

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

S.S., Appellant	)	
	)	
and	)	Docket No. 24-0814
	)	Issued: September 27, 2024
U.S. POSTAL SERVICE, ROCK SPRINGS	)	
POST OFFICE, Rock Springs, WY, 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 August 7, 2024 appellant filed a timely appeal from a July 31, 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 June 17, 2022 causally related to her accepted June 16, 2022 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 31, 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.*

## **FACTUAL HISTORY**

On June 17, 2022 appellant, then 35-year-old labor relations clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 16, 2022 she injured her low back while lifting/delivering 47 heavy boxes in the performance of duty. She stopped work on June 17, 2022 and has not returned. Effective June 15, 2023, the employing establishment terminated appellant's employment based on her failure to maintain regular attendance. On July 5, 2023 OWCP accepted the claim for other intervertebral disc degeneration, lumbar region.

Appellant subsequently submitted multiple claims for compensation (Forms CA-7) for disability from work for the period June 17, 2022 through September 24, 2023.

In June 17, June 27 and 29, 2022 reports, Richard Anderson, a certified physician assistant, provided an assessment of acute bilateral low back pain, unspecified whether sciatica present. A June 17, 2022 return-to-work summary indicated that appellant had restrictions regarding overhead reaching and lifting, as well as lifting, pushing, and pulling over five pounds. On June 29, 2022 appellant's five-pound lifting, pushing, and pulling restriction was continued.

A June 27, 2022 magnetic resonance imaging (MRI) scan of appellant's lumbar spine demonstrated moderate disc space narrowing at L5-S1 with diffuse disc bulge asymmetric to the left contributing to mild left lateral recess narrowing with mild left neural foraminal narrowing. Multilevel degenerative changes of the lumbar spine were also noted.

A July 13, 2022 computerized tomography (CT) scan reflected mild degenerative disc disease without significant spinal canal narrowing, mild diffuse disc bulge at L5-S1 asymmetric to the left with mild partial effacement of the left lateral recess, with no definite impingement of the down going nerve root; mild left neural foraminal narrowing at L5-S1; and near complete loss of disc height at T12-L1.

A July 13, 2022 MRI scan of the lumbar spine demonstrated mild degenerative disc disease of the lower lumbar spine without dynamic instability.

In a July 13, 2022 attending physician's report (Form CA-20), Mr. Anderson diagnosed low back pain and disc bulging, as seen on MRI scan, which he opined were causally related to the June 16, 2022 work injury. Work restrictions on lifting and frequent position changes were provided.

In an August 15, 2022 Form CA-20, Dr. Henry Fabian, Jr., an orthopedic surgery specialist, reported that appellant hurt her back while delivering mail. He diagnosed a disc bulge causally related to the work injury, and opined that she could return to light work, and possibly regular duty, on September 12, 2022. In a September 6, 2022 work status report, Dr. Fabian, Jr., related that appellant was not released to return to work.

In a January 25, 2023 report, Dr. Jacob Johnson, an osteopath Board-certified in family practice, indicated that appellant's bulging disc at L5-S1 started with the June 16, 2022 work injury when she was carrying a series of boxes, weighing 30 to 40 pounds each, in and out of trucks. He indicated that the MRI scan demonstrated bulging disc at L5-S1 with moderate disc space narrowing at the L5-S1, with a diffuse disc bulge to the left contributing to narrowing of the

foraminal area. Dr. Johnson opined that bulging lumbar disc was causally related to the work injury, as she never had any chronic back pain prior to that event and, to the best of his knowledge, everything is related to the June 16, 2022 work injury. He provided work restrictions and indicated that appellant should not return to work unless the employing establishment could accommodate his specific restrictions. Dr. Johnson indicated that appellant should not lift greater than five pounds, sit no longer than one hour during an eight-hour shift, drive no more than 45 minutes per shift, and can change positions every 30 to 45 minutes. In a January 26, 2023 attending physician's report (Form CA-20), he diagnosed bulging lumbar disc and opined she was totally disabled from June 16, 2022 thru the present.

In a development letter dated July 25, 2023, OWCP indicated that the medical evidence of record was insufficient to support appellant's claimed total disability for all work for the period beginning June 17, 2022. It advised her of the type of evidence required to establish her claim and afforded her 30 days to provide the necessary evidence.

Appellant continued to file CA-7 forms claiming disability from work. Physical therapy progress notes were received, along with diagnostic testing, including a July 28, 2023 lumbar spine x-ray which indicated L5-S1 degenerative disc disease with mild lower lumbar facet arthropathy.

In a July 28, 2023 report, Dr. Katharine A. Smolinski, an osteopath Board-certified in physical medicine and rehabilitation, noted the history of appellant's June 2022 employment injury, reviewed diagnostic testing, and related appellant's physical examination findings. She provided an impression of chronic low back pain with radicular pain in an L5-S1 distribution bilaterally, left more so than right. Dr. Smolonski opined epidural steroid injections were indicated as appellant's pain and function failed to improve with conservative treatment. In an August 25, 2023 work note, she indicated appellant was seen on July 28, 2023 for back pain, and that she could work with restrictions of no lifting, pushing or pulling more than 10 pounds.

