

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

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R.C., Appellant)	
)	
and)	
)	Docket No. 24-0574
)	Issued: July 31, 2024
U.S. POSTAL SERVICE, SULLY STATION)	
POST OFFICE, Centreville, VA, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 7, 2024 appellant filed a timely appeal from a February 7, 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 issuance of the February 7, 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 has met her burden of proof to establish disability from work for the period commencing December 23, 2020, causally related to her accepted employment injury.

FACTUAL HISTORY

On May 3, 2021 appellant, then a 58-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a lower back condition due to factors of her federal employment including sitting for long periods of time per day. She explained that she was a limited-duty employee, in a sedentary position, due to a work-related injury in 2012. Appellant noted that she first became aware of her condition on September 1, 2020, and realized its relation to her federal employment on January 6, 2021.³ She stopped work on December 22, 2020.

In an April 19, 2021 narrative statement, appellant related that on or about September 1, 2020, she started having pain and numbness down the right buttock into the upper leg and feet. She noted that since 2012, she was a limited-duty employee due to a work injury, but had various jobs, most of which were outside of her work modifications. Appellant explained that on or about the end of August 2020, a work modification assignment was updated and she described her work duties, including sitting for long periods of time, most days up to eight hours. She went from being active to being sedentary. Appellant noted that on December 23, 2020 she saw a chiropractor, who placed her off work for two weeks until he got her pain under control, took an x-ray, and advised her to see Dr. Charles N. Seal, a Board-certified orthopedic surgeon. She related that on January 6, 2021, Dr. Seal placed her off work pending a magnetic resonance imaging (MRI) scan which revealed bone spurs in the neck, loss of disc height in the last disc, and arthritis throughout the spine. Dr. Seal advised that her conditions had been going on for a while, but could be brought on by an accident or onset change. Appellant explained that due to medication allergies, Dr. Seal referred her to physical therapy instead of surgery, which brought a great amount of relief in the pain; however, the numbness worsened in her feet and right buttock.

OWCP received January 10, 2021 lumbar and cervical spine diagnostic studies.

In a progress notes dated January 6 and 14, and May 4, 2021, Dr. Seal noted that sitting at work caused appellant pain. He related that her MRI scan revealed cervical spinal stenosis at C5-6 and C6-7, and lumbar spine loss of disc height with stenosis at L5-S1. Dr. Seal listed appellant's

³ OWCP assigned the current claim OWCP File No. xxxxxx476. The record reflects that appellant has several prior claims. In OWCP File No. xxxxxx762, OWCP accepted appellant's November 17, 2005 traumatic injury claim (Form CA-1) for sprain/strain of neck and sprain/strain of thoracic spine. In OWCP File No. xxxxxx126, it accepted appellant's March 3, 2009 traumatic injury claim for left ankle sprain. In OWCP File Nos. xxxxxx334 and xxxxxx664, OWCP denied appellant's July 2, 2012 traumatic injury claim as duplicative. In OWCP File No. xxxxxx240, OWCP accepted appellant's July 2, 2012 traumatic injury for lateral epicondylitis, left elbow and cartilage loss of the capitellum, left elbow (aggravation), authorized left shoulder arthroscopic lateral epicondylitis release/debridement of capitellar lesion and radial head lesion performed on November 13, 2012. On July 12, 2013 it granted appellant a schedule award for six percent permanent impairment of left upper extremity under OWCP File No. xxxxxx240. OWCP has not administratively combined the current file with the others.

diagnoses cervical and lumbar radicular pain. In the May 4, 2021 progress note, he also diagnosed lumbar disc herniation with radiculopathy.

In a May 4, 2021 duty status report (Form CA-17), Dr. Seal provided clinical findings of lumbar radiculopathy pain. He advised that appellant could resume work with restrictions from March 14 through July 31, 2021.

In a progress note dated May 19, 2021, Dr. David Kim, Board-certified in physical medicine and rehabilitation and pain medicine, assessed lumbosacral radiculopathy at L1 and L5, and referred appellant for a nerve conduction study.

OWCP also received an undated return to work certificate, bearing an illegible signature, indicating that appellant had back pain and lumbar radiculitis, and that she could resume work with restrictions, effective July 31, 2021.

