



## ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period commencing October 9, 2021, causally related to her accepted August 9, 2020 employment injury.

## FACTUAL HISTORY

On August 14, 2020 appellant, then a 38-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on August 9, 2020 she injured her lower back when she bent down to pick up a tray and twisted her back as she stood back up. She stopped work on August 10, 2020. OWCP accepted appellant's claim for lower back muscle, fascia and tendon strain. During periods of intermittent, part-time, limited-duty work, it paid her compensation on the supplemental rolls from September 24, 2020 through October 8, 2021.

Appellant filed claims for compensation (Form CA-7) for disability from work for the period October 9 through November 19, 2021. In attached time analysis forms (Form CA-7a), she indicated that she was either placed in an absent without leave status or totally disabled from work commencing October 7, 2021.

In support of her claim, appellant submitted an October 25, 2021 report from Mark F. Bordick, a physician assistant, who noted that appellant presented for low back pain secondary to her accepted August 9, 2020 employment injury. Mr. Bordick further noted that she had been unable to work since October 7, 2021 due to low back pain. He diagnosed low back pain; lumbar strain; radiculopathy, lumbar region; and encounter for observation for suspected exposure to other biological agents ruled out.

Appellant also submitted a duty status report (Form CA-17) dated October 25, 2021 from Dr. Blair Rhode, a Board-certified orthopedic surgeon. Dr. Rhode noted the date of injury as August 9, 2020 and diagnosed lumbar strain due to injury. He opined that appellant was totally disabled from work. In an October 26, 2021 letter, Dr. Rhode again advised that appellant was presently totally incapacitated from her job due to her accepted August 9, 2020 employment-related lumbar injury.

OWCP, in a November 23, 2021 development letter, acknowledged receipt of appellant's Form CA-7 claims for wage-loss compensation for disability for the period commencing October 7, 2021 and continuing. It informed her that the evidence submitted was insufficient to establish her claims for wage-loss compensation. OWCP advised appellant of the type of medical evidence necessary to establish her disability claims and afforded her 30 days to submit the requested evidence.

OWCP received a Form CA-17 report dated November 22, 2021 and a narrative report dated December 20, 2021 from Dr. Rhode who reiterated his prior diagnosis of lumbar strain. He also diagnosed radiculopathy, lumbar region. Dr. Rhode, in the November 22, 2021 Form CA-17 report, reiterated his prior opinion that appellant's diagnosis of lumbar strain was due to the August 9, 2020 employment injury. In the December 20, 2021 report, he related that appellant sustained a work-related lumbar strain on August 9, 2020 and that she sustained an aggravation of

her condition on October 7, 2021. Appellant had related that her pain worsened secondary to performing a significant amount of stooping at work, which aggravated her symptomatology and necessitated that she be placed off work. Dr. Rhode indicated that appellant performed modified light-duty work two hours per day and had required an off-duty status from October 7, 2020 through the present.

Appellant filed additional Form CA-7 claims for wage-loss compensation for disability from work for the period November 20 through December 17, 2021.

In support of her claims, appellant submitted a November 15, 2021 report from Dr. Anis O. Mekhail, a Board-certified orthopedic surgeon. Dr. Mekhail related a history of appellant's August 9, 2020 employment injury, discussed examination findings, and provided a diagnosis of intractable back pain, degenerative disc. He explained to appellant that if she had degenerative disc disease then she would be a surgical candidate, otherwise he would not recommend surgery.

In a November 22, 2021 report, Mr. Bordick reiterated his prior diagnoses of low back pain; lumbar strain; radiculopathy, lumbar region.

OWCP, by decision dated December 23, 2021, denied appellant's claims for wage-loss compensation for the period commencing October 9, 2021 and continuing because the medical evidence of record was insufficient to establish disability during the claimed period due to a worsening of her accepted employment-related condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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>4</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>5</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>6</sup>

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.<sup>7</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a

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<sup>3</sup> *Supra* note 1.

