

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

M.R., Appellant	)	
	)	
and	)	<b>Docket No. 24-0846</b>
	)	<b>Issued: October 29, 2024</b>
DEPARTMENT OF VETERANS AFFAIRS,	)	
NEW ORLEANS VA MEDICAL CENTER,	)	
New Orleans, LA, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On August 15, 2024 appellant filed a timely appeal from a July 23, 2024 merit decision 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 her burden of proof to establish disability from work commencing May 19, 2024, causally related to her accepted April 1, 2024 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 July 23, 2024 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.*

## **FACTUAL HISTORY**

On April 2, 2024 appellant, then a 57-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on April 1, 2024 she injured her left knee when she tripped and fell onto a pallet, striking her knee, while in the performance of duty. She stopped work on the claimed date of injury and received continuation of pay from April 2 through May 16, 2024. OWCP accepted the claim for contusion of left knee and sprains of the lumbar spine and left knee.

X-rays of the left leg dated April 1, 2024 revealed prepatellar subcutaneous soft tissue edema, generalized osteopenia and mild degenerative changes of the hip, knee, and ankle.

In a form report dated April 1, 2024, Dr. Thao Dola, a Board-certified internist, noted that appellant had sustained a work-related injury and anticipated she would be able to return to work on April 8, 2024.

In a medical report dated April 4, 2024, Dr. Kevin Johnson, a family medicine physician, noted that appellant related complaints of left knee pain due to a trip and fall onto the knee at work on April 1, 2024. He indicated that she initially experienced swelling and burning pain in the left knee, which was later followed by lower back and left hip pain when she stood from a seated position or walked for 10 yards or more. Dr. Johnson performed a physical examination of appellant's low back, which revealed tenderness and spasm in the lumbar spine and radiating pain in the left hip. On examination of the left knee, he documented a contusion, healing laceration, swelling, tenderness to palpation, and a positive anterior drawer sign. Dr. Johnson diagnosed lumbar sprain, disc disease with myelopathy, contusion and laceration of the left knee, and left knee internal derangement. He recommended magnetic resonance imaging (MRI) of the lower back and left knee. In a duty status report (Form CA-17) of even date, Dr. Johnson advised that appellant was unable to work.

In a form report dated April 4, 2024, Dr. Johnson indicated that appellant was unable to work from April 1 through July 1, 2024, noting that she could not stand, bend, or lift 10 pounds.

In an attending physician's report (Form CA-20) dated April 18, 2024, Dr. Johnson diagnosed left knee contusion, swelling, laceration, and laxity concerning for internal derangement, lob ack radicular spasm. He opined that appellant would be totally disabled from April 1 through July 1, 2024, and that she was scheduled for an orthopedic surgery consultation on May 1, 2024.

In a May 1, 2024 medical report, Dr. Douglas Bostick, a Board-certified orthopedic surgeon, noted that appellant related medial and lateral joint pain and swelling in the left knee and left shoulder pain, which she attributed to the April 1, 2024 employment injury. He performed a physical examination, which revealed left knee swelling and exquisite tenderness over the medial and lateral joint line, pain with McMurray testing medially and laterally, pain with flexion of the left knee past 90 degrees, and no instability with ligamentous testing. Dr. Bostick diagnosed left knee pain, left knee and shoulder strains, and internal derangement of the left knee. In a Form CA-17 of even date, he indicated that appellant was unable to work in any capacity due to a left knee sprain.

In reports dated May 3 through June 17, 2024, Dr. Jonathan R. Poole, a chiropractor, noted appellant's subjective complaints and physical examination findings and diagnosed a left knee

contusion, lumbar disc disease, strain of left knee, sacroiliac (SI) sprain, lumbar sprain, and left knee pain. He recommended various chiropractic modalities.

On June 6, 2024 appellant began filing claims for compensation (Form CA-7) for disability from work, effective May 19, 2024.

