

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUE**

The issue is whether appellant has met his burden of proof to establish disability from work commencing May 30, 2023, causally related to his accepted March 31, 2023 employment injury.

### **FACTUAL HISTORY**

On August 1, 2023 appellant, then a 59-year-old cook, filed a traumatic injury claim (Form CA-1) alleging that on March 31, 2023 he developed a back and shoulder condition, including a pinched nerve and bulging disc, as a result of pulling carts from refrigerator to stations, removing boxes and large cans, and lifting boxes into ovens while in the performance of duty. He stopped work on April 1, 2023. OWCP accepted appellant's claim for cervical disc herniation at C3-4, cervical disc disorder with myelopathy, and cervical spinal stenosis.

On September 13, 2023 appellant filed a claim for compensation (Form CA-7) claiming disability from work for the period May 30 through September 9, 2023.

In a June 23, 2023 report, Dr. Pasquale Colavita, a Board-certified osteopathic physiatrist, reported that appellant had increased neck pain and tightness into his arms along with dysesthesias, restlessness with radiation into his legs and difficulty with gait with decreased balance, coordination and ambulatory tolerance. He noted examination findings and provided the results of electrodiagnostic testing.

In an August 30, 2023 attending physician's report (Form CA-20), Dr. Christian Ivan Fras, a Board-Certified orthopedic surgeon, noted the history of the March 31, 2023 injury and diagnoses of cervical disc herniation C3-4, cervical stenosis and myelopathy. He opined that these conditions were caused or aggravated by the work activity and recommended surgery. Dr. Fras found that appellant was disabled from work from April 4, 2023 through April 4, 2024.

OWCP also received diagnostic testing reports dated April 4, May 25, and June 23, 2023.

In a development letter dated September 19, 2023, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation. It advised him of the type of medical evidence needed to establish his claim and afforded him 30 days to provide the necessary evidence.

In a July 21, 2023 report, Dr. Michael Karsy, a Board-certified neurosurgeon, noted that appellant reported developing neck pain and weakness in May 2023 after picking up a heavy

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the September 10, 2024 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.*

object. He provided results from diagnostic testing and physical examination findings. Dr. Karsy diagnosed cervical myelopathy with severe neurological deficits secondary to a C3-4 cervical disc spinal stenosis and spinal cord injury with cord signal change. He recommended an urgent C3-4 anterior cervical discectomy and fusion (ACDF) procedure for decompression of the spinal cord.

By decision dated October 20, 2023, OWCP denied appellant's claim for disability from work commencing May 30, 2023, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period causally related to his March 31, 2023 employment injury.

On November 13, 2023, appellant requested reconsideration. He submitted an undated statement, along with a May 25, 2023 cervical spine magnetic resonance imaging (MRI) scan.<sup>4</sup>

In a November 6, 2023 report, Dr. Vidita V. Khatri, a Board-certified neurologist, noted that appellant's symptoms started after lifting a heavy object around April 2023. A summary of his treatment was provided, which noted that the recommended cervical spine surgery was scheduled for November 15, 2023. Dr. Khatri also reported that appellant had moderate spine stenosis at L4-5 levels. She opined that appellant had not been able to perform his job functions since April 1, 2023 because of weakness in the hands and an abnormal, unsteady gait.

By decision dated January 26, 2024, OWCP denied modification of its October 20, 2023 decision.

OWCP subsequently received physical therapy notes dated March 4 through July 3, 2024.

In a March 20, 2024 report, Dr. Zachary D. Hauser, a Board-certified physiatrist, provided a trigger point injection for lumbar disc displacement without radiculopathy at L1-2 and L4-5 and lumbago without radiculopathy.

In a February 7, 2024 report, Dr. Eugene E. Elia, a Board-certified orthopedic surgeon, provided a diagnosis of bilateral osteoarthritis of both knees, which appellant reported began a few years prior, but worsened after his November 2023 cervical surgery.

