

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

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<b>E.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0738</b>
	)	<b>Issued: June 22, 2022</b>
<b>U.S. POSTAL SERVICE, ROGERS PARK POST</b>	)	
<b>OFFICE, Chicago, IL, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 18, 2020 appellant filed a timely appeal from January 16 and 31, 2020 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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

<sup>2</sup> The Board notes that, following the January 31, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish intermittent disability from work for the period April 23, 2018 through November 21, 2019 causally related to his accepted March 8, 2017 employment injury.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 5, 2017 appellant, then a 27-year-old mail carrier,<sup>4</sup> filed a traumatic injury claim (Form CA-1) alleging that he injured his lower back on March 8, 2017, when he blacked out and stumbled upon a stool while in the performance of duty. He stopped work on the date of injury. On July 21, 2017 OWCP accepted appellant's claim for lumbar strain.

On November 4, 2019 appellant filed a claim for compensation (Form CA-7) for leave without pay (LWOP) used from April 23, 2018 through January 28, 2019.

In an August 30, 2018 report, Dr. Lise Weisberger, a family practitioner, advised that appellant had permanent work restrictions, limiting him to 5 hours of work daily, no more than 2 hours on his feet, the remaining work hours to be seated, up to 6 days a week, with no lifting over 15 pounds.

On January 11, 2019 OWCP offered appellant a modified limited-duty job effective January 18, 2019. The physical requirements of the position were listed as sitting 2 hours, lifting/carrying no more than 15 pounds 6 hours, walking/standing 3 hours, and reaching above the shoulder 2 hours.

In a report dated July 11, 2019, Dr. Weisberger related that appellant had not worked since April 2018 due to depression. She also noted that appellant had chronic back pain, and she reiterated appellant's work restrictions, including standing/walking limited to 2 hours a day.

By letter dated September 24, 2019, OWCP informed the employing establishment that the January 11, 2019 job offer was not in compliance with the physical requirements set by Dr. Weisberger which indicated that appellant was limited to five hours of work per day, with no more than two hours on his feet. By letter dated October 5, 2019, the employing establishment

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<sup>3</sup> Docket No. 18-0454 (issued February 20, 2020).

<sup>4</sup> On March 7, 2017 appellant had accepted a limited-duty job offer as a city carrier. The duties included emptying trash at carrier cases, cleaning, mopping, and answering telephones. The physical requirements included lifting carrying, pushing, and pulling up to 13 pounds for up to six hours per day, walking up to three hours per day, simple grasping and fine manipulation up to six hours per day, and sitting one hour at a time for up to six hours per day.

advised that the job offer contained a typographic error as the offer actually required standing/walking limited to two hours a day.

On October 16, 2019 the employing establishment issued a modified limited-duty job offer which required walking/standing for two hours a day. Appellant accepted the modified job offer on October 17, 2019.

On November 25, 2019 appellant a Form CA-7 for disability from November 18 through 29, 2019.

In a development letter dated December 3, 2019, OWCP authorized payment for five hours of disability per day on November 18, 19, 20, 22, 25, 26, and 29 2019.<sup>5</sup> It determined, however, that the claim for the period November 18 through 29, 2019, was not payable in its entirety as the evidence of record was insufficient to establish the remaining claimed disability. OWCP afforded appellant 30 days to submit the necessary evidence.

No additional evidence was received.

By decision dated January 16, 2020, OWCP denied the disability claim for the period from April 23, 2018 through January 28, 2019. It explained that appellant had not submitted medical evidence establishing total disability for the claimed period.

By decision dated January 31, 2020, OWCP authorized payment for five hours of disability claimed on November 21, 2019. However, it denied the remaining claimed disability, finding that it had not received any additional evidence.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</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>7</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>8</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>9</sup>

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<sup>5</sup> The Board notes that appellant was not paid for 5 hours for disability claimed on November 27, 2019.

<sup>6</sup> *Supra* note 1.

<sup>7</sup> *See C.B.*, Docket No. 20-0629 (issued May 26, 2021); *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>8</sup> *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *D.P.*, Docket No. 18-1439 (issued April 30, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>9</sup> 20 C.F.R. § 10.5(f); *J.M.*, Docket No. 18-0763 (issued April 29, 2020).

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>10</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a 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>11</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 specific employment factors identified by the claimant.<sup>12</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>13</sup>

### ANALYSIS

The issue is whether appellant has not met his burden of proof to establish intermittent disability from work for the period April 23, 2018 through November 21, 2019 causally related to his accepted March 8, 2017 employment injury.

Dr. Weisberger, in an August 30, 2018 report, advised that appellant was able to work with permanent restrictions. While she related the work restrictions, her opinion was conclusory. Dr. Weisberger did not provide objective medical findings to explain why appellant required work restrictions due to the accepted medical condition of lumbar strain and did not explain why appellant could not perform his federal employment duties during the claimed periods.<sup>14</sup> Likewise, in her report dated July 11, 2019, Dr. Weisberger related that appellant had not worked since April 2018 due to depression. She also noted that appellant had chronic back pain, and reiterated appellant's work restrictions, including standing/walking limited to two hours a day. Dr. Weisberger again did not provide objective medical findings to substantiate that appellant required permanent work restrictions due to his accepted lumbar strain.<sup>15</sup>

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<sup>10</sup> *Id.* at § 10.5(f); *see J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>11</sup> *J.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>12</sup> *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

<sup>13</sup> *D.P., supra* note 6; *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>14</sup> *See E.M.*, Docket No. 18-0454 (issued February 20, 2020); *see also J.J.*, Docket No. 15-1329 (issued December 18, 2015).

<sup>15</sup> *Id.*

As appellant has not submitted rationalized medical evidence establishing disability for the claimed periods causally related to the accepted March 8, 2017 employment injury, the Board finds that he has not met his 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.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish intermittent disability from work for the period April 23, 2018 through November 21, 2019 causally related to his accepted March 8, 2017 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 16 and 31, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 22, 2022  
Washington, DC

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

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

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