

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On June 30, 2015 appellant, then a 45-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging a pelvis injury due to the physical requirements of his federal employment.<sup>2</sup> He noted that he first became aware of his claimed condition on August 1, 2013 and realized its relation to his federal employment on June 18, 2015.<sup>3</sup> Appellant stopped work on June 19, 2015. OWCP accepted his claim for a pelvis sprain, and paid wage-loss compensation for disability from work on the supplemental rolls commencing June 19, 2015 and on the periodic rolls commencing December 13, 2015.<sup>4</sup>

On March 28, 2016 appellant returned to full-time work with restrictions as a sales solution team member. The position required intermittent engagement in the following activities for the designated periods: sitting for eight hours per day, using a computer mouse for four to eight hours, intermittent fine manipulation of a keyboard for four to eight hours, and speaking on a telephone for six to eight hours.

In a June 19, 2018 report, Dr. Raymond Candage, a Board-certified orthopedic surgeon, noted that appellant had been diagnosed with facet hypertrophy at L4-5 and left neural foraminal stenosis at L5-S1. He advised that the requirements of appellant's light-duty work had aggravated his pelvis and lumbar spine conditions. Dr. Candage indicated that prolonged sitting, lifting, and carrying would only further aggravate appellant's conditions and, therefore, it was recommended for him to be declared permanently disabled.

In a letter received by OWCP on June 29, 2018, appellant requested that the acceptance of his claim be expanded to include additional employment-related conditions of the right hip and low back.

In a December 12, 2018 narrative report, Dr. Dean J. Marshall, an osteopath Board-certified in orthopedic surgery, diagnosed unilateral primary osteoarthritis of the right hip and indicated that this condition was employment related. In a duty status report (Form CA-17) of even date, he indicated that appellant could not perform his regular work and diagnosed employment-related avascular necrosis of the right hip. Dr. Marshall listed the date of injury as August 1, 2013 and recommended work restrictions due to appellant's accepted employment

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<sup>2</sup> OWCP assigned OWCP File No. xxxxxx642. Appellant's letter carrier position required casing mail by standing for approximately three hours per day and pitching letters, flats, magazines, and newspapers into a case. The letter carrier then delivered mail on assigned routes, a task that required lifting a mailbag weighing up to 35 pounds in and out of a postal vehicle, and carrying it on a strap over the shoulder. The position involved walking or standing most of the day and lifting mail/mailbags weighing up to 70 pounds.

<sup>3</sup> Appellant also asserted that a fall down icy stairs at work in early-2013 caused injury to his groin and right hip. However, he did not seek medical care for this fall or file a claim with OWCP. The question of whether a appellant sustained a disabling injury due to a fall in early-2013 is not currently before the Board.

<sup>4</sup> The present case record shows that appellant filed a Form CA-2 on January 19, 2018, assigned OWCP File No. xxxxxx374, in which he claimed a new occupational injury of the right hip, tail bone, and lower/mid back region due to factors of his federal employment. He asserted that pain from the new injury commenced in September 2017. OWCP denied that claim by decisions dated March 13, 2018 and July 11, 2019. It has administratively combined File Nos. xxxxxx374 and xxxxxx642, designating the latter as the master file.

injury, including lifting/carrying no more than 40 pounds for up to 20 minutes per day, pushing/pulling no more than 40 pounds for up to 15 minutes per day, sitting for no more than 15 minutes per hour, and standing or walking for no more than 20 minutes per day.

On December 14, 2018 appellant began working part-time hours in the modified position.

Appellant subsequently filed claims for wage-loss compensation (Form CA-7) for intermittent disability from work from December 14, 2018 through June 28, 2019 causally related to his accepted employment injury. The specific periods of disability claimed by appellant were: December 14 and December 17 through 21, 2018; June 13 through 14, June 17 through 21, and June 24 through 28, 2019. Appellant worked two hours per day on these dates and claimed wage-loss compensation for the remaining hours of each workday not covered by leave.

