

<sup>3</sup> The Board notes that following the December 17, 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 her burden of proof to establish intermittent disability from work for the period October 30, 2018 through October 30, 2019 causally related to her accepted October 15, 2018 employment injury.

## **FACTUAL HISTORY**

On October 23, 2018 appellant, then a 51-year-old city letter carrier, filed an occupational disease claim (Form CA-2), alleging that she sustained a bulging lumbar disc on October 15, 2018 as a result of repetitive bending, lifting, carrying up to 75 pounds, and walking on uneven surfaces while in the performance of duty. She noted that she first became aware of her condition and realized its relation to her federal employment on October 15, 2018,<sup>4</sup> noting that the pain started two weeks prior. Appellant sought medical attention and worked intermittently thereafter. On March 13, 2020, OWCP accepted appellant's claim for left hip labral tear.

On March 30 and April 1 and 7, 2020 appellant filed claims for wage-loss compensation (Form CA-7) for intermittent disability commencing October 30, 2018.

In a development letter dated April 16, 2020, OWCP requested that appellant submit additional information to establish her wage-loss compensation claims, including medical evidence from her physician explaining why she was unable to work due to her work-related injury. It afforded her 30 days to submit the necessary evidence.

OWCP subsequently received an October 15, 2018 report, wherein Dr. Jacinthe Malalis, an osteopath, Board-certified in physical medicine and rehabilitation, reported that appellant, a mail carrier, was approximately two weeks into her current symptomatology of left-sided low back pain and left lower extremity pain that began at traumatically and worsened gradually. Dr. Malalis noted that appellant's pain was located in the left lower back and left lower extremity and affected the lateral hip, lateral thigh and anterior knee. She indicated that appellant's symptoms were suggestive of lumbar strain with lumbar radiculitis. In an accompanying duty status report (Form CA-17), Dr. Malalis noted appellant's job duties of repetitive bending, lifting up to 75 pounds, and walking on uneven surfaces while "holding these things." She diagnosed lumbar strain with radiculopathy based on positive examination findings of lumbar facet loading and straight leg raise, and tenderness to palpation and restricted appellant from carrying a mail bag until reevaluation. On November 27, 2018 Dr. Malalis diagnosed lumbar strain, lumbar facet pain and placed appellant off work. In a December 5, 2018 report, she reported appellant was doing well with physical therapy treatments, and while not carrying the mail bag, until today when her pain worsened significantly. Dr. Malalis noted appellant's symptoms were in the setting of lumbar spondylosis by magnetic resonance imaging (MRI) scan and were suggestive of facetogenic low back pain and myofascial pain. She advised that appellant was placed off work until the recommended left lumbar paraspinal trigger point cortisone injections were performed. On December 7, 2018 Dr. Malalis performed a left L3-S1 facet joint injection, and on December 14, 2018 she performed a left quadratus lumborum trigger point injection.

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<sup>4</sup> Appellant initially noted on the CA-2 that her injury occurred in 2016; however, in a letter dated December 13, 2018, she clarified that the correct year was 2018.

In a December 19, 2018 report, Dr. Malalis noted that appellant had undergone left L3-S1 facet joint injections and left quadratus lumborum trigger point injections on December 7 and 14, 2018 respectively, but appellant reported 50 percent relief for only two days before her pain returned. She also noted that appellant had completed physical therapy without any relief and was currently off work. Dr. Malalis noted that appellant reported referred pain to the left hip, although she pointed to the left sacral area. She recommended that appellant return to work with restrictions of no carrying her mail bag, lifting no more than 10 pounds, with no repetitive twisting, lifting, and bending, noting that the listed restrictions were supported with the MRI scan findings and her physical examination findings. Dr. Malalis also indicated that appellant did not agree with her recommendation to return to work and therefore she recommended appellant seek a second opinion elsewhere.

OWCP received a series of physical therapy reports indicating that appellant presented on October 25, 2018 with a main complaint of back pain. These reports indicated that appellant should demonstrate an ability to carry 35 pounds unilaterally before she could return to work at full duty. A note dated January 2, 2019 from a chiropractor with an illegible signature indicated that to avoid aggravation of her condition, appellant should be excused from work until January 11, 2019.

