

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

S.E., Appellant	)	
	)	
and	)	Docket No. 21-1230
	)	Issued: January 27, 2023
U.S. POSTAL SERVICE, POST OFFICE,	)	
Blossvale, NY, Employer	)	
	)	

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On August 9, 2021 appellant filed a timely appeal from a July 28, 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.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish disability from work commencing April 10, 2021 causally related to the accepted March 13, 2019 employment injury.

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

<sup>2</sup> The Board notes that, following the July 28, 2021 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.*

## **FACTUAL HISTORY**

On March 14, 2019 appellant, then a 48-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2019 she sustained injuries to her left leg, right knee, both arms, and head when she was involved in a motor vehicle accident while in the performance of duty. She stopped work on March 13, 2019. OWCP accepted appellant's claim for fracture of right fibula, sprain of left ankle, and sprain of the ligaments of the thoracic spine. It paid her wage-loss compensation on the supplemental rolls from April 28, 2019 through March 28, 2020 and on the periodic rolls from March 29 through June 20, 2020.

On June 30, 2020 Dr. Kevin Kopko, a Board-certified orthopedist, prepared a form report providing appellant's maximum work capacity. He noted that she could work up to eight hours a day with restrictions on pushing and pulling up to two hours a day, lifting up to 30 pounds eight hours a day, walking and standing up to one hour a day, bending/stooping, twisting, climbing up to two hours a day, and operating a motor vehicle one to two hours a day. Dr. Kopko diagnosed primary osteoarthritis of the right knee.

On July 8, 2020 the employing establishment offered appellant a position as a part-time modified rural carrier associate, effective July 20, 2020. The duties of the position were delivering express mail up to two hours a day, resolving customer complaints up to five hours a day, and answering telephone calls up to five hours a day. The physical requirements were: walking and standing intermittently up to one hour; driving, climbing stairs, twisting, and bending/stooping intermittently up to two hours a day; lifting up to 30 pounds; pushing and pulling intermittently up to two hours a day; and use of a computer, telephone, simple grasping, and reaching up to five hours a day. On July 13, 2020 appellant accepted the position and returned to work.

OWCP further developed appellant's claim. On July 24, 2020 it referred her for a second opinion evaluation with Dr. Kevin Scott, a Board-certified orthopedic surgeon. In an August 12, 2020 report, Dr. Scott diagnosed strain to the left knee, left proximal fibular fracture, ankle sprain resolved, cervical strain, thoracic strain resolved, and impingement of the left shoulder. He noted findings on examination and opined that appellant reached maximum medical improvement for her left ankle and thoracic spine only and continued to have residuals of the other accepted conditions. Dr. Scott opined that she sustained injuries to the left shoulder, left knee, and cervical spine during the accident and permanently aggravated the preexisting osteoarthritic condition of her left knee. He indicated that appellant was currently delivering express mail with lifting restrictions of 30 pounds, and he believed she could continue to perform this job with restrictions. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Scott diagnosed fracture of the left fibula, sprain of the left ankle, and sprain of the thoracic and cervical spine and indicated that she could perform sedentary, light, and medium-duty work. He noted that appellant could return to work eight hours a day with restrictions of pushing, pulling, and lifting up to 30 pounds for five hours a day.

By notice dated August 19, 2020, OWCP issued a loss of wage-earning capacity (LWEC) determination based on appellant's actual earnings as a part-time modified rural carrier associate. It found that she had worked in the position for over 60 days, commencing July 13, 2020, and that the employment fairly and reasonably represented her wage-earning capacity. OWCP found that

appellant's actual wages met or exceeded the wages of the job held when injured, which resulted in a zero loss of wage-earning capacity.

Appellant was treated by Dr. Vivienne Taylor, a Board-certified internist on September 23, November 9, and December 18, 2020 for injuries sustained in a motor vehicle accident at work on March 13, 2019. She reported working light duty and experiencing pain with her current restrictions and was unable to lift up to the 30-pound restriction. Appellant noted findings of limping gait, tenderness of the left shoulder, limited range of motion of the left knee, tenderness of the left medial knee, and tenderness of the lumbosacral muscles. Dr. Taylor diagnosed cervicalgia, left shoulder pain, left leg pain, internal derangement of the left knee, and strain of muscle, fascia and tendon of the lower back. She continued light duty and noted that appellant had 75 percent impairment. In a report dated February 8, 2021, Dr. Taylor treated appellant in follow up for a work-related left knee injury. She noted diagnoses and reported that appellant was off duty due to an unrelated right knee surgery.

On January 19, 2021 Dr. Kopko reevaluated appellant for worsening left knee pain that began after a motor vehicle accident at work. Appellant's history was significant for a prior meniscectomy. Dr. Kopko noted findings of positive patellofemoral crepitus of the left knee and joint line tenderness. X-rays of the left knee revealed mild-to-moderate degenerative changes of the knee with joint space narrowing, subchondral sclerosis, and osteophyte formation. Dr. Kopko diagnosed primary osteoarthritis of the left knee status post prior arthroscopy with traumatic horizontal meniscal tear posterior horn and resolved fibular head fracture. He noted nonoperative therapies failed and recommended a meniscectomy. Dr. Kopko noted that appellant was 50 percent impaired and returned her to part-time light-duty work, limited driving, and pushing/pulling, standing, and lifting up to 30 pounds. In a March 9, 2021 work note, he noted that appellant was evaluated and treated and could return to "75%" light-duty and sedentary-duty work, with no driving.

A magnetic resonance imaging (MRI) scan of the left knee dated February 27, 2021 revealed a recurrent tear posterior horn medial meniscus and mild degenerative joint disease.