In a January 2, 2019 development letter with regard to OWCP File No. xxxxxx642, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation. It advised him of the type of additional factual and medical evidence required, including an attending physician's report establishing causal relationship between the claimed periods of disability and an employment-related condition. No additional evidence was received.

On February 7, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a series of questions, for a second opinion examination with Dr. William R. Bohl, a Board-certified orthopedic surgeon. It requested that Dr. Bohl evaluate whether appellant continued to have residuals/disability causally related to his accepted pelvis sprain. OWCP also requested that Dr. Bohl evaluate whether appellant developed right hip osteoarthritis or whether the claim should be expanded to include other previously unaccepted conditions causally related to the performance of his employment duties.

On March 15, 2019 appellant underwent right total hip replacement. The procedure was not authorized by OWCP.

In a March 26, 2019 report, Dr. Bohl discussed appellant's factual and medical history. He reported his physical examination findings, which included tenderness in appellant's right sacroiliac joint, sciatic notch, and the incision site of his recent right hip surgery. Dr. Bohl opined that appellant did not exhibit evidence of his accepted pelvis sprain, and generally noted that he had residual pain from "his other diagnoses."<sup>5</sup> He opined that appellant could not return to his date-of-injury job as a letter carrier, but noted that this was due to his lack of capacity for "walking or standing work" while he healed from his right hip surgery. In a March 26, 2019 work capacity evaluation report (Form OWCP-5c), Dr. Bohl noted that appellant's right hip surgery prevented him from working as a letter carrier.

On April 11, 2019 OWCP requested clarification of Dr. Bohl's opinion with respect to whether appellant sustained employment-related conditions other than a pelvis sprain. In a supplemental April 18, 2019 report, Dr. Bohl indicated that the avascular necrosis of appellant's right hip was not employment related in that the employment exposures were not sufficient to

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<sup>5</sup> Dr. Bohl also opined that appellant had right hip arthritis due to femoral head avascular necrosis, which "could be secondary to his work injuries" and right gluteus medius tendinitis, which likely was "a result of his work injuries."

cause such a condition. He noted that appellant had a history of right hip problems prior to sustaining an employment-related condition. Dr. Bohl further opined that the steroid injections that appellant received for his accepted pelvis sprain condition did not cause the avascular necrosis of his right hip. He also indicated that appellant's right gluteus medius tendinitis was not due to the employment duties identified in the SOAF.

On April 25, 2019 OWCP determined that there was a conflict in the medical opinion evidence between Dr. Bohl and Dr. Marshall regarding whether appellant continued to have residuals and/or disability due to the accepted pelvis sprain. On May 7, 2019 it referred appellant, along with a SOAF and series of questions, to Dr. Dennis Glazer, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion on the matter. OWCP requested that Dr. Glazer evaluate whether appellant continued to have residuals/disability causally related to his accepted pelvis sprain. It also determined that there was a conflict in the medical opinion evidence regarding whether appellant sustained an employment-related condition other than a pelvis sprain and it requested that Dr. Glazer evaluate whether appellant sustained right hip osteoarthritis or another previously unaccepted condition causally related to the performance of his employment duties.

In a May 24, 2019 report, Dr. Glazer detailed appellant's factual and medical history and described the findings of the physical examination he conducted on that date. Appellant reported that he presently had pain in his groin, buttock, and low back. Dr. Glazer indicated that appellant had normal motor and sensory findings in the lower extremities, negative bilateral straight leg test, and intact bilateral ankle jerks/deep tendon reflexes. Examination of the right hip showed slightly limited internal and external rotation. Dr. Glazer found that appellant suffered no residuals or disability from the accepted condition of pelvis sprain. He advised that, although appellant had complaints with ambulation and groin/right hip/back pain, the nonwork-related avascular necrosis of his right hip was "a source of his pain." Dr. Glazer noted, "[t]he accepted sprain condition is self-limiting and should have resolved." He opined that appellant had avascular necrosis of the right hip, a nonwork-related degenerative condition, which was the result of wear and tear over time, and noted that appellant's work duties would not have been competent to cause such an injury. Dr. Glazer also found that appellant's facet hypertrophy with left neural foraminal stenosis at L4-5 and L5-S1 was not employment related, noting that it would not have been caused by his work duties and that such a condition typically developed over the course of time "due to aging and degeneration."