In a June 7, 2021 report, Sarah Russell, a nurse practitioner, indicated that appellant was off work because of an exacerbation of pain.

By decision dated July 15, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that she sustained a back condition causally related to the accepted factors of her federal employment.

On August 26, 2021 appellant requested reconsideration. In support of her request, she submitted a July 29, 2021 letter by Dr. Faisal Siddiqui, a Board-certified orthopedic surgeon. Dr. Siddiqui opined that appellant's injuries were directly related to her work at the employing establishment. In an addendum letter dated August 13, 2021, he explained that appellant's employment-related lower back injury was caused by sitting for long periods of time greater than 15 minutes, standing, bending, and lifting packages weighing up to 50 pounds for extended time periods, even with her work modification that was in place for her for previous left elbow injury.

OWCP, by decision dated October 20, 2021, denied modification of its July 15, 2021 decision.

OWCP subsequently received an addendum letter dated November 9, 2021 from Dr. Siddiqui who diagnosed other intervertebral disc displacement, lumbar region; radiculopathy, lumbar region; and spondylosis without myelopathy or radiculopathy, lumbar region. Dr. Siddiqui opined that appellant's lower back injury was causally related to her previously noted work duties.

On March 28, 2022 appellant requested reconsideration of the October 20, 2021 decision. In support of her request, she submitted a March 22, 2022 letter from Dr. Jared Tareen, a Board-certified orthopedic surgeon. Dr. Tareen opined that appellant had herniation at L5-S1 that was directly caused by her work duties that included lifting over 10 pounds, twisting, and bending. He further opined that she had degenerative disc disease at LS-S1 and bilateral lumbar radiculopathy which were directly aggravated by heavy lifting at work. Dr. Tareen concluded that appellant could work with restrictions, of no heavy lifting over 10 pounds, and no pushing, pulling, standing, sitting or walking for more than 20 minutes.

On August 17, 2022 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. James R. Schwartz, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether appellant had any medical conditions causally related to her employment.

In an August 31, 2022 report, Dr. Schwartz recounted appellant's history of medical treatment, and opined that appellant had a temporary aggravation of lumbar degenerative disc disease at L5-S1. He noted that it was not clear if the aggravation was permanent. Dr. Schwartz also noted that appellant had preexisting work injuries and was working under light-duty conditions. Dr. Schwartz completed a work capacity evaluation (Form OWCP-5c) on even date and advised that appellant could perform limited-duty work, eight hours per day with restrictions.

On September 16, 2022 accepted appellant's claim for intervertebral disc degeneration, lumbar region L5-S1, temporary aggravation.

On October 4, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work during the period December 23, 2020 through September 29, 2022.

In an October 11, 2022 development letter, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of factual and medical evidence necessary to establish her claim. OWCP afforded appellant 30 days to submit the necessary evidence.

On October 25, 2022 appellant responded to OWCP's letter and indicated that there was no limited-duty position available for her and the employing establishment could not accommodate her request for a position which would require that she travel less than 68 miles to the employing establishment. She provided a copy of her modified assignment due to her July 2, 2012 employment injury in File No. xxxxxx240 and noted that she had worked in that capacity since 2012 in several employing establishment facilities.

OWCP continued to receive reports from Dr. Seal. In a January 14, 2021 report, Dr. Seal continued to diagnose lumbar radicular pain.

In an October 28, 2022 report, Dr. Louis A. Magdon III, a Board-certified orthopedic surgeon, diagnosed lumbar spinal stenosis, lumbar radiculopathy, and lumbar degenerative disc disease.

By decision dated May 31, 2023, OWCP denied appellant's claim for compensation for disability from work for the period December 23, 2020 and continuing, finding that the medical evidence of record did not contain a rationalized medical opinion to establish that she was totally disabled for work during the claimed period due to her accepted employment injury.

OWCP subsequently received a report dated July 20, 2023 by Ms. Russell, who diagnosed autoimmune thyroiditis, prediabetes, periodic headache syndromes, and hormone replacement therapy.

An August 25, 2023 functional capacity evaluation (FCE) from a physical therapist indicated that appellant was capable of light work.

