United States Department of Labor
Employees' Compensation Appeals Board

N.B., Appellant	)	
and	)	**Docket No. 21-0710**
	)	**Issued: August 19, 2022**
U.S. POSTAL SERVICE, LYNDONVILLE POST OFFICE, Lyndonville, VT, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On April 9, 2021 appellant filed a timely appeal from February 8 and March 16, 2021 merit decisions 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.[2]

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and entitlement to schedule award benefits, effective November 30, 2020, as she abandoned suitable work, pursuant to 5 U.S.C. § 8106(c)(2); and (2) whether appellant has

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the issuance of the March 16, 2021 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*.

met her burden of proof to establish a recurrence of disability, commencing September 25, 2020, causally related to her accepted employment conditions.

FACTUAL HISTORY

On September 29, 2018 appellant, then a 48-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 17, 2018 she felt a tearing pop in her left shoulder joint and experienced pain in her left biceps and triceps area, left neck, rear left shoulder, and left elbow when unloading a snow machine track into the back of her car while in the performance of duty.[3] She stopped work on September 24, 2018. OWCP accepted the claim for left shoulder labral tear, left shoulder bicipital tendinitis, and acromioclavicular (AC) joint derangements. On October 26, 2018 appellant underwent OWCP-authorized left shoulder arthroscopic surgery, including significant intra-articular debridement of a torn superior labrum and torn rotator cuff, left biceps tenodesis, distal clavicle excision of the distal one centimeter of the clavicle, and subacromial decompression. OWCP paid her wage-loss compensation on the supplemental rolls, effective November 14, 2018.

OWCP continued to receive medical evidence, including progress notes dated September 27, 2018, and April 8 and May 20, 2019 from Dr. Eric Mullins, an attending orthopedic surgeon. Dr. Mullins noted appellant's history of injury. He discussed examination findings and provided assessments of status post left shoulder arthroscopy and the accepted conditions of superior labral tear with some AC joint derangement and biceps tendinitis. Dr. Mullins advised that appellant's work restrictions would continue. He noted, however, that she was not capable of performing a rural mail carrier position.

On August 28, 2019 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a list of questions to Dr. Douglas P. Kirkpatrick, a Board-certified orthopedic surgeon, for a second opinion to determine the extent of her disability and work capacity.

In a November 21, 2019 medical report, Dr. Kirkpatrick noted a history of the accepted December 26, 2017 and September 17, 2018 employment injuries and his review of the SOAF and medical record. He discussed examination findings and diagnosed post-concussive symptoms, persistent trace neck discomfort with normal range of motion, and persistent left shoulder impingement signs and mild discomfort and weakness of the rotator cuff connected the September 17, 2018 employment injury. Dr. Kirkpatrick opined that appellant's subjective complaints corresponded with his objective findings. He advised that her work-related condition had completely resolved. Dr. Kirkpatrick further advised that appellant had reached maximum medical improvement and there was no clear need for medical treatment at that time. He concluded that she could return to her date-of-injury rural carrier position, but with restrictions that included a right-hand drive (RHD) car to avoid reaching and no carrying significantly heavy packages

[3] OWCP assigned the present claim OWCP File No. xxxxxx074. Appellant also has a prior claim for a December 26, 2017 traumatic injury, assigned OWCP File No. xxxxxx001. OWCP accepted that claim for acute neck sprain, concussion, and left shoulder rotator cuff tendinosis without full thickness tear. It has administratively combined OWCP File Nos. xxxxxx001 and xxxxxx074, with the latter serving as the master file.

making her occasionally lift 70 pounds with both hands. Dr. Kirkpatrick advised that appellant's level of disability was a direct result of her accepted conditions.

On March 11, 2020 the employing establishment offered appellant a modified rural carrier position, effective June 16, 2020, based on the work restrictions set forth in Dr. Kirkpatrick's November 21, 2019 report. The duties included: casing mail, marking packages, and completing paperwork for a rural route, and delivering mail on a rural route. The physical requirements included: carrying a heavy package for up to one hour and occasionally lifting 70 pounds with both hands for up to 10 minutes.