In a July 3, 2019 letter, OWCP advised appellant that it proposed to terminate his wage-loss compensation and medical benefits because the special weight of medical evidence, as represented by Dr. Glazer's opinion, established that he no longer had residuals or disability causally due to his accepted employment-related pelvis sprain. It afforded him 30 days to submit argument and evidence challenging the proposed termination action.

By decision dated July 9, 2019, OWCP found that appellant did not meet his burden of proof to establish disability from work for intermittent periods from December 14, 2018 through June 28, 2019. In a separate decision dated July 9, 2019, it found that appellant had not met his burden of proof to expand the acceptance of his claim to include additional conditions causally related to the accepted employment injury.

In a July 11, 2019 statement received by OWCP on July 16, 2019, appellant argued that he continued to have residuals and disability due to his accepted employment-related pelvis sprain and additional claimed employment injuries.

On August 7, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review with respect to the July 9, 2019 decisions.

By decision dated August 20, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective August 21, 2019. It found that the special weight of the medical opinion evidence with respect to work-related residuals/disability rested with the opinion of Dr. Glazer.

By decision dated September 11, 2019, a hearing representative set aside OWCP's July 9, 2019 decisions and remanded the case to OWCP for further development.<sup>6</sup> The hearing representative directed OWCP to ask Dr. Glazer to provide a supplemental report clarifying whether appellant's work duties, including walking, standing, and handling mail, contributed to his right hip osteoarthritis and, if so, to comment on the nature and extent of any injury-related disability. The hearing representative further directed that, after requesting such a supplemental report and engaging in any further development deemed necessary, OWCP was to issue a *de novo* decision.

OWCP then referred appellant's case to Dr. Glazer, along with an updated SOAF and series of questions, and requested that he provide an opinion on whether appellant's employment duties contributed to the diagnosis of right hip osteoarthritis and, if so, to comment on any related periods of disability.<sup>7</sup> In an October 28, 2019 supplemental report, Dr. Glazer opined that appellant's work duties as described in the SOAF did not cause or contribute to the diagnosis of right hip osteoarthritis. He explained that such a diagnosis is often associated with aging and natural deterioration. Dr. Glazer indicated, "[h]is job duties would be unlikely to cause or accelerate his hip osteoarthritis."

By decision dated November 19, 2019, OWCP determined that appellant did not meet his burden of proof to expand the acceptance of his claim to include additional conditions causally related to the accepted employment injury. It also found that he did not meet his burden of proof to establish disability from work for intermittent periods from December 14, 2018 through June 28, 2019 causally related to the accepted employment injury.

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<sup>6</sup> Although it was suggested in parts of the September 11, 2019 decision that only the July 9, 2019 decision regarding appellant's expansion claim was being set aside, the hearing representative effectively set aside both of the above-described July 9, 2019 decisions.

<sup>7</sup> In its referral documents, OWCP instructed Dr. Glazer to only consider the effects of the work duties delineated in the updated SOAF with respect to appellant's expansion and disability claims. It indicated that he should not consider the effects of a purported fall at work in early 2013.

## **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 benefits.<sup>8</sup> After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>9</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>10</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>11</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>12</sup>

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.<sup>13</sup> For a conflict to arise, the opposing physicians' opinions must be of virtually equal weight and rationale.<sup>14</sup> In situations where the case is properly referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>15</sup>

## **ANALYSIS -- ISSUE 1**

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 21, 2019.

