



## ISSUE

The issue is whether appellant has met her burden of proof to establish total disability from work for the period June 26 to September 2, 2018 causally related to the accepted May 11, 2018 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 and order are incorporated herein by reference. The relevant facts are as follows.

On May 15, 2018 appellant, then a 37-year-old claims examiner, filed a traumatic injury claim (Form CA-1) alleging that on May 11, 2018 she sustained bilateral shoulder and back strains when she attempted to open a heavy door with her left hand, while pushing a chair with her right hand in the performance of duty.<sup>4</sup> She stopped work on the date of injury.

On June 13, 2018 Dr. Richard A. Pearl, a Board-certified orthopedic surgeon, performed a right shoulder arthroscopy with partial synovectomy, extensive debridement of the right shoulder labral tear and rotator cuff tear subscapularis tendon, and right shoulder subacromial decompression with acromioplasty.<sup>5</sup>

After initial denial of her claim, by decision dated April 5, 2019, OWCP accepted the claim for bilateral shoulder and lumbar strains.

On March 3, 2020 appellant filed claims for compensation (Form CA-7) alleging disability from work for the period June 26 through September 2, 2018.

In a development letter dated March 10, 2020, OWCP advised appellant of the necessary medical evidence to support disability during the period claimed. It afforded her 30 days to respond.

In a July 2, 2018 disability form report, Dr. Dante T. Lazo, a Board-certified internist, noted that appellant had been seen that day for a May 11, 2018 employment injury and advised that she was disabled from working for eight weeks due to bilateral shoulder and lower back pain and weakness.

An August 20, 2018 attending physician's report (Form CA-20) from Dr. Lazo indicated that appellant was totally disabled from work for the period May 11 through September 2, 2018. Dr. Lazo described how the May 11, 2018 employment injury occurred and diagnosed lumbar and

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<sup>3</sup> *Order Granting Remand*, Docket No. 19-0240 (issued March 22, 2019); Docket No. 21-0500 (issued December 10, 2021).

<sup>4</sup> The employing establishment issued an authorization for examination and/or treatment (Form CA-16) on May 21, 2018.

<sup>5</sup> The record does not indicate that this procedure was authorized.

shoulder strain. He checked a box marked “Yes” in response to the questions of whether there was a history or evidence of concurrent or preexisting injury, and whether the condition had been aggravated by the employment activity. Dr. Lazo noted that appellant had been involved in a motor vehicle accident (MVA) on April 6, 2018 during which she sustained shoulder and back injuries.

In a state workers’ compensation form report dated August 20, 2018, Dr. Lazo noted a May 11, 2018 injury date, and described the employment injury. He diagnosed bilateral shoulder joint and lumbar sprains based upon physical findings of bilateral shoulder abnormal range of motion (ROM), shoulder weakness, and pain/tenderness in the lower back and shoulders. Dr. Lazo found that appellant was disabled from work due to pain and weakness.

By decision dated May 29, 2020, OWCP denied appellant’s claim for disability from work for the period June 26 through September 2, 2018, finding that the medical evidence of record was insufficient to establish disability during the claimed period causally related to her accepted May 11, 2018 employment injury. It noted the record also contained evidence of preexisting conditions due to a nonemployment-related April 16, 2018 MVA, which was not addressed by the medical evidence appellant submitted.

On July 1, 2020 appellant requested reconsideration.

OWCP continued to receive medical evidence. Dr. Lazo, in a May 21, 2018 report, noted appellant’s history of injury on May 11, 2018. He related appellant’s examination findings and diagnosed shoulder joint, lower back and pelvis sprains. Dr. Lazo concluded that the May 11, 2018 incident was the competent cause of appellant’s injuries as it caused acute trauma of the body tissue, which may never be as flexible or elastic as original counterparts. Superimposed on the natural aging and degenerative process, this injury, most probably, may result in a permanent reduction of range of motion and normal functions of the local peripheral neuromuscular system.

In a state workers’ compensation form dated August 31, 2018, Dr. Lazo reiterated findings from his prior report. He released appellant to return to work on September 4, 2018. On August 31, 2018 Dr. Lazo also completed an attending physician’s report, Part B of the Form CA-16, relating that appellant could return to work on September 4, 2018.

By decision dated September 22, 2020, OWCP denied modification.

On October 21, 2020 appellant filed a request for reconsideration.

In support of her request for reconsideration, appellant submitted disability notes previously of record from Dr. Lazo and an additional note dated August 1, 2018. Dr. Lazo again diagnosed bilateral shoulder and lumbar sprains due to a May 11, 2018 incident.

In a November 25, 2020 note, Dr. Erie Augustin, a specialist in family and internal medicine, advised that appellant had reached maximum medical improvement and required no further treatment. He noted an April 6, 2018 MVA and May 11, 2018 employment injury. Dr. Augustin diagnosed neck, bilateral shoulder, upper and lower back, and left knee injuries and noted appellant underwent shoulder surgery on June 13, 2018.

By decision dated January 22, 2021, OWCP denied modification.