In an August 4, 2020 e-mail, the employing establishment informed OWCP that the offered position was permanent in nature. In an August 5, 2020 e-mail, it confirmed that it would provide appellant with a RHD vehicle and provide training on its use.

By notice dated August 10, 2020, OWCP advised appellant that it confirmed with the employing establishment that the offered position remained available. It explained that the modified rural carrier position was suitable and in accordance with the restrictions set forth in Dr. Kirkpatrick's November 21, 2019 report. OWCP indicated that the case would be held open for 30 days for evaluation of the evidence. It further advised appellant that, if she failed to accept the position or provide adequate reasons for refusing the job offer, her right to wage-loss compensation and entitlement to a schedule award would be terminated pursuant to 5 U.S.C. § 8106(c)(2).

In a response letter dated August 22, 2020, appellant disagreed with the proposed action and continued to refuse the employing establishment's job offer. She claimed that she had not been contacted by the employing establishment regarding its provision of a RHD vehicle.

In a report dated August 12, 2020, Dr. Robert S. Hawkins, a Board-certified family practitioner, examined appellant and provided an assessment of left shoulder joint pain.

By letter dated September 10, 2020, OWCP notified appellant that her reasons for refusing the offered position were not valid and provided her with an additional 15 days to report to the position, or her wage-loss compensation and entitlement to schedule award benefits would be terminated. It advised her that the position remained available.

An undated report of work status (Form CA-3) from the employing establishment indicated that appellant had accepted the job offer and returned to full-time, modified-duty work with restrictions on September 21, 2020[4] and that she stopped work on September 24, 2020.

OWCP received a September 25, 2020 form report and a progress note by Haley Ireland, an advanced practice registered nurse, who diagnosed acute left shoulder pain. Ms. Ireland noted that appellant had a recurrence of pain since returning to her rural carrier position. She indicated

[4] The Form CA-3 indicated that appellant had returned to work on September 15, 2020 and accepted the employing establishment's job offer on September 21, 2020.

that she would continue to be off work. Ms. Ireland further indicated that she believed that appellant could not return to her rural carrier position.

In a September 29, 2020 e-mail, the employing establishment informed OWCP that appellant had returned to work for three days after it accommodated her restrictions set forth by Dr. Kirkpatrick. Appellant was then placed off work again by a medical provider. The employing establishment contended that there was no evidence to establish that appellant sustained a recurrence of disability or that any injury or event caused her restrictions to be limited.

By letter dated October 1, 2020, OWCP noted that appellant had returned to a modified-duty job as a rural carrier on September 15, 2020, but stopped work again on September 25, 2020. It advised her that the modified rural carrier position constituted suitable work, and also advised her of the provisions of 5 U.S.C. § 8106(c)(2) for terminating wage-loss compensation and entitlement to a schedule award upon abandonment of suitable work. OWCP also informed appellant of her right to file a claim for a recurrence of disability (Form CA-2a). It afforded her 30 days to submit additional evidence.

Thereafter, OWCP received additional medical evidence, including a September 4, 2020 pain questionnaire, which revealed that appellant had mild aching, tenderness, tiring-exhaustion, and fear/anxiety.

In a September 25, 2020 left shoulder x-ray report, Dr. Eric Emig, a Board-certified diagnostic radiologist, provided impressions of no acute fracture or dislocation and no significant arthritic changes. He also provided an impression of a small metallic device likely reflecting a suture anchor in the left humeral head.

In a September 14, 2020 referral form, Dr. Mullins diagnosed complex tear of triangular fibrocartilage of the right wrist, subsequent encounter. He referred appellant for a magnetic resonance imaging scan arthrogram of the right wrist. In an October 7, 2020 form report, Dr. Mullins noted that appellant had limited use of her left shoulder and that she was unlikely able to work on a rural postal route.

OWCP, in a letter dated November 3, 2020, notified appellant that her reasons for abandoning the position were not valid and provided her with an additional 15 days to report to the position, or her wage-loss compensation and entitlement to schedule award benefits would be terminated. It advised her that the position remained available. No response was received.

