

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

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A.G., Appellant )

and )

U.S. POSTAL SERVICE, GREENEVILLE POST )  
OFFICE, Greeneville, TN, Employer )  
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**Docket No. 21-0756**  
**Issued: October 18, 2021**

*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

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 5, 2021 appellant filed a timely appeal from an October 22, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> 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> Appellant indicated that he was appealing a February 24, 2021 OWCP decision; however, there is no decision issued by OWCP on that date. In a February 24, 2021 letter, OWCP advised that he should follow his appeal rights from the October 22, 2020 decision regarding his claimed period of disability beginning March 24, 2020. As the February 24, 2021 letter is informational in nature, it does not constitute a final adverse decision of OWCP from which appellant may properly appeal. 20 C.F.R. §§ 501.2(c) and 501.3(a); *see also S.U.*, Docket No. 20-0636 (issued December 3, 2020). The October 22, 2020 OWCP decision is the only final adverse decision within the Board's jurisdiction.

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

<sup>3</sup> The Board notes that following the October 22, 2020 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 his burden of proof to establish that he was disabled from work beginning March 24, 2020 causally related to his accepted November 27, 2013 or March 15, 2017 employment injuries.

## FACTUAL HISTORY

On March 20, 2017 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 15, 2017 he strained his right lower back and right knee while in the performance of duty. OWCP accepted the claim, assigned OWCP File No. xxxxxx312, for a traumatic tear of the medial meniscus of the right knee and lumbar strain. It paid appellant wage-loss compensation for disability on the supplemental rolls beginning May 1, 2017 and on the periodic rolls effective October 15, 2017. Appellant returned to full-time employment without restrictions on May 29, 2018.<sup>4</sup>

On April 21, 2020, in a work excuse note, Donna Reaves with a medical provider requested that appellant be excused from work for the period March 27 through April 17, 2020 due to illness.

In a report dated May 1, 2020, a nurse practitioner noted that appellant had been off work beginning March 24, 2020. She found that he had back pain due to a March 17, 2017 employment injury and indicated that an evaluation with a specialist was pending.

On May 4, 2020 appellant filed a claim for compensation (Form CA-7) for total disability from March 24 to April 18, 2020 under OWCP File No. xxxxxx312. He continued to file claims for wage-loss compensation subsequent to April 18, 2020.

In a development letter dated May 5, 2020, OWCP advised appellant that the evidence of record was currently insufficient to establish his claim for compensation for disability beginning March 24, 2020. It requested that he submit a detailed report from an attending physician explaining how his condition had worsened such that he was unable to perform the duties of his position. OWCP afforded appellant 30 days to submit the requested information.

Subsequently, OWCP received chart notes dated April 28, 2020 from a nurse practitioner who evaluated appellant for progressively worsening back pain and indicated that his condition was related to a March 2017 workers' compensation injury to his lower back and neck. The nurse practitioner diagnosed cervical radiculitis and spondylosis, neck pain, and lumbar pain radiating into the right lower extremity. The nurse practitioner recommended a lumbar magnetic resonance imaging (MRI) scan.

In an April 28, 2020 note, Dr. Wayne Woodbury, a Board-certified physiatrist, advised that appellant was unable to work pending an MRI scan.

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<sup>4</sup> OWCP had previously accepted that appellant sustained a medial collateral ligament sprain and tear of the left knee, a tear of the lateral meniscus of the left knee, unilateral primary osteoarthritis of the left knee, and neck sprain causally related to a November 27, 2013 employment injury. It assigned OWCP File No. xxxxxx999. On April 23, 2014 appellant underwent an OWCP-authorized bilateral meniscal tear debridement, chondroplasty of the medial femoral condyle, and synovectomy. He stopped work on April 23, 2014 and returned to his usual employment on August 1, 2014. On November 6, 2017 appellant underwent an OWCP-authorized left total knee replacement.

On June 4, 2020 Dr. Woodbury cosigned the April 28, 2020 report from the nurse practitioner. In an addendum dated June 4, 2020, he advised that he agreed with the nurse practitioner's findings. Dr. Woodbury indicated that appellant had previous problems from a bulging lumbar disc but that his employment injury had caused his pain to increase. He related, "[Appellant] has not been made disabled by his work[-]related accident, but his current state of pain has caused him to have greater difficulty in attempting to work. A recommendation was made for [him] to refrain from returning to work until such time that a comparison MRI [scan] could be obtained. The anatomical findings of the MRI [scan] will help determine whether or not it is reasonable and safe for [appellant] to return back to work."

In a report dated June 4, 2020, submitted under OWCP File No. xxxxxx999, Dr. Gregory L. Stewart, a Board-certified orthopedic surgeon, found no significant effusion but laxity of the knee with flexion and an antalgic gait. He diagnosed a history of a left total knee arthroplasty (TKA) and complications associated with an orthopedic device. Dr. Stewart recommended a revision of the TKA. On June 29, 2020 he diagnosed complications associated with an orthopedic device and right hip trochanteric bursitis and indicated that appellant could perform sedentary employment.

On July 2, 2020 appellant accepted a position as a modified rural carrier at the employing establishment.

In a July 2, 2020 form report, Dr. Woodbury diagnosed lumbar and cervical radiculopathy and indicated that appellant was unable to work due to severe pain. He advised that appellant had been disabled from April 28 through July 2, 2020.

By decision dated July 24, 2020, OWCP denied appellant's claim for wage-loss compensation due to disability beginning March 24, 2020 causally related to his accepted March 15, 2017 employment injury.

