

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

M.H., Appellant	)	
	)	
and	)	<b>Docket No. 20-1404</b>
	)	<b>Issued: July 14, 2021</b>
DEPARTMENT OF THE INTERIOR, LAKE	)	
MEAD NATIONAL RECREATION AREA,	)	
Cottonwood Cove, NV, 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, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 22, 2020 appellant, filed a timely appeal from a May 8, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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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.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish disability from work for the period April 29 to June 9, 2018 causally related to his accepted March 15, 2018 employment injury.

## **FACTUAL HISTORY**

On March 19, 2018 appellant, then a 57-year-old maintenance team leader, filed a traumatic injury claim (Form CA-1) alleging that on March 15, 2018 he sustained a neck and a left arm injury when he pulled on the steering wheel to climb into a truck by and hit his head on the inside of the roof of the truck while in the performance of duty.

In a disability note dated April 18, 2018, Dr. Michael Schlaack, a family medicine specialist, indicated that appellant was totally disabled from work from April 18 through May 13, 2018. Dr. Schlaack diagnosed neck/spinal stenosis and a left arm injury.<sup>3</sup>

In a letter to Dr. Schlaack dated May 2, 2018, Dr. Joseph Schifini, a Board-certified anesthesiologist, related that appellant sustained a work-related injury on March 15, 2018 when, entering a truck, appellant struck his head on the roof of the truck, thereafter developing left neck and left arm symptoms. He noted that he had seen appellant on May 2, 2018 and, after performing physical examination, felt that appellant had symptoms consistent with left C6 and C7 radicular processes, likely due to multifactorial spinal stenosis at C5-6 and C6-7. Dr. Schifini recommended transforaminal selective epidural steroid injections.

In a disability note dated May 9, 2018, Dr. Schlaack opined that appellant was totally disabled from May 9 to June 1, 2018. He diagnosed cervical and left arm injuries.<sup>4</sup>

On May 9, 2018 appellant filed a claim for compensation (Form CA-7) for disability from work for the period April 29 to May 12, 2018.

In a report dated May 15, 2018, Dr. Schifini examined appellant for complaints of pain in the left neck, left arm, and first through third fingers of the left hand. He reviewed appellant's history of injury and noted that a magnetic resonance imaging (MRI) scan on March 28, 2018 demonstrated C3-4, C4-5, and C6-7 disc protrusions and multilevel cervical spinal stenosis. Dr. Schifini also reviewed x-rays of the cervical spine and left shoulder performed on March 20, 2018 which demonstrated straightening of the normal cervical lordosis and mild osteoarthritis, respectively. On physical examination of the head and neck, he observed tenderness and spasm to palpation over the left posterior neck and upper back and reduced flexion and extension with pain. On examination of the upper extremities, Dr. Schifini observed decreased grip strength bilaterally. He diagnosed C3-4 disc bulge, C4-5 and C6-7 disc protrusions, multilevel cervical spinal stenosis, and subjective left upper extremity radiculitis. Dr. Schifini recommended left C5-6 and C6-7 transforaminal selective epidural steroid injections.

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<sup>3</sup> The April 18, 2018 disability note was partially illegible.

<sup>4</sup> The May 9, 2018 disability note was partially illegible.

In a disability note dated June 1, 2018, Dr. Schlaack opined that appellant was totally disabled from June 2 to July 1, 2018. He diagnosed cervical radiculopathy.

On June 8, 2018 appellant filed a Form CA-7 claiming compensation for disability from work during the period May 13 to June 9, 2018.

In a letter dated June 8, 2018, Dr. Schlaack stated that on March 15, 2018 appellant struck his head against the roof upon entering a work vehicle, thereby causing his left arm to become numb. He noted that appellant returned to work four days later and that upon his first examination of appellant on April 11, 2018 he observed decreased range of motion of the neck and decreased dexterity of the left arm. Dr. Schlaack recommended at that time that appellant remain off work from April 11 through 23, 2018. He requested approval of epidural injections to be performed by Dr. Schifini.

By decision dated June 27, 2018, OWCP denied appellant's traumatic injury claim. It found that he had not submitted sufficient medical evidence to establish causal relationship between the accepted employment incident of March 15, 2018 and his diagnosed conditions.

On July 5, 2018 appellant, through then-counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the decision of June 27, 2018. The hearing was held on November 14, 2018.

In a letter dated August 28, 2018, Dr. Schifini explained that appellant's injury did not represent an aggravation of a preexisting condition, as appellant was asymptomatic before striking his head on March 15, 2018 which Dr. Schifini opined directly resulted in development of neck and left arm symptoms.

An operative report dated September 25, 2018, indicated that appellant underwent cervical discectomies and fusions, along with placements of polyetheretherketone cages, at C4 through C7 on that date.

In a letter dated December 5, 2018, Dr. Schifini explained that, when on March 15, 2018 appellant struck the top of his head on the head liner or the door frame while entering a truck, he experienced a compression of the cervical spine, which was the anatomic mechanism of his injury. He stated that appellant developed posterior cervical disc protrusions as a result of this incident. Dr. Schifini opined that this event was sufficient to cause traumatic injury to the disc in the form of cervical disc bulges, protrusions, and annular tears. He explained that although moderate degenerative changes and moderate canal stenosis were noted in appellant's most recent MRI scan study of March 28, 2018, it was his opinion that these conditions became significant aggravated and symptomatic secondary to the injury. Dr. Schifini opined that appellant's current conditions, including head injury, cervical spine injury, and development of left upper extremity symptoms, were causally related to the accepted employment incident of March 15, 2018.

