United States Department of Labor
Employees' Compensation Appeals Board

J.J., Appellant	)	
	)	**Docket No. 20-1014**
and	)	**Issued: June 22, 2022**
	)	
U.S. POSTAL SERVICE, VALRICO POST OFFICE, Valrico, FL, Employer	)	

Appearances:
Wayne Johnson, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 10, 2020 appellant, through counsel, filed a timely appeal from an October 15, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] 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.

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that, following the October 15, 2019 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 commencing February 3, 2018 causally related to her accepted May 11, 2017 employment injury.

FACTUAL HISTORY

On May 11, 2017 appellant, then a 39-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that day, she sustained a contusion/bruise after she was rear-ended by a vehicle, while in the performance of duty. She stopped work on the date of injury. OWCP accepted the claim for lumbosacral strain and strain of ligaments of the cervical spine. Appellant received continuation of pay from May 12 to June 25, 2017. Appellant subsequently returned to work.

On February 19, 2017 appellant filed a claim for compensation (Form CA-7) for disability from work for the period February 3 through 16, 2018.

Thereafter, OWCP received medical evidence. In a February 19, 2018 medical report, Dr. Arnold M. Ramirez, an attending Board-certified family practitioner, noted that appellant sustained a work-related neck injury on May 11, 2017. He also noted that following her return to work she reinjured her neck while lifting a heavy bundle of mail three weeks prior. On the following day appellant had numbness in her hands, increased neck pain, and right shoulder pain radiating down to her right arm. Dr. Ramirez provided an assessment of cervicalgia with cervical radiculopathy more prominently on the right side. In a February 26, 2018 note, he diagnosed other cervical disc displacement, unspecified cervical region, and ordered physical therapy.

Appellant thereafter filed additional Form CA-7 claims seeking compensation for disability from work for the period February 17 to March 16, 2018.

OWCP subsequently received reports by Dr. Ramirez. In reports dated February 26 and March 8, 2018, Dr. Ramirez recounted appellant's history of injury on May 11, 2017 and his prior diagnosis of cervicalgia with right-sided cervical radiculopathy. He also diagnosed cervical disc protrusions at C4-5 (right side), C5-6, and C6-7 (right side). Dr. Ramirez, in state workers' compensation medical forms dated February 26 and March 8, 2018 and a narrative report dated March 19, 2018, advised that appellant's cervical disc protrusion with radiculopathy was directly related to her accepted May 11, 2017 employment injury. He further advised that her work restrictions remained unchanged.

OWCP continued to receive medical evidence, including a February 22, 2018 cervical spine magnetic resonance imaging (MRI) scan report by Dr. Dexter G. Stallworth, a Board-certified diagnostic radiologist. Dr. Stallworth provided impressions of a shallow disc bulge at C3-4 without cord compression and mild left-sided foraminal narrowing at this level due to uncovertebral joint hypertrophy; a non-classified disc protrusion paracentral to the right at C4-5 causing impingement of the thecal sac and touching the ventral cord; a noncalcified bimodal protrusion at C5-6 extending into both the right and left subarticular recesses causing impingement of the C6 nerve roots bilaterally; and an asymmetric disc protrusion at C6-7 to the right causing impingement of the thecal sac without stenosis.

A February 7, 2018 report by Dr. Edward J. Leonard, a chiropractor, provided assessments of cervicalgia, thoracic spine, and low back pain, back muscle spasm, right and left shoulder stiffness, not elsewhere classified, and segmental and somatic dysfunction of the upper and lower extremities.

Dr. Gary Cannon, a Board-certified family practitioner, noted in a February 8, 2018 report, appellant's history of injury on May 11, 2017. He provided assessments of sprain of the joints and ligaments of unspecified parts of the neck, initial encounter, and radiculopathy, cervical region.

In narrative reports, a duty status report (Form CA-17), and a state workers' compensation medical form dated February 12, 2018, Dr. Joseph E. Schreier, a family practitioner, repeated a history of appellant's May 11, 2017 employment injury. He diagnosed cervical sprain and cervical radiculopathy and advised that these conditions were due to the accepted employment injury. In the state workers' compensation medical form, Dr. Schreier indicated that appellant was unable to work or engage in commercial driving until she was seen by a specialist.

OWCP, in development letters dated March 2, 14, and 27, 2018, advised appellant of the deficiencies in her claim. It requested that she submit additional factual and medical evidence to support her claim for compensation for the period commencing February 3, 2018.