In a January 8, 2019 report, Dr. Rajeev Jain, a Board-certified orthopedic surgeon, noted that appellant had experienced low back pain since October 5, 2018 with no known injury. He noted that she was a letter carrier who performed a lot of bending, lifting, and walking. Dr. Jain provided examination findings and reported imaging findings regarding the pelvis. He provided an assessment of retroverted pelvis and low back pain.

On February 21, 2019 appellant was seen by an advanced nurse practitioner for evaluation of her left-sided lower back pain. The nurse related appellant's complaints of left hip pain with radiation to her knee. Appellant's assessment was noted as sacrococcygeal disorder.

On February 21, 2019 Dr. Howard Weiss, Board-certified in pain medicine and anesthesiology, related that appellant was seen for left-sided low back/left hip pain which had been ongoing for four months. In a note dated February 25, 2019, he related that she would be totally incapacitated from work for the next 30 days. In reports dated February 25, and 27, 2019, Dr. Weiss related that appellant had undergone S1 joint injections. He related on March 20, 2019 that she would need to be off work for the next six weeks. In a progress report dated March 20, 2019, Dr. Weiss related appellant's history regarding S1 joint injections and indicated that she had continued lower back pain with radiation into the posterior and lateral proximal thigh, and across the anterolateral thigh to just above the knee. He performed a facet joint injection on April 10, 2019. On April 25, 2019 Dr. Weiss related that appellant would be totally incapacitated from work through May 13, 2019. On May 13, 2019 appellant was seen by Dr. Weiss for bilateral lumbar facet joint injections at L4-S1. He also completed a note on even date relating that appellant would be totally incapacitated until June 24, 2019. Dr. Weiss reported on May 29, 2019 that appellant was seen for complaints of pain across her lower back which radiated into her left hip and down the lateral leg to the knee. He provided an assessment of lumbosacral disc degeneration with radiculopathy. In a note of even date, Dr. Weiss related that appellant would be incapacitated from work through June 24, 2019.

A nurse practitioner assessed appellant on April 23, 2019 with low back pain, sacrococcygeal disorder, and facet arthropathy. In a report dated June 17, 2019, a nurse

practitioner related that appellant was seen for low back pain. Appellant's diagnosis was listed as lumbosacral disc degeneration.

Dr. Weiss completed a note on June 24, 2019 relating that appellant would be totally incapacitated from work until July 29, 2019. On July 29, 2019 he related that appellant would be totally incapacitated from work until August 26, 2019.

On July 26, 2019 appellant underwent a radiofrequency ablation (RFA) of the innervation of the left L3-4, L4-5, and L5-S1 facet joints, performed by Dr. Weiss. On November 6, 2019 she underwent ultrasound guided-diagnostic left hip injection performed by Dr. Benjamin Domb, a Board-certified orthopedic surgeon.

In a report dated August 12, 2019, a nurse practitioner related that appellant was seen in follow up for her left RFA. The nurse noted that appellant now complained of newer pain above the left hip which radiated into the left thigh. Appellant had related that she had experienced this pain since October 2018, but after the RFA this pain increased. She again noted assessments of lumbar radiculopathy, low back pain, lumbar intervertebral disc degeneration, and arthropathy.

Dr. Weiss again noted on August 19, 2019 that appellant would be totally incapacitated from work until September 30, 2019. In a progress report of even date, he noted appellant's diagnoses as lumbar radiculopathy, lumbar spondylosis with radiculopathy, and lumbar intervertebral disc degeneration.

In a report dated September 23, 2019, a nurse practitioner related that appellant was seen in follow-up for low back pain. Appellant's diagnoses were listed as low back pain, arthropathy, lumbar radiculopathy, lumbar intervertebral disc degeneration, and lumbar spondylosis with radiculopathy.

On September 23, 2019 Dr. Weiss related that appellant would be disabled from work until October 21, 2019.

An October 14, 2019 MRI scan of appellant's left hip revealed findings of degenerative changes in the left hip with mild joint space narrowing and subchondral cyst at the anterior superior acetabular; fraying of the anterior superior acetabular labrum; moderate tendinosis of the left distal gluteus medius and minimus tendons; and mild edema and trace fluid in the left hip greater trochanteric bursa.

On October 16, 2019 Dr. Ilaxi P. Patel, an osteopath Board-certified in internal medicine, related that appellant was seen that day and that she would be unable to attend work on October 22, 2019 due to upcoming medical appointments.

