

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

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<b>B.L., Appellant</b> )		
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<b>and</b> )		<b>Docket No. 22-0998</b>
)		<b>Issued: July 10, 2023</b>
<b>U.S. POSTAL SERVICE, MIDDLEVILLE POST</b> )		
<b>OFFICE, Middleville, MI, Employer</b> )		
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On June 15, 2022 appellant filed a timely appeal from a January 18, 2022 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 intermittent disability from work for the period May 7, 2015 through March 31, 2017 causally related to her accepted March 13, 2014 employment injury.

**FACTUAL HISTORY**

On March 17, 2014 appellant, then a 27-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2014 she sustained a right shoulder injury

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

when she reached back in her postal vehicle to pull up a mail tray while in the performance of duty. She did not stop work, but she began working in a limited-duty position with specific work restrictions in late-March 2014. OWCP assigned the claim OWCP File No. xxxxxx435.<sup>2</sup>

On May 7, 2015 appellant stopped work. She filed claims for compensation (Form CA-7) alleging intermittent disability from work commencing May 7, 2015.

Appellant submitted a July 23, 2015 report from Dr. Tim Lenters, a Board-certified orthopedic surgeon, who discussed the history of appellant's right shoulder condition. Dr. Lenters indicated that he did not believe that appellant had a significant anatomical structural problem of the right shoulder and noted that he was uncertain as to the nature of her reported right shoulder pain.

In a report dated September 2, 2015, Dr. Wendy Balivet, a Board-certified family medicine specialist, discussed the history of appellant's right shoulder condition and reported physical examination findings. She diagnosed right shoulder pain. On September 4, 2015 Dr. Balivet indicated that she was unsure whether the right shoulder pain reported on September 2, 2015 was related to the March 13, 2014 employment incident. In a December 29, 2015 duty status report (Form CA-17), she indicated that appellant could lift up to 20 pounds for five hours per day.

In August 19, October 5, and December 2, 2015 reports, Dr. Michael Jabara, a Board-certified orthopedic surgeon, diagnosed right shoulder pain. In his December 2, 2015 report, he indicated that recent electromyogram and nerve conduction velocity (EMG/NCV) study of the upper extremities yielded essentially normal results.

Appellant also submitted diagnostic testing results, including a July 22, 2015 magnetic resonance imaging (MRI) scan and x-rays taken on July 29, 2015, which revealed a posterior labrum tear and mild tendinopathy of the supraspinatus tendon.

By decision dated December 2, 2015, OWCP accepted appellant's claim for right rotator cuff sprain.

In a December 22, 2015 development letter, OWCP informed appellant of the deficiencies of her claim for compensation. It advised her of the type of factual and medical evidence needed and afforded her 30 days to submit the requested evidence.

In a December 29, 2015 report, Dr. Balivet indicated that appellant had a labral tear of the right shoulder and opined that, due to "her shoulder injury," she had been unable to work since May 15, 2015 without restrictions of lifting up to 20 pounds for no more than five hours per day. In another December 29, 2015 report, she indicated that it was "reasonable to believe" that appellant's repetitive work duties caused her March 13, 2014 right shoulder sprain to progress to

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<sup>2</sup> Under a separate claim, assigned OWCP File No. xxxxxx717, appellant filed an occupational disease claim (Form CA-2) alleging that she sustained multiple conditions due to the repetitive motions required by her job. She noted that she first became aware of the claimed injury on September 29, 2018. OWCP denied appellant's claim by merit decisions dated September 9, 2019 and November 17, 2020, and denied her request for merit review by nonmerit decision dated December 1, 2021. OWCP administratively combined OWCP File Nos. xxxxxx717 and xxxxxx435, with the latter serving as the master file.

a right labral tear. Appellant also submitted the results of EMG/NCV testing from November 6, 2015.

By decision dated March 30, 2016, OWCP denied appellant's claim for intermittent disability during the period May 7, 2015 through March 18, 2016. It found that the medical evidence of record was insufficient to establish that she was disabled from work during the claimed period of disability due to her March 13, 2014 employment injury.