By decision dated January 25, 2019, OWCP's hearing representative accepted that appellant sustained cervical muscle strain as a result of the work-related incident of March 15, 2018, thereby reversing in part the decision of June 27, 2018 as to acceptance of that condition, and affirming in part the decision of June 27, 2018 as to other diagnosed conditions. The hearing representative noted that, upon return of the case file, OWCP should accept the claim for cervical muscle strain and adjudicate appellant's CA-7 claims in accordance with OWCP procedures.

By decision dated February 11, 2019, OWCP accepted appellant's claim for strain of muscle, fascia, and tendon at the neck level, initial encounter.

In a development letter dated February 11, 2019, OWCP requested that appellant submit medical evidence to support disability during the period claimed causally related to the accepted March 15, 2018 employment injury. It afforded him 30 days to submit the requested evidence. No response was received.

By decision dated April 19, 2019, OWCP denied appellant's claim, finding that he had not established disability from work for the period April 29 through June 9, 2018 causally related to the accepted March 15, 2018 employment injury.

On April 26, 2019 appellant, through then-counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on August 14, 2019.

By decision dated October 29, 2019, the hearing representative affirmed OWCP's April 19, 2019 decision, finding that appellant had not submitted sufficient medical evidence to establish total disability as a result of the accepted neck strain for the period April 29 to June 9, 2018.

On March 2, 2020 appellant, through counsel, requested reconsideration of the October 29, 2019 decision. With the request, he submitted a medical report dated January 30, 2020 from Dr. Neil Allen, a Board-certified internist and neurologist. Dr. Allen noted that on March 15, 2018 appellant was on duty as a letter carrier when he pulled his body into a delivery vehicle and struck his head against the roof of the vehicle, thereafter feeling a "crunch" in his neck, followed by pain in his neck and left shoulder with numbness extending down the left arm. He opined that appellant's list of accepted conditions should be expanded to include strain/sprain of the cervical spine and aggravation of cervical disc displacement causally related to the incident of March 15, 2018. In an amended report dated January 30, 2020, Dr. Allen noted that on March 15, 2018 appellant was on duty as a maintenance team leader pulling his body into a work vehicle when appellant struck his head against the roof of the vehicle. He again opined that appellant's list of accepted conditions should be expanded to include strain/sprain of the cervical spine and aggravation of cervical disc displacement causally related to the incident of March 15, 2018.

By decision dated May 8, 2020, OWCP reviewed the merits of appellant's claim and denied modification October 29, 2019 decision.

### **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>5</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled

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<sup>5</sup> See *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

from work as a result of the accepted employment injury.<sup>6</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 probative and reliable medical opinion evidence.<sup>7</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>8</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. 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>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. 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 for the period April 29 to June 9, 2018 causally related to his accepted March 15, 2018 employment injury.

In disability notes dated April 18, May 9, and June 1, 2018, Dr. Schaack indicated that appellant was totally disabled from April 18 through May 13, 2018; May 9 through June 1, 2018; and June 2 through July 1, 2018. However, he offered no opinion as to whether appellant’s accepted conditions were the cause of his disability. The Board has held that medical evidence that does not provide an opinion regarding whether a period of disability is due to an accepted employment condition is of no probative value and, thus, is insufficient to establish a claim.<sup>11</sup> Consequently, his disability notes are insufficient to meet appellant’s burden of proof.<sup>12</sup>

Appellant also submitted letters from Dr. Schifini dated May 2, August 28, and December 5, 2018; a letter from Dr. Schlaack dated June 8, 2018; an operative report dated September 25, 2018; and letters from Dr. Allen dated January 30, 2018. However, in these reports and letters, the physicians did not provide an opinion as to whether appellant was disabled from work during the claimed periods due to the accepted employment injury. As such, these letters

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<sup>6</sup> *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

<sup>7</sup> 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 7; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>8</sup> *Id.* at § 10.5(f); *see B.K.*, Docket No. 18-0386 (issued September 14, 2018).

<sup>9</sup> *Id.*

<sup>10</sup> *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

<sup>11</sup> *See S.D.*, Docket No. 20-1255 (issued February 3, 2021); *L.L.*, Docket No. 19-1794 (issued October 2, 2020); *C.R.*, Docket No. 19-1427 (issued January 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> *Id.*

and reports are of no probative value with regard to his claimed periods of disability from April 29 to June 9, 2018.<sup>13</sup>

As appellant has not submitted rationalized medical evidence establishing causal relationship between his claimed periods of disability and the accepted March 15, 2018 employment injury, the Board finds that he has not met his burden of proof.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish disability from work for the periods April 29 to June 9, 2018 causally related to his accepted March 15, 2018 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 8, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2021  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>13</sup> See *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *J.T.*, Docket No. 19-1813 (issued April 14, 2020); *L.B.*, *supra* note 11; *D.K.*, *supra* note 11.