

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

M.D., Appellant	)	
	)	
and	)	<b>Docket No. 18-0474</b>
	)	<b>Issued: October 3, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Baton Rouge, LA, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 8, 2018 appellant filed a timely appeal from a December 1, 2017 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 the case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish total disability for the period October 8 through 12, 2017 due to her accepted August 23, 2017 employment injury.

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

<sup>2</sup> The record provided the Board includes evidence received after OWCP issued its December 1, 2017 decision. The Board's jurisdiction is limited to the evidence in the case record that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On August 29, 2017 appellant, then a 39-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 23, 2017 she was involved in a motor vehicle accident while in the performance of duty when a vehicle collided into the backside of her postal vehicle. She stopped work on August 28, 2017. By decision dated October 10, 2017, OWCP accepted the claim for other myositis, multiple sites. Appellant initially received continuation of pay.

On October 12, 2017 appellant filed a claim for compensation (Form CA-7) for the period October 8 through 12, 2017.

In support of appellant's claim for wage-loss compensation, OWCP received medical reports and duty status reports (Form CA-17) from Dr. Tyrone Girod, an internal medicine specialist. In his reports, Dr. Girod diagnosed myositis secondary to the motor vehicle accident. In the August 25, 2017 report, he noted the history of the August 23, 2017 motor vehicle accident. Dr. Girod indicated that appellant ambulated very slowly. Appellant had full range of motion of the back with some discomfort. She was also tender to firm palpation of the right interscapular area. Dr. Girod took appellant off work for one week. In the accompanying duty status report, he noted that appellant had muscular pain and stiffness. Dr. Girod recommended no work. In his August 29, 2017 report, he indicated that appellant had significant pain secondary to motor vehicle accident and noted that she requested a referral to an orthopedist. Appellant had soreness of the posterior trapezius interscapular and down into the lower back. He also advised that she was unable to work. An August 29, 2017 duty status report diagnosed myositis due to the injury and recommended no work. In a September 5, 2017 report, Dr. Girod reported that she ambulated very slowly and had limited range of motion to the back. In his accompanying September 5, 2017 duty status report, he recommended no work. In duty status reports of September 18 and 27 and October 12 and 18, 2017, Dr. Girod reported muscle pain and stiffness and recommended no work.

By development letter dated October 26, 2017, OWCP informed appellant that the evidence received in support of her claim for wage-loss compensation was insufficient as the reports failed to provide a reason why appellant was off work. It afforded her 30 days to submit the requested information to establish that disability for the dates claimed was due to her accepted work-related medical condition.

In a November 2, 2017 report, Dr. Girod noted that he initially evaluated appellant for the injuries incurred on August 23, 2017. However, as an internal medicine specialist, he did not feel that he could accurately evaluate the extent of the injuries, so he referred appellant to an orthopedic specialist for further evaluation. Dr. Girod noted that, in the interim, he felt that appellant would not be able to return to work and that he had instructed her not to work until she was seen by the specialist.

In a November 15, 2017 duty status report, an unidentified pain management specialist reported that appellant was working in an alternate position.

OWCP also received copies of appellant's diagnostic studies from September 27, 2017. No evidence of vertebral compression fracture, subluxation, or other acute osseous abnormality in

the x-rays of the cervical, thoracic, and lumbar spine were found. Early degenerative changes at multiple levels were noted.

By decision dated December 1, 2017, OWCP denied appellant's claim for compensation for the period October 8 through 12, 2017.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden proof to establish the essential elements of his or her claim by the weight of the evidence.<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 caused an employee to become disabled from work and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>6</sup>

The claimant must submit medical evidence showing that the condition claimed is disabling.<sup>7</sup> The evidence submitted must be reliable, probative, and substantial.<sup>8</sup> The physician's opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty, and must include objective findings in support of its conclusions.<sup>9</sup> Subjective complaints of pain are insufficient, in and of themselves, to support payment of continuing compensation.<sup>10</sup> Likewise, medical limitations based solely on the fear of a possible future injury are also insufficient to support payment of continuing compensation.<sup>11</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>12</sup> Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated 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

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

<sup>4</sup> See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

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

<sup>6</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>7</sup> 20 C.F.R. § 10.115(f).

<sup>8</sup> *Id.* at § 10.115.

<sup>9</sup> *Id.* at § 10.501(a)(2).

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

<sup>11</sup> *Id.*

<sup>12</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

rationale.<sup>13</sup> Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>14</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>15</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she was totally disabled from work during the period October 8 through 12, 2017 causally related to her accepted employment injury.

In support of her claim, appellant submitted multiple reports and duty status reports from Dr. Girod, who took appellant off work after her initial visit of August 25, 2017. Dr. Girod noted that appellant had full range of motion of the back with some discomfort and was tender to firm palpation of the right interscapular area and ambulated very slowly. He also reported soreness of the posterior trapezius interscapular and down into the lower back. In his September 5, 2017 report, Dr. Girod reported that appellant had limited range of motion to the back. In his duty status reports, he reported muscle pain and stiffness. However, none of the reports from Dr. Girod contained medical rationale which explained how or why the worsening of appellant's symptoms had been caused or aggravated by the accepted myositis condition. As noted, subjective complaints of pain are insufficient, in and of themselves, to support payment of compensation.<sup>16</sup> Furthermore, in his November 7, 2017 letter, Dr. Girod offered no medical explanation as to why he felt appellant would not be able to return to work due to her August 23, 2017 accepted condition. His reports, therefore, do not establish that appellant was totally disabled from work during the claimed period due to her accepted condition.<sup>17</sup>

None of the other medical evidence of record, including the diagnostic studies, address appellant's claimed disability during the period in question.<sup>18</sup> The medical evidence does not establish that she was totally disabled from October 8 through 12, 2017 due to the accepted condition of myositis.<sup>19</sup> Appellant has therefore not met her burden of proof.

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<sup>13</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>14</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>15</sup> *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>16</sup> *See supra* note 9.

<sup>17</sup> *Supra* note 7.

<sup>18</sup> *Supra* note 15.

<sup>19</sup> *See E.B.*, Docket No. 17-1155 (issued January 26, 2018); *J.S.*, Docket No. 14-0818 (issued August 7, 2014).

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 total disability during the period October 8 through 12, 2017 causally related to her accepted August 23, 2017 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 1, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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