In a development letter dated September 8, 2023, OWCP informed appellant of the deficiencies of her claim for total disability from work commencing June 17, 2022. It advised her of the type of evidence required to establish her claim and afforded her 30 days to provide the necessary evidence.

Appellant continued to file CA-7 forms claiming disability from work.

In numerous progress reports, Dr. Smolinski provided an assessment of lumbar radiculopathy. She also provided epidural injections to control appellant's chronic bilateral low back pain with bilateral sciatica.

By decision dated September 29, 2023, OWCP denied appellant's claim for disability for the period commencing June 17, 2022]. It found that the evidence of record was insufficient to establish that she was disabled from work due to the accepted employment injury and, as such, she had not established that her wage loss was due to the accepted work-related injury of June 16, 2022.

On October 19, 2023 appellant requested reconsideration. An August 18, 2023 medical report for an L5-S1 interlaminar epidural steroid injection was received.

In an October 19, 2023 report, Dr. Johnson indicated that appellant continued to have chronic pain that started on June 16, 2022, while lifting/carrying a series of boxes in and out of trucks. He noted that appellant has been unable to return to work, as she had decreased range of motion in her lumbar spine, and weakness in her legs which inhibited her from being able to lift. Dr. Johnson continued to diagnose bulging lumbar disc and opined that she was capable of modified work with restrictions, which he outlined. He indicated that the diagnosis of degenerative disc conditions and the bulging lumbar disc were one and the same and were related to the June 2022 back injury sustained at work.

By decision dated December 20, 2023, OWCP denied modification of its September 29, 2023 decision. It found that the evidence did not support total disability beginning June 17, 2022, as her disability from work was not due to the accepted work-related condition, and she had not established that her wage-loss was due to her inability to perform all work during the entire period claimed from June 17, 2022 onward.

On February 1, 2024 appellant requested reconsideration. She submitted a narrative statement, duplicative evidence previously of record, and a January 25, 2024 note regarding a fluoroscopically-guided procedure.

In a February 1, 2024 report, Dr. Johnson reported that appellant continued to have chronic back pain from the June 16, 2022 employment injury. He provided examination findings and diagnosed bulging lumbar disc. Dr. Johnson opined that the bulging lumbar disc, the sequelae from the nerve pain and all medical treatment, and her inability to return to work were all related to the June 16, 2022 work injury when she tried to move a parcel greater than 50 pounds, which was an acute event. He noted that appellant's case was accepted for intervertebral disc degeneration, which is a condition which happens over time, but appellant's injury happened on a specific date. Dr. Johnson opined that her bulging disc and the inflammation and nerve pain were from the June 16, 2022 acute work injury.

By decision dated March 14, 2024, OWCP denied modification of its December 20, 2023 decision.

On July 30, 2024 appellant requested reconsideration.

The record reflects that on April 30, 2024, Dr. Daniel Possley, a Board-certified orthopedic surgeon, performed a bilateral L5-S1 laminectomy, foraminotomy and medial facetectomy. Postoperative diagnoses were noted as lumbar stenosis, lumbar spondylosis, lumbar radiculopathy and lumbar pain.

In a May 20, 2024 progress note, Dr. Possley reported that appellant had a work injury on June 16, 2022, and has had symptoms since her "fall." He indicated that appellant never had treatment or symptoms to her back prior to her injury and has had back pain and radiating leg pain since. Dr. Possley indicated that nonoperative treatments were unsuccessful, and appellant underwent lumbar surgery on April 22, 2024.

By decision dated July 31, 2024, OWCP denied modification of its March 14, 2024 decision.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> 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 the reliable, probative, and substantial medical opinion evidence.<sup>6</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.<sup>7</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>8</sup> Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>9</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>10</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>11</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>12</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *See M.T.*, Docket No. 21-0783 (December 27, 2021); *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

<sup>6</sup> *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>7</sup> *C.S.*, Docket No. 20-1621 (issued June 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>8</sup> 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>9</sup> *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>10</sup> *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>11</sup> *See S.M.*, Docket No. 22-1209 (issued February 27, 2024); *B.B.*, Docket No. 18-1321 (issued April 5, 2019).

<sup>12</sup> *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *William A. Archer*, 55 ECAB 674 (2004).

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>13</sup> 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 diagnosed condition and the specific employment factors identified by the claimant.<sup>14</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>15</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period commencing June 17, 2022 through September 24, 2023 causally related to her accepted June 16, 2022 employment injury.