The Board finds that OWCP improperly determined that there was a conflict in the medical opinion between Dr. Marshall, an attending physician, and Dr. Bohl, an OWCP referral physician,

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<sup>8</sup> *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>9</sup> *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>10</sup> *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>11</sup> *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005). *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>12</sup> *See A.G., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

<sup>13</sup> 5 U.S.C. § 8123(a); *see E.L.*, Docket No. 20-0944 (issued August 30, 2021); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *M.S.*, 58 ECAB 328 (2007).

<sup>14</sup> *P.R.*, Docket No. 18-0022 (issued April 9, 2018).

<sup>15</sup> *See D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

on the issue of whether appellant continued to have residuals or disability causally related to the accepted employment-related pelvis sprain. Dr. Marshall opined, in a December 12, 2018 duty status report, that appellant had residuals/disability related to his accepted pelvis sprain. However, Dr. Bohl, in his March 26 and April 18, 2019 second opinion reports, did not provide an opinion that appellant ceased to have residuals/disability related his accepted pelvis sprain. He did not directly address the question of whether this accepted condition had resolved.<sup>16</sup> Given that the case record lacked conflicting reports on the termination issue at the time of the referral to Dr. Glazer, there was no conflict in the medical opinion evidence on this issue at that time.<sup>17</sup> Therefore, Dr. Glazer, who produced a May 24, 2019 report finding that appellant ceased to have residuals/disability of the accepted pelvis sprain, actually served as an OWCP referral physician with respect to the termination issue.<sup>18</sup>

Consequently, the Board further finds that there remains an outstanding conflict in the medical opinion evidence with respect to the termination issue between Dr. Glazer, OWCP's referral physician who found no continuing employment-related residuals/disability, and Dr. Marshall, the attending physician who found continuing employment-related residuals/disability. Because OWCP relied on the opinion of Dr. Glazer to terminate appellant's wage-loss and medical benefits, effective August 21, 2019, without having resolved the existing conflict in the medical opinion evidence, OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits.<sup>19</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

When an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>20</sup>

The medical evidence required to establish causal relationship between a specific condition, and the 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

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<sup>16</sup> In his March 26, 2019 report, Dr. Bohl indicated that he did not observe signs of a pelvis sprain during the examination conducted on that date, but he did not provide an opinion on whether the accepted pelvis sprain had resolved. In his April 18, 2019 report, he also did not indicate whether the accepted pelvis sprain had resolved.

<sup>17</sup> See *supra* note 13 and 14.

<sup>18</sup> See *R.H.*, Docket No. 17-1477 (issued March 14, 2018) (finding that, due to the lack of a conflict in the medical evidence at the time of the referral to the putative impartial medical specialist, the physician actually served as an OWCP referral physician rather than an impartial medical specialist).

<sup>19</sup> See *P.J.*, Docket No. 20-0550 (issued April 26, 2021); *Gail D. Painton*, 41 ECAB 492, 498 (1990); *Craig M. Crenshaw, Jr.*, 40 ECAB 919, 922-23 (1989) (finding that termination was not supported when there was continuing conflict in medical opinion evidence regarding work-related residuals/disability).

<sup>20</sup> *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>21</sup>

The Board has held that, when the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable.<sup>22</sup> However, the normal progression of untreated disease cannot be stated to constitute “aggravation” of a condition merely because the performance of normal work duties reveals the underlying condition.<sup>23</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional conditions causally related to his accepted employment injury.

