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

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| **B.M., Appellant** | ) | |
| **and** | ) | **Docket No. 20-0826** |
| | ) | **Issued: May 10, 2021** |
| **U.S. POSTAL SERVICE, POST OFFICE, Thousand Palms, CA, 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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

## *JURISDICTION*

On March 3, 2020 appellant filed a timely appeal from a January 7, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

## *ISSUE*

The issue is whether appellant has met his burden of proof to establish disability from work for the period November 1 to December 10, 2019, causally related to his accepted September 16, 2019 employment injury.

## *FACTUAL HISTORY*

On September 17, 2019 appellant, then a 68-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that, on September 16, 2019, he injured his back while loading heavy

[1] 5 U.S.C. § 8101 *et seq.*

parcels into his truck while in the performance of duty. He stopped work on September 16, 2019. OWCP accepted the claim for low back muscle, fascia, and tendon strain.

In a form report dated October 29, 2019, Dr. William Christiansen, a Board-certified internist, diagnosed low back muscle, fascia and tendon strain, lumbar spondylosis without myelopathy or radiculopathy, and lumbar spondylolisthesis. He noted that appellant had been instructed to remain off work until December 10, 2019.

Appellant filed claims for compensation (Form CA-7) dated November 14 and 22, and December 6 and 20, 2019, requesting wage-loss compensation for leave without pay used from November 1 through December 10, 2019.

In a development letter dated December 5, 2019, OWCP requested that appellant submit additional information to establish his wage-loss compensation claims, including medical evidence establishing that his disability during the period November 1 through December 10, 2019, was causally related to his accepted September 16, 2019 employment injury. It afforded him 30 days to submit the necessary evidence.

In reports dated December 10, 2019, Dr. Mark Bickley, a family medicine specialist and osteopath, diagnosed low back muscle, fascia and tendon strain; lumbar spondylosis without myelopathy or radiculopathy; and lumbar spondylolisthesis. He recommended that appellant return to modified work on December 10, 2019.

In reports dated December 23, 2019, Dr. Christensen noted that appellant had returned to modified work on December 10, 2019 and thereafter had worsening back symptoms. He related x-ray findings including degenerative spondylosis of the lumbar discs and degenerative arthritis of the L4-5 facets bilaterally. Dr. Christensen recommended that appellant remain off work until February 3, 2020 as appellant's back pain and range of motion worsened after minimal modified duty.

By decision dated January 7, 2020, OWCP denied appellant's claim for compensation for disability for the period November 1 to December 10, 2019, finding that the medical evidence of record was insufficient to establish causal relationship between the claimed disability and his accepted work-related conditions.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.[3] 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.[4] Whether a particular injury causes an employee to

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[2] *Id.*

[3] *D.P.*, Docket No. 18-1439 (issued April 30, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

[4] *Id.*; *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

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.[5]

Under FECA, the term "disability" means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.[6] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.[7]

The medical evidence required to establish 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 claimed disability and the specific employment factors identified by the claimant.[8]

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.[9]

## ***ANALYSIS***

The Board finds that appellant has not met his burden of proof to establish disability from work for the period November 1 to December 10, 2019, causally related to his accepted September 16, 2019 employment injury.

In support of the claimed period of disability, OWCP received an October 29, 2019 report from Dr. Christensen. Dr. Christensen diagnosed low back muscle, fascia, and tendon strain, lumbar spondylosis without myelopathy or radiculopathy, and lumbar spondylolisthesis. He opined that appellant should remain off work until December 10, 2019. However, the Board notes that OWCP only accepted low back muscle, fascia, and tendon strain. Dr. Christensen's October 29, 2019 report did not provide objective findings on physical examination or offer any opinion that appellant was disabled due to the effects of appellant's accepted employment conditions.[10] This report is therefore insufficient to establish appellant's disability claim.

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[5] 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020).

[6] *Id*. at § 10.5(f); *see J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[7] *J.T.*, *id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

[8] *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

[9] *D.P.*, *supra* note 3; *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[10] *S.K.*, Docket No. 19-0272 (issued July 21, 2020).

Dr. Christensen also provided reports dated December 23, 2019. He noted findings including lumbar degenerative spondylosis and degenerative arthritis of the L4-5 facets bilaterally, and recommended that appellant remain off work until February 2, 2020. Dr. Christensen related that appellant's back pain and range of motion had worsened after he had retained to minimal modified duty on December 10, 2019. However, he again did not offer a rationalized medical opinion explaining why appellant could not perform work activities due to the effects of his accepted employment conditions, during the time period in question.[11] Accordingly, these reports are also insufficient to establish appellant's claim.

In reports dated December 10, 2019, Dr. Bickley recommended that appellant return to modified work on December 10, 2019. However, he offered no opinion regarding appellant's disability status during the period November 1 to December 10, 2019. The Board has held that medical evidence that does not provide an opinion as to whether a period of disability is due to an accepted employment condition is insufficient to meet a claimant's burden of proof.[12] Therefore, these reports are insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing that he was disabled from work during the period November 1 to December 10, 2019 due to the accepted September 16, 2019 employment injury, the Board finds that he has not met his 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 his burden of proof to establish disability from work for the period November 1 to December 10, 2019, causally related to his accepted September 16, 2019 employment injury.

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[11] *Id.*

[12] *See Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the January 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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