

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

M.F., Appellant	)	
	)	
and	)	<b>Docket No. 24-0445</b>
	)	<b>Issued: May 23, 2024</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>WEST HAVEN VA MEDICAL CENTER,</b>	)	
<b>VETERANS CANTEEN SERVICE,</b>	)	
<b>West Haven, CT, Employer</b>	)	
	)	

*Appearances:*  
Appellant, *pro se*  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On March 24, 2024 appellant filed a timely appeal from a November 17, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> 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 to consider the merits of this case.

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<sup>1</sup> The Board notes that, following the November 17, 2023 decision, OWCP received additional evidence. 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.*

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

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish disability from work for the period July 20 through 25, 2023 causally related to his accepted April 13, 2023 employment injury.

## **FACTUAL HISTORY**

On April 19, 2023 appellant, then a 56-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on April 13, 2023 he sustained an injury to his arms, shoulders, neck, and back when pulling a pallet jack while in the performance of duty. He stopped work on April 14, 2023.

The employing establishment, on April 21, 2023, issued an authorization for examination and/or treatment (Form CA-16). In Part B of the Form CA-16, attending physician's report, Dr. Angelo Accomando, an internist, reported that he treated appellant on April 24, 2023 for chronic right shoulder pain. He indicated by checking a box marked "Yes" that the condition resulted from appellant having pulled a pallet at work. Dr. Accomando indicated that appellant was disabled from work for the period April 14 through 28, 2023 and that he could return to light-duty work on May 1, 2023 with restrictions.

In a June 19, 2023 attending physician's report (Form CA-20), Dr. Phillip Luchini, a Board-certified orthopedic surgeon, diagnosed traumatic incomplete tear of the right rotator cuff and reported that appellant could return to regular work on June 20, 2023.

On July 10, 2023 OWCP accepted the claim for strain of the muscles and tendons of the right shoulder rotator cuff.

On July 25, 2023 Dr. Luchini reported that appellant had experienced exacerbation of his shoulder pain and was totally disabled from work from July 20<sup>3</sup> through 25, 2023. He repeated his previous diagnoses and opined that appellant was still symptomatic with a partial tear of the rotator cuff and a biceps tendinitis of the right shoulder and associated symptoms of cervical sprain with some paresthesias to the right upper extremity. Dr. Luchini found that appellant could return to regular work on July 26, 2023.

In an August 9, 2023 report, Dr. Luchini recounted that appellant had developed neck pain on June 13, 2023 when he was using his left hand to pull a suitcase. He diagnosed sprain of the ligaments of the cervical spine. Dr. Luchini opined that appellant could continue regular-duty work. Appellant also provided notes from Stacy Wagner, a physical therapist.

On August 10, 2023 Dr. Accomando completed a Form CA-20 and diagnosed rotator cuff partial tear with tendinopathy resulting from pulling a pallet jack. He found that appellant was totally disabled from April 14 through October 12, 2023.

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<sup>3</sup> Dr. Luchini indicated that appellant was unable to work from "July 28, 2023 through July 25, 2023." However, he corrected the period to July 20 through 25, 2023 in an August 3, 2023 addendum.

Dr. Luchini completed an August 30, 2023 report diagnosing traumatic incomplete tear of the right rotator cuff with residual anterior shoulder pain and slight limitations of range of motion. He determined that appellant could continue working in his regular occupation.

On September 21, 2023 appellant filed a claim for compensation (Form CA-7) for total disability from work for the period July 20 through 25, 2023.

In a development letter dated October 10, 2023, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation. It advised him of the type of factual and medical evidence needed and afforded him 30 days to respond.

On September 27, 2023 Dr. Kenneth W. Donohue, a Board-certified orthopedic surgeon, recounted appellant's April 13, 2023 employment incident and diagnosed partial-thickness rotator cuff tear. He referred appellant for evaluation of cervical radiculopathy.

In October 6, 2023 reports, Dr. Jonathan N. Grauer, a Board-certified orthopedic surgeon, examined appellant due to cervical spine issues. He recounted that appellant began to notice his symptoms in April while performing work and initially believed that these were due to his right shoulder injury. Appellant related that he had experienced some improvement in the symptoms involving his right shoulder, but he had recently increased symptoms involving his neck.

By decision dated November 17, 2023, OWCP denied appellant's claim for disability from work for the period July 20 through 25, 2023, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period due to the accepted April 13, 2023 employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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>4</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>5</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>6</sup>

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment

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<sup>4</sup> See *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 4; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

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>7</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>8</sup> Rationalized medical evidence is medical evidence, which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's claimed disability and the accepted employment injury. 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 period of disability and the accepted employment injury.<sup>9</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>10</sup> 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>11</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period July 20 through 25, 2023 causally related to his accepted April 13, 2023 employment injury.

