

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

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<b>A.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-1093</b>
	)	<b>Issued: July 21, 2022</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, Employer</b>	)	
_____	)	

*Appearances:*  
*Michael Phillips, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 13, 2021 appellant, through counsel, filed a timely appeal from a January 22, 2021 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 January 22, 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.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish intermittent disability from work during the period May 21 through August 28, 2019 causally related to her accepted July 28, 2018 employment injury.

## **FACTUAL HISTORY**

On July 31, 2018 appellant, then a 44-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 28, 2018 she sustained injuries to her right arm, left hand, right leg, neck, back, and right shoulder as a result of an attack by a pit bull while in the performance of duty. OWCP accepted her claim for open dog bites of the right arm and left hand, open bites of the right hand and left middle and ring fingers without damage to nail, an open type 1 or 2 puncture-type fracture of the shaft of the right ulna, and a laceration of the radial nerve at the right forearm. It paid appellant wage-loss compensation on the supplemental rolls from September 12 through 15, 2018 and on the periodic rolls commencing September 16, 2018. On March 26, 2019 appellant returned to work full time with light-duty restrictions. She was to perform the duties of a web cam watcher with her left hand.

On September 23, 2019 appellant filed claims for compensation (Form CA-7) for intermittent disability from work during the period April 27 through September 13, 2019. In an accompanying time analysis form (Form CA-7a), she claimed compensation the following hours and dates: 2.15 hours on May 21, 2019; 3 hours on May 24, 2019; 4 hours on May 28, 2019; 3 hours on May 31, 2019; 3 hours each on June 5, 7, 18, and 28 and July 3, 2019; 4 hours on July 19, 2019; 3 hours on July 25, 2019; 4 hours each on July 31 and August 1, 2, and 9, 2019; 2 hours on August 13 and 15, 2019; 4 hours on August 16, 2019; 8 hours on August 22, 2019; 4 hours each on August 23 and 26, 2019; and 3.2 hours on August 28, 2019.

On May 15, 2019 OWCP referred appellant for a second opinion evaluation to determine whether she had residuals of the accepted July 28, 2019 employment injury.

In a report dated May 28, 2019, Dr. Matthew Delarosa, an orthopedic surgeon, noted appellant's history of injury and diagnosed complex regional pain syndrome of the right upper extremity. Dr. Raymond Gaston, a Board-certified hand surgeon, completed a work restriction form on May 28, 2019, indicating that appellant could return to work that day, with no right hand/arm work.

In a report dated June 13, 2019, Dr. Chason S. Hayes, an OWCP second opinion physician, Board-certified in orthopedic surgery, related that appellant had sequela of a dog bite injury. He opined that appellant was capable of returning to her date-of-injury job. Dr. Hayes explained that other than a slight loss of range of motion of her ring finger, there were no objective findings. He noted "Most of the complaints of pain and numbness are not substantiated by the physical examination. There is no evidence of any neurological dysfunction. There is no evidence of any residual tendon dysfunction." In an accompanying work capacity evaluation (Form OWCP-5c), Dr. Hayes indicated that appellant was capable of returning to work without restrictions.

In a July 19, 2019 report, Caroline Clark, a physician assistant, noted appellant's history of injury and her complaints of neck and low back pain.

On August 1, 2019 Dr. Gaston reported that appellant had active problems including back pain, cervical radiculopathy, complex pain syndrome of the right upper extremity, depression, dog bite, finger stiffness, hand numbness, low back pain, lumbar radiculopathy, neck pain, and right upper extremity pain. He completed a work status form on August 1, 2019 indicating that appellant could return to work that day with no work involving the right arm.

In a report dated August 15, 2019, Ms. Clark noted appellant's active problems including back pain, cervical radiculopathy, complex regional pain syndrome of the right upper extremity, depression, dog bite, finger stiffness, hand numbness, low back pain, lumbar radiculopathy, neck pain, and right upper extremity pain. She also completed a work status report indicating that appellant could return to work that day with no work involving the right upper extremity.

Appellant underwent a functional capacity evaluation on August 22, 2019, which was performed by physical therapist, John Miller. Mr. Miller related that appellant could return to work in a sedentary position, with some light work activities.<sup>4</sup>

By decision dated November 5, 2019, OWCP authorized payment of wage-loss compensation for disability on the following claimed dates: May 3, 8, 15, 17, and 28; July 19; August 9, 13, and 15; and September 6, 2019. However, it denied appellant's claim for compensation for the remaining claimed dates of intermittent disability during the period May 21 through August 28, 2019.

On October 23, 2020 appellant, through counsel, requested reconsideration of OWCP's November 5, 2019 decision.

In a report dated October 12, 2020, Dr. Gaston related that appellant had been under his care since a dog attack on July 28, 2018. He noted that he had released her from care, but that her injuries and disability were related to the dog attack on July 28, 2018.

With the request, counsel enclosed appellant's undated psychiatric assessment intake form, wherein Dr. Kurian Abraham, a Board-certified psychiatrist, diagnosed post-traumatic stress disorder, and psychiatric progress notes dated from January 8 through August 6, 2020. In an undated report, Dr. Abraham noted that appellant had been under his care since January 2020. He diagnosed post-traumatic stress disorder and major depressive disorder following a dog attack while performing her duty for the employing establishment and related that she was incapacitated to the extent she may not be able to perform duties of her position, due to reexperiencing the traumatic event with avoidance and hyper-vigilant symptoms.

By decision dated January 22, 2021, OWCP denied modification of its November 5, 2019 decision.

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<sup>4</sup> By decision dated October 17, 2019, OWCP denied appellant's request to expand the acceptance of her claim to include mild carpal tunnel syndrome, mild cubital tunnel syndrome, cervical radicular syndrome, cervical radiculopathy, cervical spinal stenosis, complex regional pain syndrome of the right upper extremity, depression, hand stiffness, hand numbness, lumbar radiculopathy, pain and numbness of the right upper extremity and right shoulder, and stiffness of the right wrist joint.