On April 27, 2016 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 13, 2017.

Appellant submitted additional Form CA-7 claims alleging intermittent disability through March 17, 2017.

In an August 9, 2016 report, Dr. Balivet advised that appellant had right upper extremity symptoms, which were "quite disabling to her." She indicated that appellant possibly had right pectoralis minor syndrome and diagnosed pain in the right arm. In another August 9, 2016 report, Dr. Balivet discussed appellant's work duties and noted, "[Appellant's] repetitive job duties made a significant contribution toward the progression from a shoulder strain to a tear overtime, and that her continued activities ... contribute significantly to the limitations, pain and disability she continues to have with her right upper extremity." She advised that appellant's current diagnosis was sprain of the right rotator cuff capsule.

In an August 19, 2016 report, Dr. Chandu Vemuri, a Board-certified vascular surgeon, discussed the March 13, 2014 employment injury. He reported physical examination findings and indicated that appellant's symptoms were consistent with right pectoralis minor syndrome. In an October 22, 2016 note, Dr. Vemuri indicated that appellant could return to work using her right arm as tolerated.

By decision dated March 30, 2017, OWCP's hearing representative affirmed OWCP's March 30, 2016 decision.

On March 28, 2018 appellant, through her then-counsel, requested reconsideration of the March 30, 2017 decision. She submitted a Form CA-7 claiming intermittent disability through March 31, 2017.

Appellant submitted a report of a right pectoralis minor tenotomy performed on January 26, 2017. The procedure was not authorized by OWCP. In a May 5, 2017 report, Dr. Vemuri indicated that appellant's pectoralis minor syndrome "may" have resulted from her work duties related to repetitive trauma.

In a September 11, 2017 report, Dr. Neil Allen, a Board-certified internist and neurologist, discussed appellant's factual and medical history, and reported physical examination findings. He opined that the acute trauma sustained by appellant on March 13, 2014, combined with the repetitive upper limb tasks required by her position, precipitated right neurogenic pectoralis minor syndrome. Dr. Allen opined that it was "reasonable and expected that [appellant] would require periods of leave while coping with [neurogenic pectoralis minor syndrome] and recovering from her subsequent surgery."

By decision dated June 26, 2018, OWCP denied modification of its March 30, 2017 decision.

On June 26, 2019 appellant requested reconsideration of the June 26, 2018 decision. In a June 25, 2019 brief, appellant's then-counsel asserted that OWCP failed to adequately consider the argument that appellant sustained work-related disability because the March 13, 2014 employment injury contributed, at least in part, to the claimed disability.

By decision dated September 20, 2019, OWCP denied modification of its June 26, 2018 decision.

On September 18, 2020 appellant, through her then-counsel, requested reconsideration of the September 20, 2019 decision. Appellant's then-counsel again asserted that OWCP failed to adequately consider the argument that appellant sustained work-related disability because the March 13, 2014 employment injury contributed, at least in part, to the claimed disability.

By decision dated October 21, 2020, OWCP denied modification of its September 20, 2019 decision.

On October 20, 2021 appellant, through her then-counsel, requested reconsideration of the October 21, 2020 decision. Appellant's then-counsel argued that appellant had established work-related disability because her light-duty work was withdrawn on August 7, 2015.

By decision dated January 18, 2022, OWCP denied modification of its October 21, 2020 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</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>4</sup> Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues, which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.<sup>5</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.<sup>6</sup>

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<sup>3</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Id.*; *William A. Archer*, 55 ECAB 674 (2004).

<sup>5</sup> *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, *id.*

<sup>6</sup> *Dean E. Pierce*, 40 ECAB 1249 (1989).

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>7</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>8</sup> An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>9</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.<sup>10</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 accepted employment injury.<sup>11</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>12</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work for the period May 7, 2015 through March 31, 2017 causally related to her accepted March 13, 2014 employment injury.