OWCP accepted the claim for strain of the muscles and tendons of the right shoulder rotator cuff. On July 25, 2023 Dr. Luchini reported that appellant experienced exacerbation of his shoulder pain and was totally disabled from July 20 through 25, 2023. He opined that appellant was still symptomatic with a partial tear of the rotator cuff and a biceps tendinitis of the right shoulder and associated symptoms of cervical sprain with some paresthesias to the right upper extremity. Although Dr. Luchini opined that appellant was unable to work during the claimed period of disability, he did not provide medical reasoning explaining the nature of the relationship between the claimed disability and the accepted employment injuries.<sup>12</sup> As such, this report is insufficient to establish appellant's claim.

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<sup>7</sup> *Id.*

<sup>8</sup> *C.J.*, Docket No. 21-1424 (issued February 27, 2024); *J.M.*, Docket No. 19-0478 (issued August 9, 2019).

<sup>9</sup> *R.H.*, Docket No. 18-1382 (issued February 14, 2019).

<sup>10</sup> 20 C.F.R. § 10.501(a); *V.P.*, Docket No. 21-1111 (issued May 23, 2022); *C.E.*, Docket No. 19-1617 (issued June 3, 2020); *M.M.*, Docket No. 18-0817 (issued May 17, 2019); *see T.A.*, Docket No. 18-0431 (issued November 7, 2018); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>11</sup> *C.E., id.; M.M., id.; see V.B.*, Docket No. 18-1273 (issued March 4, 2019); *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>12</sup> *T.H.*, Docket No. 23-0811 (issued February 13, 2024); *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *R.C.*, Docket No. 17-0748 (issued July 10, 2018); *Dean E. Pierce*, 40 ECAB 1249 (1989).

The April 24, 2023 attending physician's report, Part B of the Form CA-16, completed by Dr. Accomando predates the claimed period of disability. Therefore, the report is of no probative value and is insufficient to establish appellant's claim for compensation.<sup>13</sup>

On August 10, 2023 Dr. Accomando completed a Form CA-20 and diagnosed rotator cuff partial tear with tendinopathy resulting from pulling a pallet jack. He found that appellant was totally disabled from April 14 through October 12, 2023. Dr. Accomando, however, did not provide an opinion indicating that appellant was disabled from work during the claimed period due to the accepted April 13, 2023 employment conditions.<sup>14</sup> The Board has held that medical evidence that does not provide an opinion as to whether a period of disability is due to an accepted employment-related condition is insufficient to meet a claimant's burden of proof.<sup>15</sup> Therefore, the report from Dr. Accomando is insufficient to establish appellant's claim for compensation.

Dr. Donohue completed a September 27, 2023 report diagnosing partial-thickness rotator cuff tearing and Dr. Grauer provided October 6, 2023 reports diagnosing cervical spine issues. However, neither physician offered an opinion as to whether appellant was disabled from work due to the accepted conditions during the claimed period. Therefore, these reports are of no probative value and are insufficient to establish his claim for compensation.<sup>16</sup>

Appellant also submitted notes from Ms. Wagner, a physical therapist. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified physicians as defined under FECA.<sup>17</sup> Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.<sup>18</sup>

As the medical evidence of record is insufficient to establish causal relationship between the claimed period of disability and the accepted April 13, 2023 employment injury, the Board finds that he has not met his burden of proof.

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<sup>13</sup> *K.K.*, Docket No. 22-0270 (issued February 14, 2023); *B.C.*, Docket No. 22-0940 (issued January 4, 2023).

<sup>14</sup> *See T.L.*, Docket No. 23-1039 (issued February 23, 2024); *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>15</sup> *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.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>16</sup> *T.H.*, Docket No. 23-0811 (issued February 13, 2024); *F.B.*, Docket No. 22-0679 (issued January 23, 2024); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020); *see also L.B., id.; D.K., id.*

<sup>17</sup> Section 8101(2) of FECA 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. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *K.D.*, Docket No. 22-0756 (issued November 2022) (a physical therapist is not considered a physician under FECA); *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).

<sup>18</sup> *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id.*

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 his burden of proof to establish disability from work for the period July 20 through 25, 2023 causally related to his accepted April 13, 2023 employment injury.<sup>19</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 17, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 2024  
Washington, DC

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

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

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

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<sup>19</sup> The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *C.H.*, Docket No. 24-0212 (issued April 22, 2024); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).