In a development letter dated June 18, 2024, OWCP informed appellant of the deficiencies of her claim for compensation. It advised her of the type of factual and medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

A June 6, 2024 MRI scan of the lumbar spine revealed loss of lordotic curve, right-sided disc herniations at L3-4 and L5-S1, and a disc bulge at L4-5.

An MRI scan of the left knee of even date demonstrated a partial thickness tear of the anterior collateral ligament (ACL), oblique horizontal tear of the anterior horn of the lateral meniscus, mild chondromalacia patella, a Baker's cyst, and marrow edema in the head of the fibula.

In a report dated June 26, 2024, Dr. Bostick indicated that appellant related complaints of popping and swelling in her left knee but that she wanted to return to light-duty work. He reviewed her MRI scan results and performed a physical examination, which revealed tenderness, but no mechanical findings. Dr. Bostick diagnosed left knee pain, left knee and shoulder strains, and an acute lateral meniscus tear of the left knee. In a Form CA-17 of even date, he released appellant to return to work with restrictions including up to six hours per day standing, walking, twisting, pushing, and pulling no greater than 15 pounds.

In a June 27, 2024 note, Dr. Petrus Malherbe, an emergency medicine physician, noted only that appellant had been treated in the emergency room that day and could return to work, effective July 8, 2024.

In a July 8, 2024 medical report, Dr. Bostick noted that appellant had been seen in the emergency room recently for complaints of acute right ankle pain and swelling, which she attributed to putting more pressure on her right side to protect her left knee. He performed a physical examination and documented stable findings in the left knee and swelling of the right ankle. Dr. Bostick diagnosed left knee pain, left knee and left shoulder strain, left knee meniscus tear, and right ankle pain. In a Form CA-17 and work slip of even date, he diagnosed a left knee meniscal tear and indicated that appellant was totally disabled. Dr. Bostick noted the right ankle as an "other disabling condition."

On July 10, 2024 the employing establishment offered appellant a light-duty assignment with lifting up to 15 pounds.

OWCP also received additional chiropractic reports.

By decision dated July 23, 2024, OWCP denied appellant's claim for compensation finding that the medical evidence of record was insufficient to establish disability from work commencing May 19, 2024, due to the accepted April 1, 2024 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>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>

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>9</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing May 19, 2024, causally related to her accepted April 1, 2024 employment injury.

In support of her claim for compensation, appellant submitted reports and forms by Dr. Johnson dated April 4 and 18, 2024. He diagnosed sprain, disc disease, and myelopathy of the

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<sup>3</sup> *S.F.*, Docket No. 20-0347 (issued March 31, 2023); *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 H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>6</sup> *See H.B.*, *id.*; *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> *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>9</sup> *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

lumbar region, and contusion, laceration, and internal derangement of the left knee. Dr. Johnson indicated that appellant was unable to work from April 1 through July 1, 2024, opining that she was unable to stand, bend, or lift 10 pounds. He did not, however, provide sufficient rationale explaining the nature of the relationship between the claimed disability and the accepted employment injuries.<sup>10</sup> As such, Dr. Johnson's April 4 and 18, 2024 reports are insufficient to establish appellant's claim.

In his May 1, 2024 medical report, Dr. Bostick diagnosed left knee pain, left knee and shoulder strains, and internal derangement of the left knee. In a Form CA-17 of even date, he indicated that appellant was unable to work in any capacity due to the left knee sprain. In a July 8, 2024 Form CA-17, Dr. Bostick diagnosed left knee and right ankle conditions, and indicated that appellant was totally disabled. He did not, however, explain with rationale whether the disability was causally related to the accepted employment injury. The Board has held that reports which lack rationale are of limited probative value on the issue of causal relationship.<sup>11</sup> Therefore, Dr. Bostick's May 1 and July 8, 2024 reports are insufficient to establish appellant's disability claim.