On November 13, 2023 appellant requested reconsideration of the May 31, 2023 disability decision. In support of her request, she submitted a report dated October 31, 2023 from Dr. Elisa Kucia, a Board-certified neurosurgeon. Dr. Kucia diagnosed multilevel degenerative changes, worst at L5-S1 where there was mild-to-moderate bilateral foraminal and lateral recess stenosis, greater on the left.

By decision dated February 7, 2024, OWCP denied modification of the May 31, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.⁵ 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.⁶ 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.⁷

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. 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.⁸

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

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ See *L.R.*, Docket No. 21-0018 (February 17, 2023); *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); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

⁶ 20 C.F.R. § 10.5(f); see *A.N.*, Docket No. 20-0320 (issued March 31, 2021); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁷ See *A.N.*, *id.*; *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, *supra* note 5.

⁸ *T.L.*, Docket No. 20-0978 (issued August 2, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing December 23, 2020, causally related to her accepted employment injury.

Appellant submitted progress notes dated January 4, 6, and 14, and May 4, 2021 from Dr. Seal, who diagnosed cervical and lumbar radicular pain and lumbar disc herniation with radiculopathy. He did not, however, provide an opinion that appellant was disabled from work for the period December 23, 2020 and continuing. 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.¹⁰ As such, these progress notes are insufficient to establish appellant's disability claim.

Likewise, a May 19, 2021 progress note from Dr. Kim; reports dated July 29, August 13, and November 9, 2021 from Dr. Siddiqui; an October 28, 2022 report from Dr. Magdon; and October 31 and November 13, 2023 reports from Dr. Kucia are also insufficient to establish that appellant's disability from December 23, 2020 through September 29, 2022 was causally related to the accepted employment injury. None of these reports explained why appellant was disabled from work for the period December 23, 2020 and continuing. As discussed above, medical evidence that does not offer an opinion as to why appellant is unable to perform her employment duties due to the accepted injury is of no probative value.¹¹ Therefore, this evidence is insufficient to establish appellant's disability claim.

OWCP also received Dr. Tareen's March 22, 2022 report in which he opined that appellant could work with restrictions. However, he did not provide an opinion regarding the cause of appellant's work restrictions. 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.¹² Therefore, the Board finds that his report is insufficient to meet appellant's disability claim.

The August 31, 2022 Form OWCP-5c report of Dr. Schwartz, OWCP's second opinion physician, found that appellant could work eight hours per day with restrictions. Dr. Schwartz did

⁹ *W.C.*, Docket No. 19-1740 (issued June 4, 2020); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁰ *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).

¹¹ *Id.*

¹² *See A.O.*, Docket No. 24-0382 (issued May 16, 2024); *S.M.*, 22-1209 (issued February 27, 2024); *M.P.*, Docket No. 23-0759 (issued January 23, 2024); *F.S.*, Docket No. 23-0112 (issued April 26, 2023); *A.S.*, Docket No. 21-1263 (issued July 24, 2023); *R.J.*, Docket No. 19-0179 (issued May 26, 2020); *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019); *L.B.*, *supra* note 10; *D.K.*, *supra* note 10.

not, however, provide an opinion regarding the cause of appellant's work restrictions. Therefore, the Board finds that his report is insufficient to establish appellant's disability claim.¹³

Additionally, appellant submitted evidence from a nurse practitioner, and a physical therapist. The Board has held that certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.¹⁴ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Thus, this evidence is also insufficient to establish the disability claim.

Appellant also submitted results from diagnostic testing. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused her to be disabled during the claimed period.¹⁵

As the medical evidence of record is insufficient to establish that appellant was disabled from work commencing December 23, 2020, causally related to the accepted employment injury, the Board finds that she 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 disability from work commencing December 23, 2020, causally related to her accepted employment injury.

¹³ *Id.*

¹⁴ 5 U.S.C. § 8101(2) provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law, 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *See also A.F.*, Docket No. 24-0469 (issued June 24, 2024) (a nurse practitioner is not considered a physician as defined under FECA); *K.D.*, Docket No. 22-0756 (issued November 2022) (a physical therapist is not considered a physician under FECA).

¹⁵ *See V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 31, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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