As noted above, Dr. Glazer served as a second opinion physician with respect to the termination of appellant’s compensation due to a lack of conflict in the medical opinion evidence on that issue. The Board finds, however, that Dr. Glazer did serve as an impartial medical specialist with respect to the expansion issue as there was, in fact, a conflict in the medical opinion evidence with respect to this issue at the time of referral. In his March 26 and April 18, 2019 reports, Dr. Bohl found that appellant did not sustain an employment-related condition other than a pelvis sprain. Appellant’s attending physicians produced opinions on the expansion issue, which conflicted with Dr. Bohl’s opinion. In a June 19, 2018 report, Dr. Candage noted a diagnosis of facet hypertrophy at L4-5 and left neural foraminal stenosis at L5-S1, and advised that appellant’s work duties aggravated his lumbar spine conditions. In December 12, 2018 reports, Dr. Marshall diagnosed unilateral primary osteoarthritis of the right hip and indicated that the condition was employment related.<sup>24</sup>

The Board finds that the special weight of the medical opinion evidence regarding appellant’s expansion claim rests with the well-rationalized opinion of Dr. Glazer.<sup>25</sup> In his May 24 and October 28, 2019 reports, Dr. Glazer opined that appellant did not sustain an employment injury other than the accepted pelvis sprain, and specifically indicated that appellant’s degenerative conditions of necrosis of the right hip and facet hypertrophy with left neural foraminal stenosis at L4-5 and L5-S1 were not employment related. He explained that appellant’s employment activities would not have been competent to cause such conditions, and that they developed due to nonwork-related degenerative processes associated with aging. The opinion of Dr. Glazer

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<sup>21</sup> See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>22</sup> *C.H.*, Docket No. 17-0488 (issued September 12, 2017).

<sup>23</sup> *Id.*

<sup>24</sup> See *supra* note 13 and 14.

<sup>25</sup> See *supra* note 15.



regarding the expansion issue was based on a complete and accurate factual and medical history.<sup>26</sup> For these reasons, the opinion of Dr. Glazer serves as a proper basis for OWCP's denial of appellant's expansion claim.

### **LEGAL PRECEDENT -- ISSUE 3**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>27</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>28</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>29</sup> 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>30</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.<sup>31</sup>

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 accepted employment injury.<sup>32</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that appellant has not met his burden of proof to establish disability from work for intermittent periods from December 14, 2018 through June 28, 2019 causally related to his accepted employment injury.

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<sup>26</sup> See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *D.W.*, Docket No. 18-0123 (issued October 4, 2018); *Melvina Jackson*, 38 ECAB 443 (1987) (regarding the importance, when assessing medical evidence, of such factors as a physician's knowledge of the facts and medical history, and the care of analysis manifested and the medical rationale expressed in support of the physician's opinion).

<sup>27</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>28</sup> 20 C.F.R. § 10.5(f).

<sup>29</sup> See *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>30</sup> See *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

<sup>31</sup> See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

<sup>32</sup> *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

Appellant claimed that, due to his accepted pelvis sprain, he sustained disability from work on the following dates: December 14 and December 17 through 21, 2018; June 13 through 14, June 17 through 21, and June 24 through 28, 2019. He worked two hours per day on these dates and claimed wage-loss compensation for the remaining hours of each workday not covered by leave.

The Board finds, however, that appellant did not establish disability for these claimed dates because he did not submit any medical reports that contained an opinion on disability relating to these specific dates. As appellant has not submitted rationalized medical evidence establishing causal relationship between his claimed periods of disability and the accepted employment injury, the Board finds that he has not met his burden of proof to establish his claim.<sup>33</sup>

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 OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 21, 2019. The Board further finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional conditions causally related to his accepted employment injury or to establish disability from work for intermittent periods from December 14, 2018 through June 28, 2019 causally related to his accepted employment injury.

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<sup>33</sup> See *A.D.*, Docket No. 21-0143 (issued November 15, 2021). The Board notes that none of the government physicians in the present case, whether serving as an OWCP referral physician or impartial medical specialist, was asked to provide an opinion on the above-noted specific dates of claimed intermittent disability. Therefore, there is no opinion of an OWCP referral physician or impartial medical specialist in the case record which would be dispositive on this issue.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 20, 2019 decision of the Office of Workers' Compensation Programs is reversed. The November 19, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2022  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board