In a letter dated August 5, 2020, appellant requested that OWCP combine OWCP File Nos. xxxxxx999 and xxxxxx312. He advised that following his November 27, 2013 left knee injury and left knee replacement he had an altered gait resulting in right knee pain. Appellant also asserted that he continued to experience problems with his neck due to the November 27, 2013 work injury.

On August 5, 2020 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

By decision dated October 22, 2020, OWCP's hearing representative affirmed the July 24, 2020 decision. The hearing representative reviewed the evidence from OWCP File Nos. xxxxxx312 and xxxxxx999 and found that appellant had not submitted any evidence from a physician addressing the claimed period of disability. The hearing representative noted that he might wish to file a consequential injury claim to his right knee due to his November 27, 2013 employment injury and instructed OWCP, on remand, to combine OWCP File Nos. xxxxxx312 and xxxxxx999.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>5</sup> 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>6</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>7</sup> Whether a particular injury causes an employee to become disabled for 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>8</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>9</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>10</sup> An employee who has a physical impairment causally related to his or her federal employment injury, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>11</sup>

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.<sup>12</sup> The opinion of the physician 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 employee.<sup>13</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>14</sup>

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *Kathryn Haggerty*, 45 ECAB 383 (1994).

<sup>7</sup> *See B.O.*, Docket No. 19-0392 (issued July 12, 2019); *M.C.*, Docket No. 18-0919 (issued October 18, 2018).

<sup>8</sup> *See K.C.*, Docket No. 17-1612 (issued October 16, 2018).

<sup>9</sup> 20 C.F.R. § 10.5(f); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *S.T.*, Docket No. 18-0412 (issued October 22, 2018).

<sup>10</sup> *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>11</sup> *See M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

<sup>12</sup> *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

<sup>13</sup> *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>14</sup> *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he was disabled from work beginning March 24, 2020 causally related to his accepted November 27, 2013 or March 15, 2017 employment injuries.

In an April 28, 2020 report, Dr. Woodbury discussed appellant's complaints of increased back pain and attributed his condition to a March 2017 employment injury to his low back and neck. He diagnosed cervical radiculitis and spondylosis, neck pain, and lumbar pain radiating into the right lower extremity. Dr. Woodbury advised that appellant was not disabled due to his employment injury but that pain had made working difficult. In a June 4, 2020 addendum, he noted that appellant's work injury had caused an increase in pain from a preexisting bulging lumbar disc. Dr. Woodbury recommended that he remain off work pending a new MRI scan. The Board has held, however, that subjective complaints of pain are insufficient to establish disability from employment.<sup>15</sup> As Dr. Woodbury failed to provide a rationalized opinion substantiating disability from work supported by objective findings, his reports are insufficient to meet appellant's burden of proof.<sup>16</sup>

On June 29, 2020 Dr. Stewart diagnosed complications associated with an orthopedic device and right hip trochanteric bursitis and indicated that appellant could perform sedentary employment. He did not, however, discuss how the accepted employment injury was competent to cause disability during the claimed period. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/level of disability has an employment-related cause.<sup>17</sup> Therefore, this report is insufficient to establish appellant's disability claim.

In a July 2, 2020 form report, Dr. Woodbury diagnosed lumbar and cervical radiculopathy and advised that appellant had been unable to work from April 28 through July 2, 2020. He did not, however, address disability from work due to either of the accepted employment injuries. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>18</sup> Therefore, this report is insufficient to establish appellant's claim for compensation.

On June 4, 2020 Dr. Stewart discussed appellant's history of a left TKA and complications due to an orthopedic device. He recommended a revision of the TKA. Dr. Stewart did not address the issue of whether appellant was disabled during the claimed period. 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

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<sup>15</sup> See *B.L.*, Docket No. 20-1685 (issued May 25, 2021); *G.J.*, Docket No. 18-1335 (issued March 22, 2019).

<sup>16</sup> See *G.J.*, *id.*

<sup>17</sup> See *S.C.*, Docket No. 21-0263 (issued August 24, 2021); *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

<sup>18</sup> *L.O.*, *supra* note 12; *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

allow employees to self-certify their disability and entitlement to compensation.<sup>19</sup> Thus, his report is insufficient to establish appellant's disability claim.

The record contains a May 1, 2020 report from a nurse practitioner. However, the Board has held that medical reports signed solely by a nurse practitioner are of no probative value, as nurse practitioners are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion.<sup>20</sup>

On April 21, 2020 Ms. Reaves requested that appellant be excused from work for the period March 27 through April 17, 2020 due to illness. However, there is no evidence that the April 21, 2020 request was signed by a physician. Therefore, it does not constitute probative medical evidence as it was not signed or reviewed by a physician.<sup>21</sup>

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work during the claimed period as a result of the accepted employment injury.<sup>22</sup> Because the medical opinion evidence of record is insufficient to establish employment-related disability during the period claimed as a result of the accepted employment injuries, the Board finds that appellant has not met his burden of proof to establish his claim for disability compensation.

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 that he was disabled from work beginning March 24, 2020 causally related to his accepted November 27, 2013 or March 15, 2017 employment injuries.

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<sup>19</sup> See *S.L.*, Docket No. 19-0603 (issued January 28, 2020); *E.B.*, Docket No. 17-0875 (issued December 13, 2018).

<sup>20</sup> Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *M.C.*, Docket No. 19-1074 (issued June 12, 2020); *S.L.*, Docket No. 19-0607 (issued January 28, 2020) (nurse practitioners are not considered physicians under FECA).

<sup>21</sup> See *S.D.*, Docket No. 21-0292 (issued June 29, 2021); *G.W.*, Docket No. 20-0507 (issued March 4, 2021); *Merton J. Sills*, 39 ECAB 572 (1988).

<sup>22</sup> *L.O.*, *supra* note 12.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 22, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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