

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

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**B.F., Appellant**

**and**

**U.S. POSTAL SERVICE, KENNESAW MAIN  
POST OFFICE, Kennesaw, GA, Employer**  
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**Docket No. 19-1095  
Issued: March 8, 2021**

*Appearances:*

*Alan J. Shapiro, Esq.,* for the appellant<sup>1</sup>  
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 19, 2019 appellant, through counsel, filed a timely appeal from a March 22, 2019 merit decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative’s collection of a fee without the Board’s approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the March 22, 2019 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.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish intermittent disability from work during the period February 21 through May 14, 2018 causally related to her accepted September 29, 2017 employment injury.

## **FACTUAL HISTORY**

On September 29, 2017 appellant, then a 48-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her neck and upper back in a motor vehicle accident (MVA) while in the performance of duty. She stopped work on September 30, 2017 and returned to work on October 3, 2017. OWCP accepted the claim for sprains of the ligaments of the cervical and thoracic areas of the spine.

On March 20, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) for leave without pay (LWOP) for intermittent dates of disability during the period January 6 to March 2, 2018. An attached time analysis form (Form CA-7a) dated March 20, 2018 indicated that she was claiming a total of 48 hours of lost time from work during this period. Appellant stopped work completely on February 21, 2018.

OWCP received a Form CA-7 on March 21, 2018 wherein appellant claimed LWOP for disability for the period March 3 through 16, 2018.

In a development letter dated March 27, 2018, OWCP requested that appellant provide additional medical information supporting that she was disabled for the periods claimed on the CA-7 forms.

On April 3, 2018 appellant filed a Form CA-7 requesting LWOP for disability from March 17 through 30, 2018. In an attached Form CA-7a, she claimed that she used 80 hours of LWOP during the aforementioned period. In a development letter dated April 10, 2018, OWCP requested additional medical evidence supporting disability during the claimed period.

Thereafter, OWCP received a February 26, 2018 report from Dr. Ryan Rosen, a Board-certified physiatrist. Dr. Rosen noted that appellant had undergone a radiofrequency ablation at L3-S1 earlier that month, but that performing repetitive activities at work had increased her symptoms. He diagnosed bilateral carpal tunnel syndrome, cervical and lumbar dorsopathies, lumbar and cervical facet syndrome, and paresthesia of the hands. Dr. Rosen advised that appellant should remain off work for two weeks due to severe pain. He indicated that she might need surgery for carpal tunnel syndrome and performed a steroid injection to the right lumbar paraspinal region. In a duty status report (Form CA-17) of the same date, Dr. Rosen diagnosed facet syndrome and carpal tunnel syndrome and opined that appellant was totally disabled from work.

In a progress report dated March 12, 2018, Dr. Rosen discussed appellant's complaints of increased pain in the right lower back, buttock, and groin. He diagnosed right hip pain, other spondylosis of the sacral and sacrococcygeal region, right sacroiliac (SI) joint dysfunction, hand

paresthesia, and carpal tunnel syndrome.<sup>4</sup> In a work status report and Form CA-17 of the same date, Dr. Rosen found appellant unable to work.

On March 14, 2018 Dr. Phillip R. Langer, a Board-certified orthopedist, evaluated appellant for “right hip pain following an [MVA] on September 29, 2017.” He diagnosed trochanteric bursitis, a lesion of the sciatic nerve, a right hip contusion, piriformis syndrome, and iliotibial band syndrome.

On March 15, 2018 Dr. Rosen performed a sacroiliac joint injection.

Dr. Jeffrey Y. Lee, an osteopath, treated appellant on April 2, 2018 for back pain and identified the date of injury as September 29, 2017. On examination he found tenderness in the right gluteal area with palpation. Dr. Lee diagnosed right hip pain, bilateral carpal tunnel syndrome, myalgia, other spondylosis, sacral and sacrococcygeal region, right SI joint dysfunction, lumbar facet syndrome, and paresthesias of the hand. He determined that appellant should remain off work until her next appointment. In a work status form of the same date, Dr. Lee found that she was disabled from employment.

On April 3, 2018 Dr. Daren Newfield, a Board-certified orthopedic surgeon, evaluated appellant for pain in her forearms, bilaterally, and numbness of both hands. He discussed her history of an MVA on September 29, 2017 and resulting treatment with injections and ablation of the cervical spine. On examination Dr. Newfield found a positive Tinel’s sign on the right and a positive compression test bilaterally. He diagnosed bilateral carpal and cubital tunnel syndrome. Dr. Newfield asserted that it was “unlikely that one accident caused all of [appellant’s] extremity symptoms and we do not have a single source for her issues.” He recommended a right carpal tunnel release.

In a development letter dated April 10, 2018, OWCP advised appellant that the evidence submitted was insufficient to support that she was disabled. It requested that she submit a report from her attending physician supported by objective findings, explaining why she was unable to work beginning February 21, 2018. OWCP afforded appellant 30 days to respond.

In a progress report dated April 16, 2018, Dr. Lee discussed appellant’s complaints of neck, back, right hip, and groin pain. He diagnosed cervicalgia, lumbar and cervical dorsopathies, low back pain, myalgia, sacral and sacrococcygeal spondylosis, cervical and lumbar facet syndrome, lumbago, lumbar degenerative disc disease, and right S1 dysfunction. In a work status form of the same date, Dr. Lee found that appellant could not work pending reevaluation.

