

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

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<b>D.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-0900</b>
	)	<b>Issued: October 28, 2019</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Elk Grove Village, IL, Employer</b>	)	
_____	)	

*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 March 26, 2019 appellant filed a timely appeal from a December 18, 2018 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 total disability for the period February 14 to March 23, 2018 causally related to her accepted employment injuries.

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

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. 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 April 17, 2013 appellant, then a 48-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging a neck injury due to working an excessive number hours. She indicated that she first became aware of her claimed injury on July 31, 2012 and first realized its relation to her federal employment on March 15, 2013. Appellant stopped work on March 20, 2013.<sup>3</sup>

OWCP initially accepted appellant's occupational disease claim for cervicalgia and subsequently expanded the accepted conditions to include aggravation of spinal stenosis in the cervical region and cervical radiculopathy of the left arm.

In an August 29, 2015 duty status report (Form CA-17), Dr. Robert J. Strugala, a Board-certified orthopedic surgeon, indicated that appellant could work for five hours per day with restrictions including lifting, pushing, and pulling no more than 10 pounds.

On October 2, 2015 appellant returned to modified-duty work for five hours per day and OWCP paid her wage-loss compensation for three hours per day due to the partial disability causally related to her accepted occupational employment injuries.

In an April 1, 2016 Form CA-17, Dr. Strugala indicated that appellant could continue working for five hours per day with restrictions including lifting, pushing, and pulling no more than 10 pounds.

On August 9, 2016 appellant filed a traumatic injury claim (Form CA-1) alleging that she sustained a neck injury on that date while exiting through the rear door of her postal vehicle and closing the rear door in the performance of duty.<sup>4</sup> She stopped work on August 10, 2016 and returned to work on August 15, 2016 in a modified-duty position for five hours per day. OWCP initially accepted that appellant sustained a neck strain on August 9, 2016 and it later expanded the accepted conditions in the claim to include lumbar sprain and strain of muscle, fascia, and tendon at the neck level. It administratively combined the files for OWCP File Nos. xxxxxx719 and xxxxxx843 and designated OWCP File No. xxxxxx719 as the master file.

After a period of total disability, appellant returned on October 10, 2017 working as a modified city carrier for five hours per day. The position required driving for up to two hours per day, delivering business mail for up to two hours per day, and pushing/pulling up to 10 pounds. OWCP continued to pay appellant wage-loss compensation for three hours per day.

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<sup>3</sup> OWCP assigned this claim OWCP File No. xxxxxx843. Appellant previously filed a claim under a separate file number, OWCP File No. xxxxxx223, which OWCP accepted for closed lumbar vertebrae fracture (without spinal cord injury) and cervical sprain due to a June 27, 2011 motor vehicle accident. She stopped work after the accident and returned to her regular duty on a full-time basis on January 27, 2012.

<sup>4</sup> OWCP assigned the claim OWCP File No. xxxxxx719.

Appellant completely stopped work on February 14, 2018. In connection with her accepted occupational disease claim, she filed a claim for compensation (Forms CA-7) alleging total disability for the period February 14 to March 23, 2018.<sup>5</sup>

In a February 23, 2018 development letter, OWCP requested that appellant submit medical evidence in support of her claim for wage-loss compensation for the period from February 14 to March 23, 2018.

Appellant submitted a February 1, 2018 report from Dr. Strugala who indicated that, prior to August 9, 2016, appellant had been under work restrictions for employment-related cervical injuries which included aggravation of cervical spinal stenosis. Dr. Strugala opined that appellant had recovered from the effects of her August 9, 2016 employment injury, but found that, due to her earlier occupational injuries, she still required the same restrictions that she worked under prior to August 9, 2016. He indicated that appellant's cervical condition was in a stable state and noted that no specific further intervention was planned. In a February 1, 2018 Form CA-17, Dr. Strugala advised that appellant could work for five hours per day with restrictions including lifting, pushing, and pulling no more than 10 pounds.

In a February 16, 2018, 2018 Form CA-17, Dr. Strugala advised that appellant had clinical findings of neck/arm pain and opined that she could not perform any work.<sup>6</sup> In a separate February 16, 2018 form report, he diagnosed spinal stenosis of the cervical region and indicated that appellant could not return to work.<sup>7</sup>

In a March 19, 2018 development letter, OWCP requested that appellant submit additional medical evidence in support of her claim for wage-loss compensation for the period February 14 to March 23, 2018.

Appellant submitted March 23 and April 20, 2018 Forms CA-17 in which Dr. Strugala indicated that appellant could work for five hours per day with restrictions including lifting, pushing, and pulling no more than 10 pounds.<sup>8</sup>

By decision dated May 22, 2018, OWCP denied appellant's claim for total disability for the period February 14 to March 23, 2018.<sup>9</sup> It determined that she had not submitted medical

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<sup>5</sup> The case record reflects that, after March 23, 2018, appellant returned to her modified-duty job for five hours per day.

<sup>6</sup> Dr. Strugala provided the notation, "Off work permanent, further workup."

