

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

|                                    |   |                                 |
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| V.A., Appellant                    | ) |                                 |
|                                    | ) |                                 |
| and                                | ) | <b>Docket No. 24-0886</b>       |
|                                    | ) | <b>Issued: November 7, 2024</b> |
| U.S. POSTAL SERVICE, NORTH HOUSTON | ) |                                 |
| PROCESSING & DISTRIBUTION CENTER,  | ) |                                 |
| North Houston, TX, Employer        | ) |                                 |
|                                    | ) |                                 |

*Appearances:*  
*Appellant, pro se*  
*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 September 3, 2024 appellant filed a timely appeal from June 11 and August 9, 2024 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish disability from work commencing January 20, 2024 causally related to his accepted employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the August 9, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

## **FACTUAL HISTORY**

On September 1, 2023 appellant, then a 73-year-old electronic technician, filed a traumatic injury claim (Form CA-1) alleging that on August 31, 2023 he injured his shoulder, right leg, and hip when he caught his foot in strapping material, tripped, and fell while in the performance of duty. He stopped work on August 31 and returned on September 3, 2023. OWCP accepted the claim for contusion of the lower back, pelvis, and right hip, and right arm and right shoulder strains.

On October 4, 2023 Dr. Scott Bischoff, a physician specializing in sports medicine, examined appellant and observed limited range of motion in the lumbar spine, and an S1 sensory impairment with muscle weakness in the L4, L5, and S1 dermatomes resulting in decreased dorsiflexion of the right foot. He additionally diagnosed acute low back pain with radicular symptoms. Dr. Bischoff released appellant to return to work with no restrictions.

In an October 17, 2023 report, Dr. Bischoff related that appellant had not been working and that no light-duty work was available. He described the accepted August 31, 2023 employment incident and reviewed the October 13, 2023 lumbar magnetic resonance imaging (MRI) scan which demonstrated disc herniations at L3-4, L4-5, and L5-S1. Dr. Bischoff completed a duty status report (Form CA-17) of even date and determined that appellant could perform his full-duty work without restrictions.

On December 19, 2023 Dr. Benjamin Agana, a Board-certified physiatrist, indicated that appellant could perform his full-duty work. He completed a narrative report of even date recounting appellant's history of injury on August 31, 2023 and describing his course of medical treatment. Dr. Agana noted that appellant had experienced progressive weakness and stiffness of the lower extremities without pain causing a decline in his function and mobility. He performed electromyogram and nerve conduction velocity (EMG/NCV) studies which were abnormal with evidence of severe axonal/demyelinating neuropathy in the bilateral lower extremities with no gross evidence of radiculopathy. Dr. Agana related that his condition was not a clear-cut lumbar radiculopathy, but instead a substantial axonal demyelinating neuropathy causing muscle denervation. He opined that the relationship of this condition to appellant's work-related injury was unknown.

Dr. Bischoff completed a January 2, 2024 report and reviewed Dr. Agana's December 19, 2023 report. He continued to find that appellant could work without restrictions on January 2, 2024.

In a memorandum of telephone call (Form CA-110) dated January 22, 2024, appellant informed OWCP that lumbar spine surgery was scheduled.

In a January 22, 2024 note, Dr. Steven Cyr, a Board-certified orthopedic surgeon, related that appellant was scheduled for major surgery on February 2, 2024 and found him totally disabled from January 20 through March 20, 2024.

On January 26, 2024 appellant filed a claim for compensation (Form CA-7) alleging disability from work commencing January 20, 2024.

On March 12, 2024 appellant submitted a narrative statement summarizing the medical evidence that he felt supported his claimed period of disability. He provided additional diagnostic studies. Appellant also submitted an unsigned report from a medical provider dated January 17, 2024.

In a development letter dated May 6, 2024, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation for disability from work commencing January 20, 2024. It advised him of the type of medical evidence needed and afforded him 30 days to respond.

OWCP continued to receive evidence. On April 27, 2024 Dr. Bischoff related appellant's August 31, 2023 employment incident and diagnosed right shoulder pain as a direct result of the August 31, 2023 fall.

In a May 9, 2024 letter, OWCP requested additional evidence including a copy of the operative report and a narrative medical report addressing the relationship between the accepted employment incident and the scheduled surgery.

By decision dated June 11, 2024, OWCP denied appellant's claim for disability from work commencing January 20, 2024, finding that the medical evidence of record was insufficient to establish causal relationship of the accepted employment injury.