By decision dated November 30, 2020, OWCP terminated appellant's wage-loss compensation and entitlement to a schedule award, effective that date, based on her abandonment of suitable work, pursuant to 5 U.S.C. § 8106(c)(2). It also found that she did not sustain a recurrence of disability as the medical evidence of record was insufficient to outweigh the weight accorded to the opinion of Dr. Kirkpatrick that she could work with restrictions.

On December 16, 2020 appellant requested reconsideration. She submitted a September 4, 2020 letter from Dr. William J. Spina, a Board-certified orthopedic surgeon, who disagreed with Dr. Kirkpatrick's opinion that appellant could return to work. He maintained that her left shoulder could not stand up to the rigors of rural mail delivery or sorting mail. Dr. Spina advised that

appellant could possibly work with a 20-pound lifting restriction initially for four hours per day, three days per week, with increased work hours and workload as tolerated.

Dr. Mullins, in an October 7, 2020 letter, reiterated appellant's history of injury. He maintained that her current issues related back to her original injury. Dr. Mullins indicated that there was likely a level of deconditioning as it had been about two years or so since the initial injury. He noted that the current job requirements, which involved reaching and lifting at arm's length with the left upper extremity put maximum strain on the shoulder region of that extremity. Dr. Mullins maintained that appellant was unable to perform her work duties due to difficulty with strain on her left shoulder. As she was unable to perform her job duties and complete her route secondary to time restraints and repetitive use of her left shoulder, he related that he was not certain that any set of restrictions would allow her to continue to deliver mail over a full postal route.

In a progress note of even date, Dr. Mullins diagnosed left shoulder impingement syndrome and restated his opinion that there was a possibility that appellant could not return to her rural carrier position due to her shoulder injury.

In letters dated October 15 and December 8, 2020, appellant noted that, following her return to work, she was unable to complete her route in a timely manner due to shoulder pain and her RHD vehicle, which only allowed her to put mail or packages into the mailbox while the rest of her job duties required a left-hand reach for mail on a tray and in a bucket. She contended that she did not abandon her position. Rather, appellant explained that she resigned from her position, which did not require termination of her compensation benefits.

On January 14, 2021 the employing establishment noted that medical limitations allowed appellant to work on her route with the RHD vehicle it had provided to her. It noted that she only worked a few days before placing herself off work.

On February 5, 2021 the employing establishment informed OWCP that appellant was an active employee. It also again advised that its June 16, 2020 job offer was for a permanent position.

By decision dated February 8, 2021, OWCP denied modification of its November 30, 2020 decision. It found that the medical evidence submitted did not contain a rationalized medical opinion that appellant stopped work due to a worsening of her accepted employment-related conditions. OWCP further found that the medical evidence submitted was insufficient to overcome the weight accorded to the second opinion physician with regard to appellant's work restrictions. It noted that the modified job remained available.

On March 9, 2021 appellant requested reconsideration. In an accompanying March 1, 2021 letter, she contended, *inter alia*, that her modified-duty position did not accommodate Dr. Kirkpatrick's restriction of a RHD vehicle as it was not included in the employing establishment's job offer. Appellant contended that she made a good faith attempt to return to work.

By decision dated March 16, 2021, OWCP denied modification of its February 8, 2021 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's compensation benefits.[5] Section 8106(c)(2) of FECA provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee is not entitled to compensation.[6] To justify termination of compensation, OWCP must show that the work offered was suitable, that the employee was informed of the consequences of refusal to accept such employment, and that she was allowed a reasonable period to accept or reject the position or submit evidence to provide reasons why the position is not suitable.[7] Section 8106(c) will be narrowly construed as it serves as a penalty provision, which may bar an employee's entitlement to compensation based on a refusal to accept a suitable offer of employment.[8]

To establish that a claimant has abandoned suitable work, OWCP must make a finding of suitability.[9] In determining what constitutes suitable work, OWCP considers the employee's current physical limitations, whether the work is available within the employee's demonstrated commuting area, the employee's qualifications to perform such work and other relevant factors.[10] The issue of whether an employee has the physical ability to perform a modified position offered by the employing establishment is primarily a medical question that must be resolved by medical evidence. The weight of medical evidence must establish that the employee is physically capable of carrying out any physical requirements of the job.[11] OWCP's procedures provide that, acceptable reasons for refusing an offered position include withdrawal of the offer, or medical evidence of inability to do the work or travel to the job.[12]

Section 10.517(a) of FECA's implementing regulations provide that an employee who refuses or neglects to work after suitable work has been offered or secured, has the burden of showing that such refusal or failure to work was reasonable or justified.[13] Pursuant to section

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[5] *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[6] 5 U.S.C. § 8106(c)(2); *see also Geraldine Foster*, 54 ECAB 435 (2003).