Appellant submitted a December 29, 2015 report from Dr. Balivet, who indicated that she had a labral tear of the right shoulder and opined that, due to her injury, she had been unable to work since May 15, 2015 without restrictions of lifting up to 20 pounds for no more than five hours per day. In another December 29, 2015 report, Dr. Balivet indicated that it “was reasonable to believe” that appellant’s repetitive work duties caused her March 13, 2014 right shoulder sprain to progress to a right labral tear. In an August 9, 2016 report, she discussed appellant’s work duties and noted, “[Appellant’s] repetitive job duties made a significant contribution toward the progression from a shoulder strain to a tear overtime, and that her continued activities . . . contribute significantly to the limitations, pain and disability she continues to have with her right upper extremity.” Dr. Balivet advised that appellant’s current diagnosis was sprain of the right rotator

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<sup>7</sup> 20 C.F.R. § 10.5(f).

<sup>8</sup> See *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>9</sup> See *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

<sup>10</sup> See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

<sup>11</sup> *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>12</sup> *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

cuff capsule. However, these reports are of limited probative value regarding appellant's disability claim because OWCP has not accepted a work-related right labral tear and Dr. Balivet failed to provide sufficient medical rationale to establish causal relationship between the accepted March 13, 2014 employment injury and the claimed disability. The Board has held that reports that do not contain medical rationale explaining how the accepted employment injury caused or contributed to the claimed disability are of limited probative value regarding causal relationship.<sup>13</sup> Therefore, this evidence is insufficient to establish appellant's disability claim for compensation.

In a September 11, 2017 report, Dr. Allen opined that the acute trauma sustained by appellant on March 13, 2014, combined with the repetitive upper limb tasks required by her position, precipitated right neurogenic pectoralis minor syndrome. He asserted that it was "reasonable and expected that [appellant] would require periods of leave while coping with [neurogenic pectoralis minor syndrome] and recovering from her subsequent surgery." Dr. Allen, 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>14</sup> Therefore, this evidence is insufficient to establish appellant's disability claim.

Appellant also submitted a July 23, 2015 report from Dr. Lenters, who indicated that he did not believe that appellant had a significant anatomical structural problem of the right shoulder. Dr. Lenters further noted that he was uncertain as to the nature of appellant's reported right shoulder pain. In August 19, October 5, and December 9, 2015 reports, Dr. Jabara diagnosed right shoulder pain. In a September 2, 2015 report, Dr. Balivet diagnosed right shoulder pain. On September 4, 2015 she indicated that she was unsure whether the right shoulder pain reported on September 2, 2015 was related to the March 13, 2014 employment injury. In a December 19, 2015 Form CA-17, Dr. Balivet indicated that appellant could lift up to 20 pounds for five hours per day. In an August 9, 2016 report, she advised that appellant had right upper extremity symptoms which were "quite disabling to her" and diagnosed pain in the right arm. In an August 19, 2016 report, Dr. Vemuri reported physical examination findings and indicated that appellant's symptoms were consistent with right pectoralis minor syndrome. In an October 22, 2016 note, he indicated that appellant could return to work using her right arm as tolerated. In January 26 and May 5, 2017 reports, Dr. Vemuri indicated that appellant's pectoralis minor syndrome might have resulted from her work duties related to repetitive trauma. The Board finds that these reports are of no probative value regarding appellant's disability claim because they do not contain an opinion that appellant was disabled from work during the claimed period causally related to her accepted March 13, 2014 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> Therefore, this evidence is insufficient to establish appellant's disability claim.

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<sup>13</sup> See *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>14</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

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

Appellant submitted diagnostic testing reports produced between 2015 and 2017. However, diagnostic studies, standing alone, lack probative value as they do not address whether an accepted employment injury caused the claimed disability.<sup>16</sup>

As the medical evidence of record is insufficient to establish disability from work during the claimed period causally related to her accepted March 13, 2014 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 intermittent disability from work for the period May 7, 2015 through March 31, 2017 causally related to her accepted March 13, 2014 employment injury.

### **ORDER**

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

Issued: July 10, 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

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<sup>16</sup> See A.V., Docket No. 19-1575 (issued June 11, 2020).