Thereafter, appellant continued to file Form CA-7 claims requesting compensation for disability from work for the period March 17 through April 27, 2018.

In a March 22, 2018 report, Nathan Sipe-Powell, a doctor of physical therapy, discussed appellant's progress with treatment in relation to her sprain of ligaments of cervical spine, initial encounter; injury of lumbosacral plexus, initial encounter; low back pain; and cervicalgia.

In an April 12, 2018 note, Dr. Ramirez indicated that on March 8, 2018 he diagnosed cervical radiculopathy, neck pain and weakness, cervical disc herniation with radiculopathy and cervical disc protrusion at C4-5/C5-6/C6-7 due to the May 11, 2017 employment injury.

In a duty status report (Form CA-17) and narrative report also dated April 12, 2018, Dr. Ramirez reiterated his prior cervical diagnoses, opinion that appellant's cervical disc herniation was due to her May 11, 2017 employment injury, and finding that her work restrictions were unchanged.

An April 26, 2018 report by Dr. Hoi Van Do, a family practitioner, included a history of the May 11, 2017 employment injury. Dr. Do noted appellant's reduced level of neck and low back pain when she was released to full-duty work in June 2017 by Dr. Geoffrey Cronen, a Board-certified orthopedic surgeon, and her worsening level of neck and low back pain after she started working full duty commencing in December 2017. In January 2018, appellant noticed radiating numbness, tingling pain, and weakness going down both upper extremities into her hands. She also noticed a sharp pain in her right gluteal area that was aggravated while working in her long-life vehicle (LLV) and leaning toward the right to deliver mail multiple times per day. By the end of January 2018, appellant was unable to work due to increased and constant pain. Dr. Do indicated that appellant's primary care physician advised that her pain and radiculopathy were due to a May 11, 2017 work-related injury. He diagnosed the accepted conditions of injury of lumbosacral plexus, initial encounter, and sprain of ligaments of the cervical spine, initial encounter. Dr. Do also provided updated diagnoses of other cervical disc displacement, unspecified cervical region, and radiculopathy, cervical region. He opined that the diagnosed

conditions were due to the employment injury. Dr. Do explained that appellant's accepted conditions were not properly treated, and she experienced worsening neck and low back pain and constant tingling, numbness, and weakness in her hands. He maintained that she had not fully recovered from her accepted employment injury. Dr. Do attributed appellant's worsening symptoms to her rural carrier work duties, which included repetitive twisting, bending, stooping, and lifting up to 50 pounds. He advised that she was able to return to light-duty work with restrictions. In an April 26, 2018 Form CA-17 report, Dr. Do reiterated his opinion that appellant continued to experience the effects of her employment-related injury. He again concluded that she could work with restrictions.[4]

OWCP, by decision dated May 8, 2018, denied appellant's claims for compensation for the period commencing February 3, 2018. It found that the medical evidence of record was insufficient to establish that her claimed disability was causally related to her accepted May 11, 2017 employment injury.

OWCP subsequently received additional medical evidence. In a May 4, 2018 narrative report and May 8, 2018 state workers' compensation medical form, Dr. Ron Chatterjee, a physiatrist, who specializes in physical medicine and rehabilitation provided assessments of herniation of cervical intervertebral disc with radiculopathy; traumatic disc herniation of the cervical spine; facet arthropathy, cervical spine; cervicalgia, and low back pain. In the May 4, 2018 report, he related that appellant presented with post-traumatic neck pain and paresthesia in her upper extremities following her May 11, 2017 employment injury. Dr. Chatterjee advised that she had disc herniations in the cervical spine at C4-5 and C5-6 which caused neck pain and neural impingement with radicular complaints in the upper extremities. In the May 8, 2018 state workers' compensation medical form, he listed appellant's physical restrictions.

In an April 26, 2018 prescription, Dr. Do ordered physical therapy to treat appellant's accepted conditions and reiterated his prior finding that she could return to light-duty work.

A May 8, 2018 lumbar spine MRI scan report by Dr. Eric M. Tirnauer, a Board-certified diagnostic radiologist, found no evidence of acute fracture or static subluxation and no significant disc pathology or central canal or neural foraminal stenosis.

Dr. Ramirez, in an April 27, 2018 progress report, noted that appellant was off work, outlined her physical therapy evaluation and treatment plan for her May 31, 2018 diagnoses of cervicalgia, low back pain, injury of lumbosacral plexus, initial encounter, and sprain of ligaments of cervical spine, initial encounter. In a narrative report and Form CA-17 report dated May 31, 2018, he indicated that she was unable to work due to severe pain in her neck and arms.