Appellant was treated by Dr. Jason Lok, a Board-certified anesthesiologist, on March 15, 2021 for left knee pain that began after a work-related motor vehicle accident in March 2019. She reported undergoing a left knee meniscectomy that did not relieve her symptoms. Dr. Lok diagnosed left knee pain and osteoarthritis of the left knee and recommended two left-side diagnostic genicular injections. He noted that appellant was 50 percent impaired and working at this time.

On April 9 and May 12, 2021 Dr. Brendan McGinn, a Board-certified anesthesiologist, performed left fluoroscopic genicular injections.

Appellant filed several claims for compensation (Form CA-7) for work-related disability commencing April 10, 2021.

In a note dated May 4, 2021, Dr. Taylor excused appellant from work due to a work-related injury from April 9 through May 12, 2021. Similarly, on May 12, 2021, she excused appellant from work from May 12 through June 29, 2021.

In a May 13, 2021 development letter, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of additional evidence required and afforded her 30 days to submit the necessary evidence.

OWCP subsequently received a May 12, 2021 report, wherein Dr. Taylor reevaluated appellant for the March 13, 2019 work-related injury. Findings on examination revealed a limping, slow gait, tenderness of the left shoulder, limited range of motion of the left knee, tenderness left medial knee, and tenderness of the cervical, thoracic, and lumbosacral muscles. Dr. Taylor diagnosed pain in the left shoulder, unspecified internal derangement of the left knee, strain of muscle, fascia, and tendon of the lower back, pain in the left leg, and pain in the thoracic spine. She noted appellant was not working and was 75 percent impaired. In a note dated July 20, 2021, Dr. Taylor excused appellant from work from June 23 through August 16, 2021.

By decision dated July 28, 2021, OWCP denied appellant's claims for wage-loss compensation, finding that she had not established disability from work commencing April 10, 2021 causally related to the accepted March 13, 2019 employment injury.

### **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 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 probative and reliable 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 and he or she is entitled to compensation for any loss of wages.<sup>8</sup>

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

<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 M.B.*, Docket No. 18-1455 (issued March 11, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>6</sup> *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>7</sup> *Id.* at § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>8</sup> *See G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Merle J. Marceau*, 53 ECAB 197 (2001).

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>9</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>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing April 10, 2021 causally related to her accepted March 13, 2019 employment injury.

Reports from Dr. Taylor dated September 23, November 9, and December 18, 2020 and from Dr. Kopko dated June 30, 2020, predate the claimed period of disability and, thus, are not relevant to the specific period of disability claimed.<sup>11</sup> Thus, these reports are insufficient to establish appellant's disability claims.

On February 8, 2021 Dr. Taylor treated appellant in follow up for a work-related left knee injury. She noted diagnoses and reported that appellant was off duty due to unrelated right knee surgery. However, this report is of no probative value because Dr. Taylor did not provide an opinion that appellant was disabled from work during the claimed period, beginning April 10, 2021, causally related to the accepted March 13, 2019 work injuries. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>12</sup> Therefore, this report is insufficient to establish her claim.

On May 4, 2021 Dr. Taylor excused appellant from work due to a work-related injury from April 9 through May 12, 2021. Similarly, on May 12, 2021, she excused appellant from work from May 12 through June 29, 2021. Likewise, on July 20, 2021, Dr. Taylor excused appellant from work from June 23 through August 16, 2021. On May 12, 2021 she diagnosed pain in the left shoulder, unspecified internal derangement of the left knee, strain of muscle, fascia, and tendon of the lower back, pain in the left leg, and pain in the thoracic spine and noted that appellant was not working. Dr. Taylor, however, did not otherwise provide an opinion on whether appellant was disabled from work during the claimed period due to her accepted employment injury.

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<sup>9</sup> See *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

<sup>10</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).

<sup>11</sup> See *E.B.*, Docket No. 17-0875 (issued December 13, 2018); *C.L.*, Docket No. 16-0004 (issued June 14, 2016).

<sup>12</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Accordingly, these reports are of no probative value and are insufficient to establish appellant's claim for compensation.<sup>13</sup>

On January 19, 2021 Dr. Kopko diagnosed primary osteoarthritis of the left knee status post prior arthroscopy with traumatic horizontal meniscal tear posterior horn and resolved fibular head fracture. He returned appellant to part-time light-duty work. On March 9, 2021 Dr. Kopko noted that appellant could return to "75%" light-duty and sedentary-duty work. Similarly, on March 15, 2021, Dr. Lok diagnosed left knee pain and osteoarthritis of the left knee and noted appellant was 50 percent impaired and working at this time. However, these reports are of no probative value because the physician did not provide an opinion that appellant was disabled from work during the claimed period causally related to the accepted March 13, 2019 work injuries.<sup>14</sup> Therefore, these reports are insufficient to establish her claim.

On April 9 and May 12, 2021 Dr. McGinn performed left fluoroscopic genicular injections. However, he did not specifically address the claimed dates of disability or offer an opinion regarding the cause of appellant's disability.<sup>15</sup> Accordingly, Dr. McGinn's reports are of no probative value and are insufficient to establish appellant's claim for compensation.

Appellant also submitted an MRI scan of the left knee dated February 27, 2021. The Board has held, however, that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.<sup>16</sup>

As the medical evidence of record is insufficient to establish employment-related disability commencing April 10, 2021 causally related to the accepted March 13, 2019 employment injury, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish disability from work commencing April 10, 2021 causally related to her accepted March 13, 2019 employment injury.

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

<sup>14</sup> *Id.*

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

<sup>16</sup> *L.F.*, Docket No. 19-1905 (issued April 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 28, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2023  
Washington, DC

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

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

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