020); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>33</sup> It has an obligation to see that justice is done.<sup>34</sup>

The case must therefore be remanded to OWCP for further development. On remand, OWCP shall refer appellant, along with the case record and a SOAF, to a specialist in the appropriate field of medicine, consistent with OWCP's procedures, to determine whether her disability from work commencing March 15, 2020 was causally related to her accepted February 3, 2019 employment injury.<sup>35</sup> The chosen physician shall provide a rationalized opinion as to whether the diagnosed conditions are causally related to the accepted factors of appellant's federal employment. If the physician opines that the diagnosed conditions are not causally related, he or she must explain, with rationale, how or why the opinion differs from that of Dr. Inbody. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

On appeal, appellant asserts that she provided the required documentation as requested. As explained above, however, the medical evidence of record does not contain a rationalized medical opinion establishing that she was unable to work modified duty from February 8 through 11 or February 22 through 27, 2020 due to the accepted February 3, 2019 employment injury. Accordingly, the Board finds that she has not met her burden of proof to establish total disability during the claimed periods. The case is not in posture for decision with regard to whether she was totally disabled from work commencing March 15, 2020 causally related to her accepted February 3, 2019 employment injury.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish total disability from work for the periods February 8 through 11 and February 22 through 27, 2020 causally related to her accepted February 3, 2019 employment injury. The Board also finds that this case is not in posture for decision regarding whether she was totally disabled from work commencing March 15, 2020 causally related to her accepted February 3, 2019 employment injury.

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<sup>33</sup> See *e.g.*, *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

<sup>34</sup> See *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).

<sup>35</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.9.b(3) (June 2015).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 15 and May 8, 2020 decisions of the Office Workers' Compensation Programs with regard to disability from work for the periods February 8 through 11 and February 22 through 27, 2020 are affirmed. The December 30, 2019 and May 15, 2020 decisions of the Office of Workers' Compensation Programs with regard to disability from work commencing March 15, 2020 are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 28, 2021  
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