On June 10, 2018 appellant requested reconsideration of the May 8, 2018 decision and submitted a June 6, 2018 narrative report and Form CA-17 report from Dr. Do. Dr. Do continued to opine that appellant's diagnosed lumbar and cervical conditions were due to her May 11, 2017 employment injury and repetitive work duties. He also continued to advise that she could perform light-duty work with restrictions.

[4] On April 26, 2018 the employing establishment offered appellant a modified rural carrier position which she accepted on May 3, 2018.

In a June 11, 2018 letter, Dr. Jorge J. Inga, a Board-certified neurosurgeon, noted a history of the May 11, 2017 employment injury and appellant's medical treatment. He indicated that she was off work. Dr. Inga provided impressions of herniated cervical disc at C5-6 lateralized to the left side with C6 radiculopathy, herniated cervical disc at C4-5 lateralized to the right side, symptomatic cervical spondylosis at C6-7, and chronic lumbosacral strain.

Dr. Tirnauer, in a June 14, 2018 cervical spine MRI scan report, provided impressions of no evidence of acute fracture or static subluxation; straightening and reversal of the normal cervical lordosis which may be secondary to underlying degenerative changes or muscle spasm; broad-based posterior disc bulge at C3-4 that minimally indented the ventral thecal sac and was age-indeterminate; broad-based posterior disc bulge at C4-5 extending greater towards the right and indented the ventral thecal sac and potentially abutted the right ventral cervical cord and was age-indeterminate; broad-based posterior disc bulge at C5-6 which indented the ventral thecal sac and likely abutted the ventral cervical cord; superimposed left paracentral disc herniation with inferior extrusion and a smaller superimposed right paracentral disc herniation with inferior extrusion contributing to mild central canal stenosis and mild-to-moderate neural foraminal stenosis bilaterally that were "age-indeterminate," but could be seen in the setting of traumatic disc herniations; and broad-based posterior disc bulge at C6-7 that indented the ventral thecal sac and contributed to mild central canal stenosis that was age-indeterminate.

In a June 22, 2018 report, Dr. Samuel A. Joseph, a Board-certified orthopedic surgeon, obtained a history of the May 11, 2017 employment injury and appellant's medical treatment. He provided an assessment of herniated nucleus pulposus at C5-6 left. In a state workers' compensation medical form of even date and an undated form report, Dr. Joseph recommended cervical disc arthroscopy to treat appellant's herniated nucleus pulposus at C5-6.

Appellant filed additional Form CA-7 claims requesting compensation for intermittent disability from work for the period June 9 through August 31, 2018.

Additional Form CA-17 reports dated May 31 and June 7, 2018 and narrative reports dated May 16 and 31, 2018 by Dr. Do, restated his prior lumbosacral and cervical spine diagnoses, opinions on causal relationship, and appellant's work capacity.

Dr. Inga, in a June 22, 2018 letter, related that appellant was scheduled to undergo surgery on July 23, 2018 to treat her diagnosis of herniated cervical discs at C4-5 and C5-6. He advised that she was unable to work on the date of his letter or the next day due to a flare up of her symptoms.

In reports dated May 16 and 31, 2018, Dr. John Patrick, an anesthesiologist, concluded that appellant sustained an injury of the lumbosacral plexus, initial encounter, and sprain of the ligaments of the cervical spine, initial encounter, "as a direct result of her required work duties on May 11, 2017." He administered trigger point injections into the trapezius area to treat her neck pain.

Dr. Tirnauer, in a July 11, 2018 report, advised that an x-ray of the chest was unremarkable.

A July 24, 2018 work capacity evaluation (Form OWCP-5c) by Dr. Evan Zimmer, a family practitioner and psychiatrist, indicated that appellant was unable to perform her usual job or work

eight hours per day with restrictions because she could not perform prolonged hyperflexion or hyperextension of her neck.

Dr. Inga, in a July 19, 2018 letter, indicated that appellant's cervical symptoms remained unabated. He noted that she was scheduled to undergo anterior cervical discectomies and fusion with instrumentation at C5-6 and C4-5 on August 6, 2018 based on her significant symptoms on the right upper extremity and continued pain in both shoulders.

By decision dated September 6, 2018, OWCP denied modification of its May 8, 2018 decision finding that the medical evidence submitted failed to establish a spontaneous worsening of appellant's accepted employment injury without intervening work factors.

