

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

C.G., Appellant	)	
	)	
and	)	Docket No. 24-0550
	)	Issued: July 3, 2024
U.S. POSTAL SERVICE, SOCASTEE POST OFFICE, Myrtle Beach, SC, Employer	)	
	)	

*Appearances:*  
Michael Watson, for the appellant<sup>1</sup>  
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 April 30, 2024 appellant, through her representative, filed a timely appeal from a March 19, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). 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> 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.

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

<sup>3</sup> The Board notes that, following the March 19, 2024 decision, 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.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish intermittent disability from work commencing January 21, 2023 causally related to her accepted employment injury.

## **FACTUAL HISTORY**

On January 12, 2023 appellant, then a 52-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she developed a slipped disc and pinched nerve due to factors of her federal employment. She noted that she first became aware of her condition on December 14, 2022 and realized its relation to her federal employment on December 21, 2022. Appellant stopped work on January 19, 2023. OWCP accepted her claim for radiculopathy of the cervical region and subsequently expanded the acceptance of her claim to include lumbar spondylolisthesis, lumbar radiculopathy, cervical spondylosis without myelopathy or radiculopathy, cervical spinal stenosis, and lumbar spinal stenosis with neurogenic claudication.

In a return-to-work clearance form dated January 30, 2023, Dr. Erkan Alci, a Board-certified orthopedic surgeon, diagnosed low back pain and neck pain and released appellant to work with restrictions of lifting 10 pounds up to 8 hours a day, and sitting, standing, walking, repetitive motion of the hands, grasping, pushing, pulling, and driving up to eight hours a day. On February 3, 2023 he performed a left L5-S1 intra-articular injection. Dr. Alci continued to treat appellant on February 16, 2023 for persistent back and left leg pain, difficulty walking, numbness, and tingling in her lower extremity. He diagnosed cervical radiculopathy, lumbar spondylolisthesis, lumbar radiculopathy, cervical spondylosis, and spinal stenosis in the cervical and lumbar region. Dr. Alci noted that a series of intra-articular injections provided only temporary relief and he recommended anterior lumbar interbody fusion surgery. On March 21, 2023 he performed an anterior lumbar interbody arthrodesis at L5-S1 and diagnosed lumbar stenosis at L5-S1, lumbar radiculopathy, and L5-S1 spondylolisthesis.<sup>4</sup>

On April 11, 2023 appellant filed claims for compensation (Form CA-7) for intermittent disability from work for the period January 14 through April 7, 2023. She continued to file claims for compensation for periods thereafter.

In a development letter dated April 25, 2023, OWCP informed appellant of the deficiencies of her claim for compensation. It advised her of the type of medical evidence required and afforded her 30 days to submit the requested evidence.

OWCP subsequently received additional evidence, including a March 1, 2023 computerized tomography (CT) scan of the lumbar spine which revealed multilevel lumbar spondylosis, severe at L5-S1.

Dr. Alci related in a May 1, 2023 report that appellant was status-post anterior lumbar interbody arthrodesis at L5-S,1 and she had no pain or significant radicular leg symptoms. He diagnosed history of lumbar fusion and returned appellant to light-duty work. In a work capacity

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<sup>4</sup> This surgery was not authorized by OWCP.

evaluation (Form OWCP-5c) and work status report of even date, Dr. Alci released appellant to modified full-time light-duty work.

On May 2, 2023 appellant indicated that she had lumbar surgery on March 21, 2023.

On June 13, 2023 OWCP referred the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), to determine whether the requested surgery was medically necessary. In a June 15, 2023 report, Dr. Harris explained that he had reviewed the SOAF and the medical record, including Dr. Alci's February 16, 2023 report. He diagnosed status-post anterior lumbar interbody fusion/posterior lumbar interbody fusion at L5-S1, March 21, 2023. Dr. Harris opined that there was no documentation of objective findings on examination and insufficient information in the medical records to support authorization of an anterior lumbar interbody fusion/posterior lumbar interbody fusion at L5-S1.

By decision dated June 27, 2023, OWCP denied appellant's Form CA-7 claim for wage-loss compensation, finding that the medical evidence of record was insufficient to establish intermittent disability from work commencing January 21, 2023 causally related to the accepted employment injury.