<sup>7</sup> Appellant also submitted a February 23, 2018 examination report which was electronically signed by a transcriptionist with the initials, L.A.M.

<sup>8</sup> Appellant also submitted March 23, 27, and April 3, 2018 examination reports which were electronically signed by a transcriptionist with the initials, L.A.M., as well as an April 27, 2018 examination report which was electronically signed by a transcriptionist with the initials, D.M.G.

<sup>9</sup> OWCP indicated that the May 22, 2018 decision was an amended version of a May 10, 2018 decision in the case record.

evidence sufficient to establish total disability for the period February 14 to March 23, 2018 causally related to her accepted employment injuries.

On June 5, 2018 appellant requested a hearing with a representative of OWCP's Branch of Hearings and Review.

Appellant subsequently submitted the findings of March 20, 2018 electromyogram and nerve conduction velocity (EMG/NCV) testing of the upper extremities which contained an impression of mild right median nerve mononeuropathy suggestive of carpal tunnel syndrome. There was no evidence of left upper extremity peripheral neuropathy or left-sided cervical spine radiculopathy.<sup>10</sup>

During the hearing held on November 5, 2018, appellant testified that she had symptoms in her neck and both upper extremities. After the hearing, appellant submitted a November 9, 2018 Form CA-17 in which Dr. Strugala indicated that she could work for five hours per day with restrictions including lifting, pushing, and pulling no more than 10 pounds.

By decision dated December 18, 2018, OWCP's hearing representative affirmed the May 22, 2018 decision. She noted that appellant did not submit medical evidence sufficient to establish total disability for the period February 14 to March 23, 2018. The hearing representative indicated that medical evidence of record suggested that appellant had developed right carpal tunnel syndrome, but she noted that appellant's claim had not been accepted for employment-related carpal tunnel syndrome and advised her that she might wish to file a claim for such a condition.<sup>11</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>12</sup> In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.<sup>13</sup> This meaning, for brevity, is expressed as disability for work.<sup>14</sup>

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<sup>10</sup> Appellant also submitted May 31, June 6, and November 13, 2018 examination reports which were electronically signed by a transcriptionist with the initials, D.M.G.

<sup>11</sup> OWCP's hearing representative indicated that appellant would still be entitled to receive wage-loss compensation for three hours per day due to the partial disability causally related to her accepted employment injuries.

<sup>12</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>13</sup> *See* 20 C.F.R. § 10.5(f).

<sup>14</sup> *See S.W.*, *supra* note 12. *See also A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Roberta L. Kaumoana*, 54 ECAB 150 (2002).

The medical evidence required to establish a 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 diagnosed condition and the specific employment factors identified by the claimant.<sup>15</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability for the period February 14 to March 23, 2018 causally related to her accepted employment injuries.

Appellant submitted a February 16, 2018, 2018 Form CA-17 in which Dr. Strugala advised that appellant had clinical findings of neck/arm pain and opined that she could not perform any work. In a separate February 16, 2018 form report, Dr. Strugala diagnosed cervical spinal stenosis and indicated that appellant could not return to work. Although he suggested that she had total disability due to an employment-related condition,<sup>16</sup> he had not provided an explanation for this opinion. Dr. Strugala failed to explain how findings on examination and diagnostic testing supported his conclusion that appellant could not perform the part-time modified position she held prior to stopping work on February 14, 2018.<sup>17</sup> The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>18</sup> Therefore, these reports are insufficient to establish appellant's claim.

The Board notes that the case record contains medical evidence which suggests that appellant developed right carpal tunnel syndrome by March 2018. However, this condition has not been accepted as employment related and the case record does not otherwise contain a rationalized medical report sufficient to establish the existence of disabling employment-related carpal tunnel syndrome.<sup>19</sup>

Appellant also submitted several examination reports, dated between February 23 and November 13, 2018, but these reports do not constitute medical evidence because they were not signed by a physician within the meaning of FECA. The Board has held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing

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<sup>15</sup> *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>16</sup> The Board notes that OWCP had accepted that appellant had sustained aggravation of cervical spinal stenosis.

<sup>17</sup> Appellant performed modified work for five hours per day and she received wage-loss compensation for the remaining three hours of the workday. She submitted March 23, April 20, and November 9, 2018 Forms CA-17 in which Dr. Strugala indicated that she could work for five hours per day with restrictions including lifting, pushing, and pulling no more than 10 pounds. These reports do not show that appellant was totally disabled for the claimed period.

<sup>18</sup> *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

<sup>19</sup> *See F.S.*, Docket No. 15-1052 (issued July 17, 2015) (finding that the medical evidence required to establish causal relationship is rationalized medical opinion evidence).

the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence.<sup>20</sup>

As the medical evidence of record does not contain a rationalized medical opinion establishing causal relationship between appellant's accepted employment injuries and the claimed period of total disability from February 14 to March 23, 2018, 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 total disability for the period February 14 to March 23, 2018 causally related to her accepted employment injuries.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2019  
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

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<sup>20</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010).