OWCP thereafter received an August 31, 2018 lumbar spine MRI scan report by Dr. Chintan Desai, a Board-certified radiologist, who provided impressions of grade 1 retrolisthesis of L4 over L5 and L5 over S1 vertebrae; diffuse disc bulge compressing the thecal sac and causing some narrowing of the left neural foramina and bilateral facet joint arthropathy at L3-4; diffuse disc bulge compressing the thecal sac and causing some narrowing of bilateral neural foramina and mild facet joint arthropathy and effusion at L4-5; and diffuse disc bulge compressing the thecal sac and causing some narrowing of bilateral neural foramina and bilateral facet joint arthropathy at L5-S1.

Appellant continued to file Form CA-7 claims for intermittent disability from work for the period September 1, 2018 through April 12, 2019.

Dr. Zimmer, in September 11 and 27, 2018 Form OWCP-5c reports, reiterated his opinion that appellant could not perform her usual job or work eight hours per day with restrictions due to her inability to engage in prolonged hyperflexion or hyperextension of the neck. In subsequent Form OWCP-5c reports dated October 15 and November 10, 2018, he advised that she could perform sedentary work for a maximum of six hours per day with restrictions.[5] In a December 10, 2018 disability certificate, Dr. Zimmer advised that appellant was disabled through December 13, 2018. She could return to work on December 13, 2018. Dr. Zimmer released her to return to sedentary work with restrictions, six hours per day, in a January 31, 2019 Form OWCP-5c report.

On September 10, 2018 and January 14, 2019, Dr. Conrad D. Tamea, Jr., a Board-certified orthopedic surgeon, noted appellant's history of injury on May 11, 2017 and diagnosed cervical disc disorder with radiculopathy, lumbar disc disease with radiculopathy, and anxiety disorder due to a general medical condition. In a prior authorization form for spinal injections of even date, he requested a facet joint injection and facet medial branch nerve block at C3-4, C4-5, C5-6, and C6-7. In reports dated September 10, 2018 and January 14, 2019, Dr. Tamea overread diagnostic test results. He found that an August 31, 2018 lumbar spine MRI scan revealed retrolisthesis of L4 over L5 and L5 over S1, bulging discs at L3-4, L4-5, and L5-S1 with effacement of the thecal sac, narrowing of the neural parameter, and facet arthropathy at each level, bilaterally. Dr. Tamea indicated that a June 14, 2018 cervical spine MRI scan demonstrated a bulging disc at C4-5, disc herniation at C5-6 on the left and right with extrusion inferiorly, bilaterally, with nerve root

[5] On October 15, 2018 the employing establishment offered appellant a modified-duty rural carrier position, which she accepted on that date.

impingement and central canal stenosis; and a bulging disc with canal stenosis at C6-7. A February 22, 2018 cervical spine MRI scan report was unremarkable at C2-3. Additionally, it demonstrated multiple level disc osteophyte complex, foraminal stenosis worse on the left with nerve root impingement at C3-4, disc herniation central, effacement of the thecal sac, and cord impingement at C4-5, disc herniation biforaminal with impingement of the thecal sac and cord, facet arthropathy, and nerve root impingement, bilaterally at C5-6, and disc herniation lateralizing to the right with impingement of the thecal sac.

Dr. Inga, in letters dated June 11, August 27, and October 2, 2018, reiterated his prior cervical and lumbar diagnoses and recommendation that appellant have cervical spine surgery. He indicated that appellant was temporarily totally disabled.

In a June 6, 2018 report, Dr. Do restated his prior cervical and lumbar diagnoses and causal relationship opinion.

In reports dated March 5, May 16, June 11, July 17, and August 28, 2019, Dr. Mark A. Seldes, a Board-certified family practitioner, obtained a history of the May 11, 2017 employment injury and appellant's subsequent medical treatment. He diagnosed lumbar radiculopathy to include the L4, L5, and S1 distribution, cervical radiculopathy to include the C6 and C7 nerve root distribution, cervical spinal stenosis, lumbar instability with grade 1 retrolisthesis of the L4 over L5 and L5 over S1, and acute cervical radiculopathy of the left upper extremity. Dr. Seldes opined that the diagnosed conditions were caused by the accepted work-related injury. In the March 5, 2019 report, he advised that appellant could continue working with restrictions six hours per day and that she should be compensated for time lost from work as it was related to the accepted employment injury. In an undated and a May 16, 2019 Form OWCP-5c report, Dr. Seldes initially advised that appellant would be able to work eight hours per day within one year and subsequently advised that she could work eight hours per day with restrictions. In a May 16, 2019 office visit treatment and procedure record, he referred her to physical therapy to treat her cervical and lumbar radiculopathy. In the June 11, 2019 report, Dr. Seldes noted that she was incapacitated from work from June 10 through 13, 2019. In the July 17, 2019 report, he planned to give appellant a medical excuse for a couple of days to allow her cervical radiculopathy of the left upper extremity to heal. In the August 28, 2019 report, Dr. Seldes noted that appellant's acute cervical radiculopathy of the left upper extremity had resolved.