On April 18, 2018 appellant filed a Form CA-7 for disability for the period March 31 through April 13, 2018. An accompanying Form CA-7a indicated that she was claiming that she used 80 hours of LWOP during that period. On April 27, 2018 appellant filed a Form CA-7 for LWOP for disability from April 14 through 27, 2018. An accompanying Form CA-7a indicated that she was claiming that she used 80 hours of LWOP during that period. On May 11, 2018

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<sup>4</sup> A magnetic resonance imaging scan of the right hip obtained on March 13, 2018 revealed no abnormalities.

appellant filed a Form CA-7 for LWOP for disability from April 28 through May 14, 2018. An accompanying Form CA-7a indicated that she was claiming 80 hours of LWOP.

By decision dated May 15, 2018, OWCP determined that the evidence of record established that appellant was disabled from work for the period January 9 to 17, 2018. It, however, denied her claims for disability from work during the period February 21 to May 14, 2018. OWCP found, however, that appellant had not submitted sufficient medical evidence to establish that she was totally disabled from work beginning February 21, 2018 causally related to her September 29, 2017 employment injury.

Subsequently, OWCP received an April 19, 2018 operative report from Dr. Newfield, who performed a right carpal tunnel release on that date.<sup>5</sup> In a progress report dated May 1, 2018, Dr. Newfield diagnosed a contusion of the hip, trochanteric bursitis, a lesion of the sciatic nerve, and a status post right carpal tunnel release two weeks earlier. In a work status form of the same date, he provided restrictions for the right wrist.

In a progress report dated May 9, 2018, Dr. Lee advised that appellant's "chief complaint continues to be back pain across the low back with a radiating sharp, achy pain in the posterior right leg." He noted that she also had some pain in her neck. Dr. Lee diagnosed other lumbar intervertebral disc displacement, myalgia, cervicgia, dorsopathies of the cervical and lumbar region, low back pain, spondylosis, lumbar radiculopathy, cervical and lumbar facet syndrome, lumbago, lumbar herniated nucleus pulposus, and sacroiliac dysfunction. He provided work restrictions and completed a work status form of the same date.

On May 14, 2018 appellant returned to modified employment.

On May 22, 2018 appellant, through counsel, requested a telephonic oral hearing before an OWCP hearing representative.

Dr. Mark A. Flood, an osteopath, evaluated appellant on July 18, 2018 for neck and back pain after a motor vehicle collision on September 29, 2017. He diagnosed intervertebral disc displacement of the lumbar region, cervical disc displacement, herniated disc at C6-7, cervical spondylosis at C5-6 and C6-7, left C6 and C7 radiculopathies, disc bulge at L4-5, lumbar spondylosis at L4-5 and L5-S1 bilaterally, and right lower extremity pain and paresthesias. Dr. Flood recommended a total disc replacement at C5-6 and C6-7.

On August 30, 2018 OWCP expanded the acceptance of appellant's claim to include cervical and lumbar disc herniations and cervical and lumbar radiculopathy. In a telephone call dated September 13, 2018, an OWCP nurse advised that appellant had been off work due to neck surgery beginning August 29, 2018.<sup>6</sup>

During the telephonic hearing held on October 15, 2018 appellant testified that she missed work intermittently beginning in January 2019 and stopped work completely from February 21 to

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<sup>5</sup> On March 15 and April 26, 2018 Dr. Rosen performed sacroiliac injections and diagnosed SI joint dysfunction.

<sup>6</sup> OWCP paid her wage-loss compensation for total disability from work beginning August 29, 2018.

May 14, 2018. During that period, she underwent carpal tunnel surgery. Appellant asserted that her physician had taken her off work because of neck pain.

By decision dated December 21, 2018, an OWCP hearing representative affirmed the May 15, 2018 decision. She found that appellant had not submitted sufficient medical evidence to establish that appellant was “totally disabled from work beginning February 21, 2018” causally related to her September 29, 2017 employment injury.

On February 11, 2019 appellant, through counsel, requested reconsideration.

By decision dated March 22, 2019, OWCP denied modification of the December 21, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>7</sup> has the burden of proof to establish the essential elements of his or her claim.<sup>8</sup> Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>9</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>10</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>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>

### **ANALYSIS**

The Board finds that this case is not in posture for decision.

Appellant filed claims for wage-loss compensation for intermittent disability from January 6 through March 2, 2018. OWCP found that she was entitled to compensation from January 9 to 17, 2018, but denied her claim for compensation from February 21 through

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<sup>7</sup> *Supra* note 2.

<sup>8</sup> *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

<sup>9</sup> 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

<sup>10</sup> *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

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

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

May 14, 2018. It, however, did not address the remaining dates claimed by appellant from January 6 through 9, and January 17 through February 21, 2018.

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.<sup>13</sup> Section 10.126 of FECA's implementing regulations provides that a decision shall contain findings of fact and a statement of reasons and a statement of reasons.<sup>14</sup> OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.<sup>15</sup>

As OWCP did not determine whether appellant was entitled to wage-loss compensation for all the claimed dates, the Board will set aside the March 22, 2019 decision.<sup>16</sup> On remand it shall make findings of fact and provide a statement of reasons regarding whether she is entitled to any intermittent wage-loss compensation for the claimed period. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>13</sup> 5 U.S.C. § 8124(a).

<sup>14</sup> 20 C.F.R. § 10.126. *E.P.*, Docket No. 20-0026 (issued August 21, 2020).

<sup>15</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

<sup>16</sup> *E.P.*, *supra* note 14.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 22, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: March 8, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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