OWCP continued to receive progress reports and medical evidence pertaining to appellant's request for a schedule award.<sup>6</sup>

On February 8, 2021 appellant filed an appeal with the Board. By decision dated December 10, 2021, the Board affirmed the January 22, 2021 decision, finding that appellant failed to meet her burden of proof to establish total disability from work for the period in question causally related to the accepted May 11, 2018 employment injury.<sup>7</sup>

On December 20, 2021 appellant requested reconsideration. She alleged that the Board's December 10, 2021 decision made contradictory findings as it related that Dr. Lazo had noted that appellant had been involved in a motor vehicle accident on April 6, 2018, during which she sustained shoulder and back injuries; however, it thereafter related that Dr. Lazo did not discuss appellant's motor vehicle accident caused appellant's disability. In support of her request, she submitted an addendum to a November 25, 2020 note from Dr. Agustin. Dr. Agustin, in an addendum to the November 25, 2020 note, attributed appellant's June 13, 2018 right shoulder arthroscopic surgery to both the April 6, 2018 motor vehicle accident and the May 11, 2018 employment injury. Thus, he concluded that appellant's disability for the period June 26 to September 2, 2018 was causally related to the accepted May 11, 2018 employment injury and accepted conditions of bilateral shoulder and lumbar sprains.

By decision dated January 18, 2022, OWCP denied modification.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>8</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>9</sup> The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.<sup>10</sup> For each period of disability claimed, the employee has the

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<sup>6</sup> On July 6, 2021 OWCP granted appellant a schedule award for 8 percent permanent impairment of the left upper extremity, and 12 percent permanent impairment of the right upper extremity. On November 16, 2021 OWCP issued a notice of proposed rescission of the schedule award.

<sup>7</sup> Docket No. 21-0500 (issued December 10, 2021).

<sup>8</sup> *Supra* note 1.

<sup>9</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); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

<sup>10</sup> 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>11</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 the reliable, probative, and substantial medical evidence.<sup>12</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>13</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>14</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability from work for the period June 26 to September 2, 2018 causally related to the accepted May 11, 2018 employment injury.

OWCP accepted appellant's claim for bilateral shoulder and lumbar strains. The issue is whether appellant's accepted employment injury caused total disability for the period June 26 to September 2, 2018. By decision dated December 10, 2021, the Board affirmed OWCP's denial of her claim for total disability for the period June 26 to September 2, 2018. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>15</sup> The Board will, therefore, not review the medical evidence addressed in the prior appeal.

In support of her request for reconsideration, appellant alleged that the Board's December 10, 2021 decision made inconsistent findings as it acknowledged that Dr. Lazo had noted in his August 20, 2018 report that appellant had been involved in an April 6, 2018 MVA, but then found that Dr. Lazo had not explained why appellant was disabled due to the May 11, 2018 employment injury. The Board previously explained that, while Dr. Lazo noted appellant's

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<sup>11</sup> See *A.S.*, Docket No. 20-0406 (issued August 18, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>12</sup> *A.S.*, *id.*; *Amelia S. Jefferson*, *id.*; *William A. Archer*, 55 ECAB 674 (2004).

<sup>13</sup> *T.L.*, Docket No. 20-0978 (issued August 2, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

<sup>14</sup> *C.T.*, Docket No. 20-0786 (issued August 20, 2021); *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, *supra* note 12; *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>15</sup> See *M.B.*, Docket No. 21-0012 (issued May 12, 2022); *M.M.*, 18-1366 (issued February 27, 2019); *E.L.*, 16-0635 (issued November 7, 2016); *R.L.*, Docket No. 15-1010 (issued July 21, 2015); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998). See also *A.P.*, Docket No. 14-1228 (issued October 15, 2014).

April 2018 motor vehicle accident, he did not discuss whether appellant's June 13, 2018 arthroscopic procedure and any resulting disability were directly caused or aggravated by appellant's May 11, 2018 employment injury, rather than the April 2018 nonwork-related motor vehicle accident. As previously noted, the Board's prior findings are *res judicata*.<sup>16</sup>

Appellant also submitted an undated addendum to a November 25, 2020 report from Dr. Agustin. Dr. Agustin opined that appellant's June 13, 2018 surgery was partially due to her April 6, 2018 motor vehicle accident and partially due to her accepted May 11, 2018 employment injury. Thus, appellant's total disability for the period June 26 to September 2, 2018 was related to her accepted bilateral shoulder and lumbar sprains and the May 11, 2018 employment injury.

Initially, the Board notes that OWCP did not authorize appellant's June 13, 2018 right shoulder surgical procedure. While Dr. Agustin opined that appellant's disability due to the surgery was partially due to the accepted bilateral shoulder and lumbar sprains, he provided no rationale explaining how the diagnosed conditions caused or aggravated the conditions for which the surgery was performed. The Board has found that medical evidence must include rationale explaining how the physician reached the conclusion that he or she is supporting.<sup>17</sup> Dr. Agustin failed to explain how appellant's inability to work June 26 to September 2, 2018 was causally related to her accepted May 11, 2018 employment injury. Appellant's burden of proof includes submitting rationalized medical evidence, which supports a causal relationship between the period of disability and the accepted conditions.<sup>18</sup> Thus, the Board finds Dr. Agustin's conclusory opinion was insufficient to establish a causal relationship between the period of disability and the accepted employment injury.<sup>19</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 appellant has not met her burden of proof to establish total disability from work for the period June 26 to September 2, 2018 causally related to the accepted May 11, 2018 employment injury.

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<sup>16</sup> *Id.*

<sup>17</sup> *T.G.*, Docket No. 20-0121 (issued May 17, 2022); *M.M.*, Docket No. 18-0817 (issued May 17, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>18</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>19</sup> *D.H.*, Docket No. 17-1913 (issued December 13, 2018) (while the physician supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 18, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 6, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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