## 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 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>

OWCP’s procedures provide that wages lost for compensable medical examinations or treatment may be reimbursed.<sup>11</sup> A claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider’s location.<sup>12</sup> Wage loss is payable only if the examination, testing, or treatment is provided on a day which is a scheduled workday and during a scheduled tour of duty. Wage-loss compensation for medical treatment received during off-duty hours is not reimbursable.<sup>13</sup> The evidence should establish that a claimant attended an examination

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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).

<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., id.*; *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> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013).

<sup>12</sup> *Id.* at Chapter 2.901.19(a); see *M.B.*, Docket No. 19-1049 (issued October 21, 2019); *T.S.*, Docket No. 19-0347 (issued July 9, 2019); *E.W.*, Docket No. 17-1988 (issued January 28, 2019).

<sup>13</sup> *Id.* at Chapter 2.901.19(a)(2).

or treatment for the accepted work injury on the dates claimed in order for compensation to be payable.<sup>14</sup> For a routine medical appointment, a maximum of four hours of compensation may be allowed. However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care. The claims for wage loss should be considered on a case-by-case basis.<sup>15</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work during the period May 21 through August 28, 2019 causally related to her accepted July 28, 2018 employment injury.

On May 15, 2019 OWCP referred appellant for a second opinion evaluation to determine whether she had residuals of the accepted July 28, 2019 employment injury. In a report dated June 13, 2019, second opinion physician Dr. Hayes related that appellant had sequela of a dog bite injury. He opined that she was capable of returning to her date-of-injury job. Dr. Hayes explained that other than a slight loss of range of motion of appellant's ring finger, there were no objective findings. He noted, "Most of the complaints of pain and numbness are not substantiated by the physical examination. There is no evidence of any neurological dysfunction. There is no evidence of any residual tendon dysfunction." In an accompanying Form OWCP-5c, Dr. Hayes indicated that appellant was capable of returning to work without restrictions. As his report is well rationalized and based on examination and an accurate history of the employment injury, the Board finds that his report constitutes the weight of the medical evidence.<sup>16</sup>

The evidence submitted in support of appellant's wage-loss compensation claim is insufficient to overcome the weight accorded to Dr. Hayes as the second opinion physician, or to create a conflict in medical opinion.

In a report dated May 28, 2019, Dr. Delarosa noted appellant's diagnoses, but offered no opinion regarding her disability status. The Board has previously explained that a medical report, which does not address the period of disability claimed lacks probative value to establish disability.<sup>17</sup>

In reports dated May 28 and August 1, 2019, Dr. Gaston related that appellant could return to work with restrictions of no work with her right upper extremity. The Board has held that medical evidence that negates causal relationship is of no probative value.<sup>18</sup>

In an October 12, 2020 report, Dr. Gaston opined that appellant's injuries and disability were related to the dog attack on July 28, 2018. However, he did not address the specific period of disability at issue or provide a rationalized medical opinion as to why appellant was disabled

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<sup>14</sup> *Id.* at Chapter 2.901.19(a)(3).

<sup>15</sup> *Id.* at Chapter 2.901.19(c).

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<sup>17</sup> *Supra* note 10.

<sup>18</sup> *T.W.*, Docket No. 19-0677 (issued August 16, 2019).

from her light-duty work due to her accepted employment injury. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how the claimed disability was related to employment factors.<sup>19</sup> Thus, this evidence is also insufficient to establish the claim.

In an undated psychiatric assessment intake form, wherein Dr. Kurian Abraham, a Board-certified psychiatrist, diagnosed post-traumatic stress disorder, and psychiatric progress notes dated from January 8 through August 6, 2020. The Board has held, however, that medical evidence that does not offer an opinion regarding causal relationship is of no probative value.<sup>20</sup>

In an undated report, Dr. Abraham noted that appellant had been under his care since January 2020. He diagnosed post-traumatic stress disorder and major depressive disorder following a dog attack while performing her duty for the employing establishment and related that she was incapacitated to the extent she may not be able to perform duties of her position, due to re-experiencing the traumatic event with avoidance and hyper-vigilant symptoms. The Board has long held that medical opinions that are speculative or equivocal in character, or which does not address the period of disability claimed, are of diminished probative value.<sup>21</sup>

OWCP also received reports from a physician assistant and a physical therapist. Physician assistants and physical therapists, however, are not considered physicians as defined under FECA.<sup>22</sup> This evidence is, therefore, of no probative value and insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence sufficient to overcome the weight accorded to second opinion physician Dr. Hayes, or to create a conflict, 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>19</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining causal relationship between the accepted work factors and a diagnosed condition/disability).

<sup>20</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>21</sup> *T.M.*, Docket No. 08-975, (issued February 6, 2009).

<sup>22</sup> Section 8101(2) of FECA provides that the term 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 *R.L.*, Docket No. 19-0440 (issued July 8, 2019).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work during the period May 21 through August 28, 2019 causally related to her accepted July 28, 2018 employment injury.<sup>23</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 21, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>23</sup> Upon return of the case record, OWCP should consider payment of up to four hours of compensation to appellant for lost time from work due to medical appointments to assess or treat symptoms related to the employment injury. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, Compensation *Claims*, Chapter 2.901.19(c) (February 2013); *J.E.*, Docket No. 19-1758 (issued March 16, 2021); *A.V.*, Docket No. 19-1575 (issued June 11, 2020). *See also* *K.A.*, Docket No. 19-0679 (issued April 6, 2020); *William A. Archer*, 55 ECAB 674 (2004).