In a note dated October 31, 2019, a physician assistant, advised that appellant had a medical visit that day. She requested that this be taken into account when reviewing appellant's time away from work. In another report of even date, the physician assistant related that appellant was seen for left hip articular cartilage disorders. She also noted that appellant had been referred for physical therapy.

On November 5, 2019 appellant began physical therapy for left hip pain and back pain.

In a November 6, 2019 report, Dr. Domb noted that appellant's left hip pain had been present for the past year and was progressively worsening. It was located in the posterior hip and radiated into the groin and lateral hip and increased with prolonged sitting and walking. Dr. Domb noted physical examination findings of October 31, 2019, performed x-rays and provided a diagnostic intra-articular injection into the left hip. He diagnosed a left hip labral tear based on an October 14, 2019 left hip MRI scan and recommended a left hip arthroscopy with labral repair as all previous conservative measures had failed.

On December 17, 2019 Dr. Domb reported that he had reviewed appellant's medical records and history. He noted that appellant had worked as a letter carrier from 2002 to the present. Appellant had no preexisting injury to her left hip and had not been receiving any treatment for her hip prior to October 15, 2018. Dr. Domb related that appellant was transferred to a new walking route in January 2018, which required that she walk approximately eight miles a day, over a six-hour period, carrying an approximately 25-pound mailbag. In addition, appellant was required to case mail and load her vehicle, which consisted of two hours of bending and twisting. Dr. Domb opined that appellant's repetitive work duties caused the left hip labral tear. He further explained that appellant had a left hip labral tear confirmed on MRI scan dated October 14, 2019. X-rays dated October 31, 2019 found incidental femoral acetabular impingement, which rubbed on the labrum with repetitive bending and twisting motions appellant performed while casing mail and loading her vehicle. He concluded that appellant's labral tear was not degenerative, but was caused by the repetitive motion, previously described.

On December 30, 2019 appellant underwent left hip repair, performed by Dr. Domb. The medical records from Dr. Domb and other providers after December 30, 2019 discussed appellant's limited left hip range of motion, left hip weakness and limited functional ambulation due to leg pain status post left hip arthroscopy and recommended that appellant remain off work.

In a June 3, 2020 letter, Dr. Domb indicated that he had reviewed appellant's medical records. He related appellant's medical history revealed she first reported symptoms in her lower back and left hip on October 15, 2018 and that she had undergone a full year of treatment for her lumbar spine which was never the source of her pain.

By decision dated July 1, 2020, OWCP denied appellant's claim for intermittent disability during the period October 30, 2018 through December 10, 2019. It noted that her medical providers failed to explain how her accepted medical condition worsened to the point that she was unable to work and had failed to support that her disability was due to the work-related hip condition for the period October 30, 2018 through December 10, 2019.

On July 28, 2020 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 2, 2020.

OWCP subsequently received additional evidence. In a July 28, 2020 note, Dr. Domb advised that, due to her left hip labral tear, appellant had restrictions of no lifting, pushing, or pulling over 5 to 10 pounds, walking, sitting and standing as tolerated, and no crawling, climbing, twisting or kneeling from October 31 through December 30, 2019. After December 30, 2019, appellant was unable to work due to surgery.

In a September 17, 2020 report, Dr. Weiss noted that appellant was initially evaluated on February 21, 2019, and reviewed her prior course of medical treatment. He indicated that it was

clear that she was unable to perform the duties of a postal carrier and was unable to work. Dr. Weiss noted that he had been informed that in January 2018 appellant was transferred to a route that was 95 percent walking (approximately eight miles a day) which usually takes 5 and ½ to 6 hours a day, over uneven surfaces while carrying a mail bag that weighs 25 pounds or more. Appellant also would spend two hours per day casing and loading her vehicle. Dr. Weiss concluded that appellant's repetitive casing and loading duties and delivery duties could not be performed due to her left hip labral tear from October 30, 2018 to January 24, 2020.

By decision dated December 17, 2020, OWCP's hearing representative modified the July 1, 2020 decision to find that the medical evidence of record was sufficient to establish entitlement to compensation for the period October 31 through December 30, 2019. The hearing representative, however, affirmed the denial of compensation for the period October 30, 2018 through October 30, 2019.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim.<sup>6</sup> Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of 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>

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 appellant, 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>10</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>11</sup>

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

<sup>7</sup> 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

<sup>8</sup> *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

<sup>9</sup> *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> *See D.W.*, Docket No. 20-1363 (issued September 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>11</sup> *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004).

