

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

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<b>B.T., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-1369</b>
	)	<b>Issued: October 6, 2022</b>
	)	
<b>U.S. POSTAL SERVICE, MARTECH CARRIER</b>	)	
<b>ANNEX, Atlanta, GA, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*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 September 13, 2021 appellant filed a timely appeal from a July 13, 2021 merit decision 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.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish disability from work for the period October 4 through 26, 2018 causally related to her accepted April 11, 2018 employment injury.

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

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</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 April 20, 2018 appellant, then a 56-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 11, 2018 she sustained a lower back injury as a result of pulling a bucket of mail while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx046 and accepted it for strain of the muscle, fascia and tendon of the lower back.

In a September 19, 2018 duty status report (Form CA-17), Dr. Eric I. Francke, an attending Board-certified orthopedic surgeon, diagnosed lumbar radiculopathy due to appellant's claimed April 2018 employment injury. He advised that appellant could return to work eight hours per day with restrictions that included no lifting more than 25 pounds and intermittent bending/stooping.

On September 27, 2018 the employing establishment offered appellant a full-time modified city carrier position based on the restrictions set forth by Dr. Francke. The duties of the position involved casing and delivering mail along established routes. The physical requirements of the position included intermittent lifting and carrying up to 25 pounds and intermittent bending and stooping.

On October 4, 2018 appellant rejected the employing establishment's job offer based on her lifting restriction. Additionally, she noted that she had twisting, standing, and sitting restrictions that were not addressed in the job offer.

On October 12, 2018 appellant filed a claim for compensation (Form CA-7) for disability from work for the period October 5 through 26, 2018. On October 12, 2018 she also filed a Form CA-7 claiming wage-loss for disability from work, commencing October 4, 2018.

In an October 24, 2018 development letter, OWCP informed appellant that the offered modified-duty city carrier position was suitable and within the work restrictions set forth by Dr. Francke. Appellant was also informed that, if she failed to accept the offered position, then she had 30 days to provide reasons for refusing it and to submit evidence that the position was no longer available or no longer accommodated her work restrictions. Otherwise, OWCP advised her that her disability claim may be denied.

In progress notes, visit status reports, and a Form CA-17 report dated November 6 and 21, and December 18, 2018, respectively, Dr. Francke reiterated his diagnosis of lumbar radiculopathy and also diagnosed lumbar spondylosis, low back strain, and low back pain. In the November 6, 2018 Form CA-17 report, he indicated that appellant's low back strain was due to her claimed employment injury. Dr. Francke increased her lifting restriction from 25 pounds to 27 pounds and restricted her from carrying more than 17 pounds, bending, kneeling, crawling, crouching, and twisting based on a functional capacity evaluation (FCE).

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<sup>2</sup> Docket No. 19-1331 (issued April 30, 2020).

OWCP, by letter dated January 23, 2019, requested that the employing establishment offer appellant a permanent position based on the permanent work restrictions set forth in Dr. Francke's December 18, 2018 visit status report.

In a decision dated January 23, 2019, OWCP denied appellant's claim for disability from work for the period October 5 through 26, 2018. It found that the medical evidence of record was insufficient to establish that the offered position was not within the work restrictions provided by Dr. Francke and that she was totally disabled from performing the offered position during the claimed period due to her restrictions.

On March 5, 2019 appellant requested reconsideration of the January 23, 2019 decision and submitted an October 9, 2018 Form CA-17 report from Dr. Francke who restated his diagnoses of lumbar radiculopathy and low back pain due to injury and appellant's work restrictions of no lifting more than 25 pounds and intermittent bending, stooping, or twisting.

In an April 10, 2019 decision, OWCP denied modification of the January 23, 2019 decision, finding that the medical evidence of record offered no rationalized opinion as to why appellant was disabled from performing the offered modified position for the period October 5 through 26, 2018.

On May 29, 2019 appellant appealed the April 10, 2019 decision to the Board.

In an additional progress note, a visit status report, and Form CA-17 dated July 19, 2019, Dr. Francke continued to diagnose low back pain and lumbar radiculopathy and to restate appellant's work restrictions, which he advised were permanent in nature.

In an August 21, 2019 report, Dr. Francke reported normal findings on physical examination and reviewed diagnostic test results. He reported that a lumbar magnetic resonance imaging (MRI) scan demonstrated a left-sided L1-2 disc protrusion causing mild left lateral recess stenosis with a facet effusion on the right side at L5-S1 with mild bilateral foraminal and lateral recess stenosis at that level.

On August 23, 2019 Dr. Francke requested that OWCP expand the acceptance of appellant's claim to include lumbar spondylosis and lumbar radiculopathy.

In a visit status report and progress note dated August 21 and September 24, 2019 statement, Dr. Francke again noted appellant's lumbar diagnoses and indicated that her work restrictions had not changed.