On July 9, 2023 appellant filed a Form CA-7 claim for disability during the period June 17 through June 30, 2023. She continued to file claims for compensation for periods thereafter.

On October 16 and 27, 2023 Dr. Alci treated appellant for neck pain radiating to the bilateral shoulders. He diagnosed history of lumbar fusion, lumbar spondylosis, and cervical spondylosis. Dr. Alci noted appellant was working 10- to 12-hour days. In an October 16, 2023 work status report, he release appellant to work without restrictions. On January 19, 2024 Dr. Alci provided an amendment to his March 21, 2023 report. He noted a history of the March 21, 2023 anterior lumbar interbody fusion, and reported that appellant did well postoperatively. Dr. Alci advised that appellant required time to recover from the lumbar fusion surgery and she was disabled from work from March 21 through May 1, 2023. He further noted releasing appellant to light-duty work on May 1, 2023 and full-duty work on October 16, 2023.

Appellant also submitted reports dated October 30, November 28, and December 11, 2023, wherein Dr. Erin Watson, a Board-certified physiatrist, treated appellant for neck pain. Dr. Watson noted that an October 23, 2023 magnetic resonance imaging (MRI) scan of the cervical spine revealed cervical spondylosis at C4-7. She diagnosed cervical spondylosis without myelopathy and recommended intra-articular injections. On November 28, 2023 Dr. Watson performed an intra-articular injection. In a November 28, 2023 return-to-work report, she noted that appellant was excused from work on November 29, 2023 and could return on November 30, 2023.

On February 9, 2024 appellant requested reconsideration.

By decision dated March 19, 2024, OWCP denied modification of the June 27, 2023 decision.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of their claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> For each period of disability claimed, the employee has the burden of proof to establish that they were disabled from work as a result of the accepted employment injury.<sup>7</sup> Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues, which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.<sup>8</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.<sup>9</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>10</sup> Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>11</sup> 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.<sup>12</sup>

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence 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>13</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work commencing January 21, 2023 causally related to the accepted employment injury.

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *See S.F.*, Docket No. 20-0347 (issued March 31, 2023); *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *S.B.*, Docket No. 23-0999 (issued March 28, 2024); *William A. Archer*, 55 ECAB 674 (2004).

<sup>8</sup> *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, *id.*

<sup>9</sup> *G.P.*, Docket No. 23-1133 (issued March 19, 2024); *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>10</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>11</sup> *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>12</sup> *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>13</sup> *See B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, *supra* note 8; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *see also C.S.*, Docket No. 17-1686 (issued February 5, 2019).

On January 30, 2023 Dr. Alci diagnosed low back pain and neck pain and returned appellant to work on January 11, 2023 full-time with restrictions. He continued to treat appellant on May 1, 2023 and diagnosed history of lumbar fusion and released appellant to light-duty work. In a Form OWCP-5c and work status report of even date, Dr. Alci returned appellant to full-time sedentary work. Likewise, on October 16 and 27, 2023, he diagnosed history of lumbar fusion, lumbar spondylosis, and cervical spondylosis and advised that appellant was working 10- to 12-hour days. In a return-to-work report of even date, Dr. Alci returned appellant to work without restrictions. However, he did not provide an opinion that appellant was disabled from work during the claimed period causally related to the accepted cervical and lumbar conditions.<sup>14</sup> The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>15</sup> Therefore, these reports are insufficient to establish her claim.

On January 19, 2024 Dr. Alci noted a history of the March 21, 2023 anterior lumbar interbody fusion and advised that appellant was disabled from work from March 21 through May 1, 2023. Thereafter, appellant was released to light-duty work on May 1, 2023 and full-duty work on October 16, 2023. Similarly, on November 28, 2023, Dr. Watson excused appellant from work on November 29, 2023. While the physicians noted that appellant was totally disabled, they did not offer an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>16</sup> Thus, these reports are insufficient to establish appellant's claim.

Appellant also submitted a March 1, 2023 CT scan of the lumbar spine. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the employment incident caused any of the diagnosed conditions.<sup>17</sup> This evidence is therefore insufficient to establish appellant's claim.

As the medical evidence is insufficient to establish disability from work commencing January 21, 2023 causally related to the accepted employment conditions, 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.

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<sup>14</sup> See *F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish disability from work commencing January 21, 2023 causally related to her accepted cervical and lumbar conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 19, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 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