[7] *See Ronald M. Jones*, 52 ECAB 190 (2000). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.4a (June 2013).

[8] *Joan F. Burke*, 54 ECAB 406 (2003); *see Robert Dickerson*, 46 ECAB 1002 (1995).

[9] Federal (FECA) Procedure Manual, *supra* note 7 at Chapter 2.814.8 (June 2013).

[10] *Supra* note 1 at § 8123(a); *see Y.A.*, 59 ECAB 701 (2008).

[11] 20 C.F.R. § 10.321.

[12] Federal (FECA) Procedure Manual, *supra* note 7 at Chapter 2.814.5a (June 2013).

[13] *Supra* note 11 at § 10.517(a); *see Ronald M. Jones, supra* note 7.

10.516, the employee shall be provided with the opportunity to make such a showing before a determination is made with respect to termination of entitlement to compensation.[14]

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective November 30, 2020, pursuant to 5 U.S.C. § 8106(c)(2).

The employing establishment offered appellant a position as a modified rural carrier on March 11, 2020, effective June 16, 2020. Appellant worked in that position from September 21 to 24, 2020, when she stopped work. OWCP subsequently found that she abandoned suitable work in violation of 5 U.S.C. § 8106(c)(2). The initial question presented under 5 U.S.C. § 8106(c)(2) is whether the job was medically suitable.

In his November 21, 2019 report, Dr. Kirkpatrick opined that appellant could work with restrictions including using a RHD car and no carrying significantly heavy packages, which limited her to occasionally lift 70 pounds with both hands. The physical requirements of the offered position, however, involved carrying a heavy package for up to 1 hour and occasionally lifting 70 pounds with both hands for up to 10 minutes. The carrying requirement, therefore, exceeds Dr. Kirkpatrick's November 21, 2019 carrying restriction. As the modified job offer exceeded appellant's restrictions, the Board finds that it did not constitute suitable work under 5 U.S.C. 8106(c)(2). Thus, OWCP erred in terminating appellant's wage-loss compensation and schedule award eligibility.[15]

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA[16] 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.[17] 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.[18] 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.[19] Whether a particular injury causes an employee to become disabled from

[14] *Id*. at § 10.516.

[15] *See C.M.*, Docket No. 19-1160 (issued January 10, 2020); *L.H.*, Docket No. 17-1930 (issued July 26, 2019); *S.B.*, Docket No. 18-0039 (issued October 15, 2018).

[16] *Supra* note 1.

[17] *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).

[18] 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

[19] *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.[20]

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition that had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. The term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to the work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[21]

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty requirements.[22]

An employee who claims a recurrence of disability resulting from an accepted employment injury has the burden of proof to establish that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[23]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability, commencing September 25, 2020, causally related to her accepted employment conditions.

Appellant stopped work on September 25, 2020 and alleged a recurrence of disability commencing that date. She has not alleged a change in her light-duty job requirements. Instead, appellant attributed her inability to work to a change in the nature and extent of her accepted left shoulder labral tear, left shoulder bicipital tendinitis, and AC joint derangements, acute neck sprain, concussion, and left shoulder rotator cuff tendinosis without full thickness tear. She,

[20] *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[21] 20 C.F.R. § 10.5(x); *see D.T.*, Docket No. 19-1064 (issued February 20, 2020).