On September 6, 2019 appellant, through counsel, requested reconsideration of the September 6, 2018 decision. She submitted an additional Form OWCP-5c report dated August 28, 2019 in which Dr. Seldes restated his prior opinion that appellant could not perform her usual work, but she could work eight hours per day with restrictions.

OWCP, by decision dated October 15, 2019 denied modification of its September 6, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which

[6] *Supra* note 2.

compensation is claimed is causally related to the employment injury.[7] 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.[8] 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.[9]

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.[10] 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.[11]

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.[12] 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 factors identified by the employee.[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability commencing February 3, 2018 causally related to her accepted May 11, 2017 employment injury.

In support of her claims for compensation, appellant submitted a series of reports dated April 26, May 16 and 31, and June 6, 2018 by Dr. Do who diagnosed the accepted conditions of injury of lumbosacral plexus, initial encounter, and sprain of ligaments of the cervical spine, initial encounter. Dr. Do also diagnosed other cervical disc displacement, unspecified cervical region, and radiculopathy, cervical region. He opined that these conditions were causally related to the May 11, 2017 employment injury and were aggravated by appellant's work duties, which included repetitive twisting, bending, stooping, and lifting up to 50 pounds and were performed following her return to work in January 2018. Dr. Do noted that by the end of January 2018 she was unable

[7] *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).

[8] *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).

[9] *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

[10] *Id.* at § 10.5(f); *see e.g.*, *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[11] *G.T.*, *id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

[12] *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

[13] *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

to work due to increased and constant pain. He maintained that the accepted conditions were not properly treated, and that appellant had not fully recovered from these conditions as she experienced worsening neck and low back pain and constant tingling, numbness, and weakness into her hands. Dr. Do advised that she could return to light-duty work with restrictions. He did not, however, explain with rationale how the newly diagnosed conditions occurred over time and appellant became disabled as a result of the May 11, 2017 employment injury.[14] Thus, the Board finds that Dr. Do's reports are insufficient to meet appellant's burden of proof.

Similarly, the reports from Drs. Ramirez, Schreier, Inga, and Seldes are insufficient to establish causal relationship. In reports and prescriptions dated February 19 through May 31, 2018, Dr. Ramirez diagnosed cervicalgia with cervical radiculopathy more prominently right-sided, other cervical disc displacement, unspecified cervical region, cervical disc protrusions at C4-5 (right side), C5-6, and C6-7 (right side) causally related to the May 11, 2017 employment injury. He also opined that appellant was totally disabled from work. In narrative reports, a Form CA-17 report, and a state workers' compensation medical form dated February 12, 2018, Dr. Schreier diagnosed cervical sprain and cervical radiculopathy due to the accepted employment injury and advised that appellant was totally disabled from work. Dr. Inga's reports dated June 11, July 19, August 27, and October 2, 2018 reiterated a history of the May 11, 2017 employment injury and indicated that appellant was temporarily disabled for work on June 11 and August 27, 2018. He provided impressions of herniated cervical disc at C5-6 lateralized to the left side with C6 radiculopathy, herniated cervical disc at C4-5 lateralized to the right side, symptomatic cervical spondylosis at C6-7, and chronic lumbosacral strain. Dr. Inga indicated that appellant was scheduled to undergo anterior cervical discectomies and fusion with instrumentation at C5-6 and C4-5 on August 6, 2018. Dr. Seldes' reports dated July 24, 2018 through August 28, 2019 diagnosed lumbar radiculopathy to include the L4, L5, and S1 distribution, cervical radiculopathy to include the C6 and C7 nerve root distribution, cervical spinal stenosis, lumbar instability with grade 1 retrolisthesis of the L4 over L5 and L5 over S1, and acute cervical radiculopathy of the left upper extremity due to the May 11, 2017 work-related injury. He initially advised that appellant could not perform her usual job or work eight hours per day with restrictions because she could not engage in prolonged hyperflexion or hyperextension of her neck. Dr. Seldes subsequently advised that she could work six hours per day with restrictions six hours per day and then work eight hours per day with restrictions. On June 11 and July 17, 2019 Dr. Seldes indicated that she was incapacitated from performing her normal work activities. On August 28, 2019 Dr. Seldes advised that appellant's acute cervical radiculopathy of the left upper extremity had resolved and that she could work eight hours per day with restrictions. But, on October 15 and November 10, 2018 and January 31, 2019, he again determined that she could work six hours per day with restrictions. None of the physicians offered medical rationale explaining why appellant's current conditions and disability were due to the accepted May 11, 2017 employment injury.[15] As such, the Board finds that the physicians' reports are insufficient to establish appellant's claim.