In a medical report and Form CA-17 dated June 26, 2024, Dr. Bostick released appellant to return to work with restrictions including up to six hours per day standing, walking, twisting, pushing, and pulling no more than 15 pounds. He did not, however, explain how the restrictions were related to the April 1, 2024 employment injury, or why appellant could only work with specific restrictions.<sup>12</sup> In addition, although Dr. Bostick outlined work restrictions, he did not indicate that she was totally disabled from work due to her April 1, 2024 employment injury, commencing May 19, 2024.<sup>13</sup> Accordingly, his June 26, 2024 report and Form CA-17 are of diminished probative value, and are insufficient to establish appellant's disability claim.

In a June 27, 2024 note, Dr. Malherbe noted that appellant had been treated in the emergency room that day and could return to work, effective July 8, 2024. However, this report did not offer an opinion as to whether appellant was disabled from work due to the accepted April 1, 2024 employment injury, commencing May 19, 2024. 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>14</sup> Therefore, this report is of no probative value, and is insufficient to establish appellant's claim for compensation.

In a form report dated April 1, 2024, Dr. Dola recommended appellant remain out of work until April 8, 2024. She, however, did not offer an opinion as to whether appellant was disabled

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<sup>10</sup> *M.F.*, Docket No. 24-0445 (issued May 23, 2024); *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).

<sup>11</sup> *See S.C.*, Docket No. 21-0580 (issued February 24, 2023); *K.T.*, Docket No. 17-1717 (issued March 27, 2018).

<sup>12</sup> *See M.B.*, Docket No. 22-0422 (issued April 3, 2023); *D.V.*, Docket No. 19-0868 (issued March 21, 2022); *M.M.*, Docket No. 18-0817 (issued May 17, 2019).

<sup>13</sup> *C.B.*, Docket No. 18-0400 (issued May 7, 2019).

<sup>14</sup> *See S.M.*, Docket No. 22-1209 (issued February 27, 2024) *A.S.*, Docket No. 21-1263 (issued July 24, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

from work due to the accepted April 1, 2024 employment injury commencing May 19, 2024. As Dr. Dola did not address appellant's disability status during the specific dates of disability for which compensation was claimed, this report is of no probative value and is insufficient to establish appellant's claim.<sup>15</sup>

Appellant also submitted chiropractic treatment notes from Dr. Poole. The Board notes that section 8101(2) of FECA provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary.<sup>16</sup> OWCP's implementing federal regulations at 20 C.F.R. § 10.5(bb) defines subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray.<sup>17</sup> The Board has reviewed the reports from Dr. Poole and finds that the reports do not diagnose a subluxation as demonstrated by x-ray. As these reports did not diagnose subluxation as demonstrated by x-ray, they do not constitute competent medical evidence.<sup>18</sup>

The record also contains MRI scans and x-rays. The Board has long held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions or associated disability.<sup>19</sup> For this reason, these diagnostic reports of record are insufficient to establish appellant's disability claim.

As the medical evidence of record is insufficient to establish disability from work commencing May 19, 2024, due to the accepted April 1, 2024 employment injury, 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.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish disability from work commencing May 19, 2024, due to the accepted April 1, 2024 employment injury.

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<sup>15</sup> *Id.* See *C.S.*, Docket No. 17-1686 (issued February 5, 2019).

<sup>16</sup> 5 U.S.C. § 8101(2).

<sup>17</sup> *Id.*; 20 C.F.R. § 10.311.

<sup>18</sup> *G.L.*, Docket No. 24-0366 (issued May 17, 2024); *see J.A.*, Docket No. 22-0869 (issued July 3, 2023); *L.M.*, Docket No. 22-0667 (issued November 1, 2022); *T.H.*, Docket No. 17-0833 (issued September 7, 2017); *George E. Williams*, 44 ECAB 533 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>19</sup> *T.W.*, Docket No. 20-1669 (issued May 6, 2021); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 23, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 29, 2024  
Washington, DC

Alec J. Koromilas, 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