[22] *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *see R.N.*, Docket No. 19-1685 (issued February 26, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

[23] *Id*.

therefore, has the burden of proof to provide medical evidence to establish that she was disabled from work due to a worsening of her accepted work-related conditions.[24]

In support of her recurrence claim, appellant submitted several reports from her physician, Dr. Mullins. In progress notes dated September 27, 2018, April 8 and May 20, 2019 and October 7, 2020 and a letter and state work capabilities form dated October 7, 2020, Dr. Mullins noted appellant's history of injury, discussed examination findings, and provided assessments of status post left shoulder arthroscopy and the accepted conditions of superior labral tear with some AC joint derangement and biceps tendinitis. He advised that appellant was not capable of performing her rural mail carrier position and that her work restrictions would continue. Dr. Mullins indicated that her current job requirements involved reaching and lifting with her left shoulder, which put maximum strain on that extremity. Because appellant was unable to perform her job duties and complete her route secondary to time restraints and repetitive use of her left shoulder, he related his uncertainty as to whether any set of restrictions would allow her to continue to deliver mail over a full postal route. Dr. Mullins failed to sufficiently explain how the worsening of her accepted conditions caused her disability from work, commencing September 25, 2020. A cursory opinion without explanation is of limited probative value.[25] Dr. Mullins' remaining September 14, 2020 form report predates the claimed September 25, 2020 recurrence and does not address the relevant time period.[26] For these reasons, the Board finds that his progress notes and reports are insufficient to meet appellant's burden of proof.

Likewise, Dr. Hawkins' August 12, 2020 report and the September 4, 2020 McGill pain questionnaire are also of no probative value in establishing the claimed recurrence of disability of September 25, 2020 as they predate the claimed recurrence.[27]

Dr. Spina, in a December 16, 2020 report, disagreed with Dr. Kirkpatrick's opinion that appellant could return to work due to her left shoulder condition. However, he indicated that appellant could possibly work with a 20-pound lifting restriction initially for four hours per day, three days per week, with increased work hours and workload as tolerated. The Board finds that his opinion is speculative on appellant's work capacity and, therefore, is of diminished probative value.[28]

Dr. Emig's September 25, 2020 x-ray report addressed appellant's left shoulder conditions. However, the Board has held that diagnostic testing, standing alone, lacks probative value, as it

[24] *K.W.*, Docket No. 20-0230 (issued May 21, 2021); *L.S.*, Docket No. 19-1231 (issued March 30, 2021); *D.H.*, Docket No. 18-0129 (issued July 23, 2018); *D.L.*, Docket No. 13-1653 (issued November 22, 2013); *Cecelia M. Corley*, 56 ECAB 662 (2005).

[25] *See T.G.*, Docket No. 20-0032 (issued November 10, 2020); *L.B.*, Docket No. 07-1861 (issued December 13, 2007).

[26] *See K.W., supra* note 24; *T.G., id.*; *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *S.W.*, Docket No. 19-1579 (issued October 9, 2020).

[27] *Id.*

[28] *M.B.*, Docket No. 18-1455 (issued March 11, 2019); *Z.B.*, Docket No. 17-1336 (issued January 10, 2019).

does not address whether a given medical condition/period of disability was caused by the employment.[29]

Appellant also submitted a form report and progress note dated September 25, 2020 from Ms. Ireland, an advanced practice registered nurse, which are of no probative medical value. The Board has held, however, that certain healthcare providers such as registered nurses are not considered physicians as defined under FECA.[30] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[31] Thus, this evidence is of no probative value and is insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing a recurrence of total disability for the period, commencing September 25, 2020, causally related to the accepted December 26, 2017 and September 17, 2018 employment injuries, the Board finds that she 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation, effective November 30, 2020, pursuant to 5 U.S.C. § 8106(c)(2). The Board further finds that appellant has not met her burden of proof to establish a recurrence of disability, commencing September 25, 2020, causally related to her accepted December 26, 2017 and September 17, 2018 employment injuries.

[29] *See K.W., supra* note 24; *T.G. supra* note 25; *R.N.*, Docket No. 19-1685 (issued February 26, 20201); *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

[30] Section 8102(2) of FECA provides as follows: (2) 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 also* 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 L.S., supra* note 24 (a registered nurse is not considered a physician as defined under FECA).

[31] *L.S., id.*; *David P. Sawchuk, id.*

ORDER

IT IS HEREBY ORDERED THAT the February 8 and March 16, 2021 decisions of the Office of Workers' Compensation Programs are reversed in part and affirmed in part.

Issued: August 19, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board