In an August 15, 2022 Form CA-20 and September 6, 2022 work status report, Dr. Fabian opined that appellant was totally disabled from work. He related appellant's disability to a bulging disc which he opined was causally related to the work injury. However, Dr. Fabian failed to provide a history of the June 16, 2022 work injury, and a well-rationalized opinion which explained how the diagnosed disc bulge and resultant disability were physiologically caused by the accepted employment injury.<sup>16</sup> Medical evidence that states a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition, is of limited probative value.<sup>17</sup> Therefore, these reports are insufficient to establish that appellant was disabled from work during the claimed period due to her accepted employment injury.

OWCP received several reports from Dr. Johnson. In his January 25, and 26, 2023 reports, Dr. Johnson diagnosed bulging disc at L5-S1 which he opined was causally related to the work injury, as she never had any chronic back pain prior to that event. A medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it, is insufficient, without supporting rationale, to establish causal relationship.<sup>18</sup> Dr. Johnson opined in his October 19, 2023 and February 1, 2024 reports, without further explanation that the diagnosis of degenerative disc and the bulging lumbar disc were one and the same. While Dr. Johnson further opined in his CA-20 of January 26, 2023 that

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<sup>13</sup> *K.B.*, Docket No. 22-0842 (issued April 25, 2023); *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

<sup>14</sup> *R.P.*, Docket No. 18-1591 (issued May 8, 2019).

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

<sup>16</sup> *See T.L.*, Docket No. 23-0073 (issued January 9, 2023); *V.D.*, Docket No. 20-0884 (issued February 12, 2021); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>17</sup> *See C.T.*, Docket No. 22-0013 (issued November 22, 2022); *R.B.*, Docket No. 22-0173 (issued July 26, 2022); *A.P.*, Docket No. 20-1668 (issued March 2, 2022); *D.H.*, Docket No. 17-1913 (issued December 13, 2018).

<sup>18</sup> *See R.S.*, Docket No. 16-1469 (issued December 8, 2016); *D.R.*, Docket No. 16-0411 (issued June 10, 2016); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

appellant was totally disabled from June 16, 2022 due to her bulging lumbar disc as the employing establishment could not accommodate her restrictions, he has not explained, based on objective findings, how appellant's accepted employment injury resulted in disability from work during the claimed period. He did not provide any objective findings which would explain why appellant was totally disabled and unable to perform the work she had performed on the date of injury.<sup>19</sup> The Board has held that findings on examination are needed to support a physician's opinion that an employee is disabled from work, along with medical rationale explaining why work cannot be performed due to the accepted employment injury.<sup>20</sup> Thus, Dr. Johnson's opinion is insufficient to establish that appellant was disabled from work during the claimed period due to her accepted employment injury.

OWCP also received several reports from Dr. Smolinski. In a July 28, 2023 report, Dr. Smolinski noted the history of the June 2022 work-related injury, reviewed diagnostic testing and presented examination findings. She indicated that appellant's clinical presentation was most consistent with chronic low back pain with radicular pain in a L5-S1 distribution bilaterally. In subsequent progress reports August 25, 2023 and continuing, Dr. Smolinski provided an assessment of lumbar radiculopathy. She also diagnosed chronic bilateral low back pain with bilateral sciatica. However, Dr. Smolinski failed to provide a rationalized opinion as to the cause of appellant's diagnosed back conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>21</sup> It is further noted that, in her August 25, 2023 work note, Dr. Smolinski indicated appellant could work with restrictions. Therefore, these reports are insufficient to establish that appellant was disabled from her date-of-injury position during the claimed period due to her accepted employment injury.

In a May 20, 2024 progress note, Dr. Possley indicated that appellant underwent lumbar surgery on April 22, 2024. He reported that she had a work injury on June 16, 2022 and has had symptoms since her "fall." Dr. Possley also indicated that she never had treatment or symptoms to her back prior to her injury and has had back pain and radiating leg pain since. As Dr. Possley is of the opinion that appellant's June 16, 2022 fall led to her surgery, his report is of limited probative value, he did not have an accurate history of injury.<sup>22</sup> Thus, this report is insufficient to establish appellant's disability claim.

Appellant also submitted copies of diagnostic tests. However, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship.<sup>23</sup> Thus, this evidence is insufficient to establish appellant's disability claim.

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<sup>19</sup> *T.S.*, Docket Nos. 20-1177, 20-1296 (issued May 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>20</sup> *Id.*

<sup>21</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>22</sup> *Y.K.*, Docket No. 18-0806 (issued December 19, 2018); *R.B.*, Docket No. 18-0416 (issued September 14, 2018).

<sup>23</sup> *K.B.*, Docket No. 22-0842 (issued April 25, 2023); *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

The remainder of the medical evidence consists of reports from a physician assistant and/or physical therapists. 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.<sup>24</sup> 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.

Because appellant has not submitted rationalized medical opinion evidence to establish employment-related disability commencing June 17, 2022, causally related to her 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 for the period June 17, 2022 through September 24, 2023 causally related to her accepted June 16, 2022 employment injury.

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<sup>24</sup> 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).



**ORDER**

**IT IS HEREBY ORDERED THAT** the July 31, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 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