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work during the period October 30, 2018 through October 30, 2019 causally related to her accepted October 15, 2018 employment injury.

Dr. Malalis reported, in her October 15, 2018 report, that appellant, a mail carrier, was two weeks into her current symptomatology of left-sided low back pain and left lower extremity pain that began a traumatically and worsened gradually. She diagnosed lumbar strain with lumbar radiculopathy based on positive examination findings and restricted appellant from carrying a mail bag. In subsequent progress reports through December 19, 2018, she placed appellant off work. Dr. Malalis, however, did not provide an opinion on causal relationship between appellant's claimed disability and the accepted employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>12</sup> Therefore, this evidence is insufficient to establish appellant's disability claim.

Dr. Jain, in his January 8, 2019 report, also provided a history of low back pain since October 5, 2018 with no known injury. He provided an assessment of retroverted pelvis and low back pain. Dr. Jain, however, also did not provide an opinion on causal relationship.<sup>13</sup> His report is, therefore, insufficient to establish appellant's disability claim.

In an October 16, 2019 note, Dr. Patel related that appellant was seen that day and would not report to work on October 22, 2019 due to a medical appointment. He did not, however, explain with rationale whether the disability was causally related to the accepted employment injury. The Board has held that reports which lack rationale are of limited probative value on the issue of causal relationship.<sup>14</sup> His report is therefore insufficient to establish the disability claim.

Appellant also submitted a series of reports from Dr. Domb dated November 6, 2019 through July 28, 2020. However, he did not provide an opinion on causal relationship between the claimed dates of disability and the accepted employment injury. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>15</sup> These reports, therefore, are insufficient to establish appellant's disability claim.

OWCP also received a series of reports from Dr. Weiss. In his September 17, 2020 report, Dr. Weiss noted that appellant would have been unable to work her repetitive casing and loading duties and delivery duties due to the left hip labral tear. However, he did not explain, with rationale, how appellant's disability was causally related to the accepted employment injury. As

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<sup>12</sup> See *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>13</sup> *Id.*

<sup>14</sup> See *K.T.*, Docket No. 17-1717 (issued March 27, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>15</sup> *Supra* note 12.

noted above, the Board has held that reports which lack rationale are of limited probative value on the issue of causal relationship.<sup>16</sup> Dr. Weiss' conclusory opinion is therefore of limited probative value and insufficient to establish the claim. The remaining reports of Dr. Weiss failed to provide an opinion on causal relationship. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>17</sup> As such, these reports are also insufficient to establish appellant's disability claim.

Appellant also submitted records from a physician assistant, a nurse practitioner, and physical therapists. These reports, however, do not constitute competent medical evidence because physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.<sup>18</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.<sup>19</sup>

A note dated January 2, 2019 from a chiropractor with an illegible signature indicated that to avoid aggravation of her condition, appellant should be excused from work until January 11, 2019. The Board has held that a note which contains an illegible signature is of no probative value, as it is not established that the author is a physician.<sup>20</sup>

The case record also contains an MRI scan dated October 14, 2019. However, the Board has held that diagnostic tests, standing alone, lack probative value as they do not provide a physician's opinion on whether there is a causal relationship between appellant's claimed disability and a diagnosed condition.<sup>21</sup>

As the medical evidence of record is insufficient to establish intermittent disability from work during the period October 30, 2018 through October 30, 2019 causally related to the accepted injury, the Board finds that appellant has not met her burden of proof.

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<sup>16</sup> *Supra* note 14.

<sup>17</sup> *Supra* note 12.

<sup>18</sup> Section 8101(2) of FECA provides that physician includes 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *R.L.*, Docket No. 19-0440 (issued July 8, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *See also* *S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

<sup>19</sup> *Id.*

<sup>20</sup> *See D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>21</sup> *See P.A.*, Docket No. 18-0559 (issued January 29, 2020); *A.P.*, Docket No. 18-1690 (issued December 12, 2019); *R.M.*, Docket No. 18-0976 (issued January 3, 2019).



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 from work during the period October 30, 2018 through October 30, 2019 causally related to her accepted October 15, 2018 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 17, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2023  
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