Thereafter, in a June 14, 2014 report, Dr. Bischoff recounted the August 31, 2023 employment incident and reviewed the medical records. He reviewed a report from Dr. Cyr, which included a recommendation from a C3-6 anterior cervical fusion. Dr. Bischoff concluded that it was within reasonable medical probability that the fall at work on August 31, 2023 resulted in a worsening of the chronic changes in his cervical spine and thus a worsening of his central canal stenosis.

In a June 20, 2024 letter, OWCP requested that appellant provide his operative report, a diagnosis of the medical conditions treated, and a medical explanation detailing how the need for surgery arose as a result of the accepted employment incident.

OWCP continued to receive medical evidence. On February 2, 2024 appellant underwent cervical discectomies and fixations due to the diagnoses of C3-6 rigid kyphosis, C3-6 stenosis, cervical spondylitic myeloradiculopathy, and C3-6 instability. Dr. Cyr explained that he examined appellant due to progressive lower extremity weakness. Approximately one year earlier appellant began to notice right footdrop with difficulty walking and inability to drive. His symptoms evolved to include the inability to flex his hips or push off of the ground with his right leg, a progressive loss of balance, and wide-based ataxic gait. On physical examination Dr. Cyr found cervical kyphosis with an inability for appellant to extend his neck and diagnostic studies revealed severe degenerative changes from C3 through C6 and segmental instability on flexion. As a result, due to the multilevel nature of appellant's condition and the severity of his symptoms with what appeared to be more severe spinal cord compression due to a combination of kyphosis and stenosis in addition to the lower extremity symptoms that are more consistent with a cervical myelopathy versus a lumbar radiculopathy, the priority was to address his cervical spine pathology.

On July 31, 2024 appellant requested reconsideration.

In an August 1, 2024 letter, OWCP requested that Dr. Bischoff explain the relationship between the February 2, 2024 cervical spine surgery and the August 31, 2023 employment incident. No response was received.

By decision dated August 9, 2024, OWCP denied modification.

### **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>3</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.<sup>4</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>5</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>6</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.<sup>7</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 accepted employment injury.<sup>8</sup>

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work causally related to the accepted employment injury.<sup>9</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.

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<sup>3</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> 20 C.F.R. § 10.5(f).

<sup>5</sup> *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>6</sup> *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

<sup>7</sup> *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

<sup>8</sup> *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

<sup>9</sup> *See B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work commencing January 20, 2024 causally related to his accepted August 31, 2023 employment injury.

In a June 14, 2014 report, Dr. Bischoff recounted the August 31, 2023 employment incident and reviewed the medical records. He reviewed a report from Dr. Cyr which included a recommendation from a C3-6 anterior cervical fusion. Dr. Bischoff concluded that it was within reasonable medical probability that the fall at work on August 31, 2023 resulted in a worsening of the chronic changes in his cervical spine and thus a worsening of his central canal stenosis. However, this evidence is of no probative value because Dr. Bischoff did not provide an opinion that appellant was totally disabled from work during the claimed period causally related to the accepted employment injury.<sup>11</sup> Therefore, this evidence is insufficient to establish appellant's disability claim.

In a January 22, 2024 note, Dr. Cyr found appellant totally disabled from January 20 through March 20, 2024 due to a scheduled surgery. On February 2, 2024 he explained that he examined appellant due to progressive lower extremity weakness. Dr. Cyr found cervical kyphosis with an inability to extend his neck and that diagnostic studies revealed severe degenerative changes from C3 through C6 and segmental instability on flexion. As a result, he determined that cervical spine surgery was appropriate. These reports are of no probative value as he did not address whether and how appellant's disability during the claimed period was caused by the accepted employment conditions.<sup>12</sup>

Appellant also submitted a series of reports from Dr. Bischoff dated October 4, 2023 through January 2, 2024 and a report from Dr. Agana dated December 19, 2023, discussing his medical history and the accepted August 31, 2023 employment incident. These reports, however, did not address whether he was disabled from work on or after January 20, 2024. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's disability is of no probative value on the issue of causal relationship. As such, this evidence is insufficient to establish appellant's claim.<sup>13</sup>

The case record also contains results of diagnostic testing. However, the Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the

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<sup>10</sup> *Id.*

<sup>11</sup> *A.M.*, Docket No. 24-0413 (issued July 31, 2024).

<sup>12</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship); *see also G.M.*, Docket No. 24-0388 (issued May 28, 2024); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>13</sup> *Id.*

employment injury caused appellant to be disabled during the claimed period.<sup>14</sup> This evidence is therefore insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish disability from work commencing January 20, 2024 causally related to the accepted August 31, 2023 employment injury, the Board finds that appellant has not met his 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 his burden of proof to establish disability from work commencing January 20, 2024 causally related to his accepted August 31, 2023 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 11 and August 9, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 7, 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

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<sup>14</sup> V.A., Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).