<sup>4</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>5</sup> *See L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>6</sup> *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>7</sup> *Id.* at § 10.5(f); *see, e.g., G.T.*, 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.<sup>8</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>9</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 incident identified by the employee.<sup>10</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>11</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period, commencing October 9, 2021, causally related to her accepted August 9, 2020 employment injury.

In support of her disability claims, appellant submitted several reports from Dr. Rhode regarding her disability status during the relevant period. In Form CA-17 reports dated October 25 and November 22, 2021, Dr. Rhode diagnosed the accepted condition of lumbar strain. He also diagnosed lumbar radiculopathy. Dr. Rhode opined that appellant was totally disabled from work due to the accepted August 8, 2020 employment injury. In an October 26, 2021 letter, he also opined that she was totally disabled from work due to the accepted employment-related lumbar injury. On December 20, 2021 Dr. Rhode reported that appellant performed modified light-duty work two hours per day. He advised that she required an off-duty status from October 7, 2020 through the present. Dr. Rhode related that appellant's symptoms increased on October 7, 2020 due to increased stooping at work. Although Dr. Rhode opined that appellant was disabled during the claimed period, he failed to explain how the August 9, 2020 employment injury was due to her disability and why she was unable to perform the duties of her position during the period claimed. A mere conclusion without medical rationale supporting a period of disability due to the accepted

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<sup>8</sup> *G.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>9</sup> *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

<sup>10</sup> *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>11</sup> *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 5.

employment condition is insufficient to meet a claimant's burden of proof.<sup>12</sup> Thus, Dr. Rhode's reports are insufficient to establish appellant's disability claim.

Dr. Mekhail's November 15, 2021 report provided an assessment of intractable back pain, degenerative disc, and recommended that appellant undergo surgery if it was determined that she had degenerative disc disease. However, he did not provide an opinion addressing whether her disability for work was causally related to the August 9, 2020 employment injury. 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>13</sup> Further, the Board has held that pain is a symptom and not a compensable medical diagnosis.<sup>14</sup> For these reasons, the Board finds that Dr. Mekhail's report is insufficient to establish appellant's disability claim.

Appellant also submitted reports dated October 25 and November 22, 2021 from Mr. Bordick, a physician assistant, who diagnosed low back pain; lumbar strain; radiculopathy, lumbar region; and encounter for observation for suspected exposure to other biological agents ruled out. He advised that appellant had not worked since October 7, 2021 due to low back pain. The Board has held that the reports of a physician assistant are of no probative value as a physician is not considered a physician as defined under FECA and, therefore, is not competent to provide a medical opinion. The reports from Mr. Bordick are, therefore, insufficient to establish appellant's claim, except to establish that appellant received treatment on the dates he provided authorized medical treatment.<sup>15</sup> The Board notes that appellant did not claim wage-loss compensation for evaluations performed by Mr. Bordick on October 25 and November 22, 2021.

As noted, 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>16</sup> Because appellant has not submitted rationalized medical opinion evidence sufficient to establish employment-related disability during the claimed period due to her accepted condition, the Board finds that she has not met her burden of proof to establish her claim.

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<sup>12</sup> See *A.L.*, Docket No. 21-0151 (issued January 21, 2022); *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *T.L.*, *supra* note 5; *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>13</sup> See *L.K.*, Docket No. 21-1155 (issued March 23, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>14</sup> *R.N.*, Docket No. 19-1004 (issued October 18, 2019); *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *Robert Broome*, 57 ECAB 339, 342 (2004).

<sup>15</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 also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (a physician assistant is not considered a physician as defined under FECA); *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).

<sup>16</sup> *Supra* note 5.

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 appellant has not met her burden of proof to establish disability from work for the period, commencing October 9, 2021, causally related to her accepted August 9, 2020 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 23, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

A handwritten signature in black ink, appearing to read "J. D. McGinley". The signature is written in a cursive style with a large, looping initial "J".

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