By decision dated October 2, 2019, OWCP denied the expansion of appellant's claim to include the additional conditions of lumbar spondylosis and lumbar radiculopathy. It found that the medical evidence of record was insufficient to establish causal relationship between the accepted April 11, 2018 employment injury and the diagnosed conditions.

On October 21, 2019 appellant requested reconsideration of the October 2, 2019 decision concerning expansion of the acceptance of her claim.

In a January 9, 2020 decision, OWCP vacated its October 2, 2019 decision and accepted appellant's claim for lumbar spondylosis and lumbar radiculopathy.

By decision dated April 30, 2020, the Board set aside the April 10, 2019 decision denying appellant's disability claim and remanded the case to OWCP to determine whether the employing establishment had offered appellant a temporary or permanent modified-duty position in accordance with 20 C.F.R. § 10.500(a) and, if not, determine whether appellant had met her burden of proof to establish total disability from work for the period October 5 through 26, 2018.

On June 4, 2020 the employing establishment advised OWCP that its September 27, 2019 job offer was not a temporary job offer and that the job offer was in accordance with the medical restrictions provided by appellant's treating physician.

OWCP, by decision dated June 11, 2020, found that the evidence of record was sufficient to establish that there was a limited-duty assignment available within appellant's work restrictions during the claimed period of total disability from October 5 through 26, 2018. It also found that she failed to submit evidence sufficient to establish that she was totally disabled from work during the claimed period.

OWCP received Dr. Francke's progress note and visit status reports dated May 20 and June 17, 2020 and a duplicate copy of his August 21, 2019 visit status report addressing appellant's previously diagnosed lumbar conditions and work restrictions.

On July 24, 2020 appellant requested reconsideration of the June 11, 2020 decision denying her disability claim.

In an October 22, 2020 decision, OWCP denied appellant's for request reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), finding that the evidence submitted was either irrelevant or immaterial to the issue of her claimed disability from work.

OWCP received progress notes and visit status reports dated April 29, 2021 from Dr. Francke who reiterated his diagnoses of lumbar radiculopathy and lumbar spondylosis, and his opinion that there were no changes in appellant's work restrictions.

On May 14, 2021 appellant requested reconsideration regarding the June 11, 2020 decision denying her disability claim.

OWCP, in a July 13, 2021 decision, denied modification of its June 11, 2020 decision. It found that appellant had not established that she was disabled from performance of the September 27, 2018 limited-duty position from October 4 to 26, 2018.

### **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

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

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 reliable, probative, and substantial 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 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>

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence 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>9</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>10</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 factors identified by the employee.<sup>11</sup>

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<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). *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

<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).

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

<sup>9</sup> See *B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, *supra* note 23; see also *C.S.*, Docket No. 17-1686 (issued February 5, 2019).

<sup>10</sup> See *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

<sup>11</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).

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period October 4 through 26, 2018, causally related to her accepted April 11, 2018 employment injury.

In support of her claim for compensation, appellant submitted medical evidence from Dr. Francke. In his progress notes, visit status, and Form CA-17 reports dated September 19, 2018 through April 29, 2021, Dr. Francke diagnosed the accepted condition of lumbar radiculopathy and also diagnosed lumbar spondylosis, low back strain, and low back pain. He initially advised that appellant could work eight hours per day with restrictions, including no lifting more than 25 pounds and intermittent bending and stooping. On September 27, 2018 the employing establishment offered appellant a full-time modified city carrier position based on the restrictions set forth by Dr. Francke. Pursuant to the Board's April 30, 2020 decision, the employing establishment clarified that the position was not temporary, but would remain available to appellant as long as she had medical restrictions.

Dr. Francke subsequently restricted appellant from lifting more than 27 pounds, carrying more than 17 pounds, bending, kneeling, crawling, crouching, and twisting. However, this evidence either postdates the claimed period of disability or does not specifically address whether and why appellant was disabled from work during the claimed period of disability causally related to the accepted April 11, 2018 employment injury. Dr. Francke opined that she could perform full-time work with restrictions. Further, he did not explain why appellant's restrictions changed during the claimed period of disability. Without a rationalized medical explanation, explaining why she was disabled on specific dates due to the accepted employment injury, appellant would be self-certifying disability.<sup>12</sup> For these reasons, the Board finds that Dr. Francke's reports are insufficient to establish appellant's disability claim.

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 due to the accepted employment injury.<sup>13</sup> Because appellant has not submitted rationalized medical opinion evidence to establish employment-related total disability during the claimed period due to her accepted conditions, the Board finds that she has not met her burden of proof to establish her disability claim.

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>12</sup> See *supra* note 26.

<sup>13</sup> *Supra* note 22.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish disability from work for the period October 4 through 26, 2018 causally related to her accepted April 11, 2018 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 13, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 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