The reports by Drs. Cannon, Chatterjee, Joseph, Patrick, and Tamea noted appellant's history of injury on May 11, 2017 and diagnosed sprain of the joints and ligaments of unspecified parts of the neck, initial encounter, radiculopathy, cervical region, herniation of cervical intervertebral disc with radiculopathy, traumatic disc herniation of the cervical spine at C4-5 and

[14] *L.A.*, Docket No. 18-1570 (issued May 23, 2019); *K.S.*, Docket No. 18-0954 (issued February 26, 2019).

[15] *Id*.

C5-6, facet arthropathy of the cervical spine, cervicalgia, low back pain, and herniated nucleus pulposus at C5-6 left. Dr. Chatterjee provided appellant's work restrictions. Dr. Joseph recommended cervical disc arthroscopy to treat her herniated nucleus pulposus at C5-6. In his May 16 and 31, 2018 reports, Dr. Patrick provided the diagnoses of the accepted employment conditions and noted that he administered injections to alleviate pain. Dr. Tamea's September 10, 2018 reports provided diagnoses of cervical disc disorder with radiculopathy, lumbar disc disease with radiculopathy, anxiety disorder due to a general medical condition, and chronic kidney disease. He reread lumbar and cervical diagnostic test scans. Dr. Tamea recommended a facet joint injection and facet medial branch nerve block bilaterally at levels C3-4 through C6-7-4, C4-5, C5-6, and C6-7. None of the physicians addressed whether appellant was disabled due to the accepted employment conditions.[16] Consequently, the reports of Drs. Cannon, Chatterjee, Patrick, and Joseph are insufficient to establish appellant was disabled from work during the claimed period due to the accepted employment injury.

The diagnostic test studies from Drs. Stallworth, Tirnauer, and Desai, standing alone, lack probative value, as they do not address whether the accepted employment injury resulted in appellant's disability during the claimed period.[17]

The February 7, 2018 report from Dr. Leonard, a chiropractor, provided assessments of cervicalgia and thoracic spine and low back pain, back muscle spasm, right and left shoulder stiffness, not elsewhere classified, and segmental and somatic dysfunction of the upper and lower extremities. However, he did not diagnose a spinal subluxation as demonstrated by x-ray to exist and, thus, he is not considered a physician under FECA. Therefore, his report is of no probative value.[18]

Appellant also submitted a March 22, 2018 report signed by Mr. Sipe-Powell, a physical therapist. This note, however, has no probative value regarding appellant's disability claim because the Board has held that the report of a physical therapist does not constitute probative medical evidence as a physical therapist is not considered a physician as defined under FECA.[19]

As the evidence of record is insufficient to establish that appellant's claimed period of intermittent disability was due to her May 11, 2017 employment injury, the Board finds that she has not met her burden of proof.

[16] *See S.A.*, Docket No. 19-1765 (issued March 13, 2020).

[17] *E.B.*, Docket No. 19-1390 (issued May 7, 2020); *F.S.*, Docket No. 19-0205 (issued June 19, 2019).

[18] 5 U.S.C. § 8101(2); *see also D.P.*, Docket No. 13-1721 (issued February 21, 2014); *P.D.*, Docket No. 13-2034 (issued May 8, 2014); *Paul Foster*, 56 ECAB 208 (2004).

[19] Section 8101(2) of FECA defines a physician as 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 (January 2013). *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (a physical therapist is not considered a physician as defined under FECA); *see David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physical therapist will be considered medical evidence if countersigned by a qualified physician.

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 her burden of proof to establish intermittent disability commencing February 3, 2018 causally related to her accepted May 11, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT that the October 15, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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