On July 12, 2024, appellant, through counsel, requested reconsideration.

In an undated report, Dr. Karsy summarized the treatment he provided. He indicated that appellant presented on July 21, 2023 for a pinched nerve and related that he began having symptoms of severe neck pain and weakness in May 2023 after he had picked up a heavy object on or about March 2023. Dr. Karsy stated that on evaluation he presented with significant cervical radiculopathy with bilateral pain radiating into the arms and hands, worse on left side, significant numbness in the arms, and a loss of control of fine motor ability. He indicated that conservative measures were without benefit and, thus, appellant had a progressive worsening of his neurological deficits from the time of injury. Dr. Karsy discussed the diagnostic findings, which included MRI

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<sup>4</sup> The May 25, 2023 cervical spine MRI scan revealed severe spinal canal stenosis with cord deformity at C3-4 level due to a large central disc protrusion with a component of peripheral osteophytes. Severe bilateral neural foraminal stenosis at C3-4 level was also noted.

scans of the cervical and lumbar areas of the spine and electromyogram and nerve conduction velocity (EMG/NCV) studies of the upper extremities. He also noted appellant's examination findings, which showed reduced strength in the upper and lower extremities, slowed hand opening and closing, numbness in the hands, limited ambulation and fine motor control, and bilateral positive Hoffman's sign. Appellant was predominately wheelchair bound with a wide-based gait. Dr. Karsy stated that the overall summary of his findings indicated cervical myelopathy with severe neurological deficits, Nurick grade 5 (able to ambulate only with assistance) secondary to a C3-4 cervical disc, spinal stenosis and spinal cord injury with cord signal change. Appellant underwent a C3-4 ACDF surgical decompression on November 15, 2023. He was discharged to rehabilitation successfully and recommended to lift less than 10 pounds. On December 15, 2023 appellant was able to ambulate with a walker and his lifting restrictions were increased to 25 pounds. Dr. Karsy indicated that recovery for a spinal cord could take up to a year after decompression surgery with the maximal recovery between six to nine months. He opined that appellant would likely not be able to return to work at this time as his work required the full use of his upper and lower extremities for lifting objects as well as freely ambulating.

In a June 29, 2024 addendum report, Dr. Karsy noted that, at appellant's six-month reevaluation on June 28, 2024, appellant had shown improvement in his upper extremity grip, sensation and coordination. However, his gait remained very limited, and he uses a cane and walker for short distances and a wheelchair for long distances. Dr. Karsy further noted that, during the visit, appellant ambulated from the examination room to his wheelchair, but collided into the wall multiple times and required assistance. He indicated that appellant remained a Nurick grade 4 (gait abnormality prevents employment).

By decision dated September 10, 2024, OWCP denied modification of its prior decision.

### **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, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>6</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>7</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 opinion

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

<sup>6</sup> *See M.T.*, Docket No. 21-0783 (issued December 27, 2021); *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

evidence.<sup>8</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.<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> Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>11</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>12</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>13</sup>

To establish causal relationship between the any disability claimed and the accepted employment injury, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such causal relationship.<sup>14</sup> 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>15</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work commencing May 30, 2023, causally related to his accepted March 31, 2023 employment injury.

In support of his disability claim, appellant submitted a July 21, 2023 report, wherein Dr. Karsy noted that appellant reported neck pain and weakness in May 2023 after picking up a heavy object. He documented physical examination findings and diagnosed cervical myelopathy

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<sup>8</sup> *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>9</sup> *C.S.*, Docket No. 20-1621 (issued June 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>10</sup> 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>11</sup> *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>12</sup> *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>13</sup> *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 8.

<sup>14</sup> *K.B.*, Docket No. 22-0842 (issued April 25, 2023); *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

<sup>15</sup> *S.S.*, Docket No. 24-0814 (issued September 27, 2024); *R.P.*, Docket No. 18-1591 (issued May 8, 2019).

with severe neurological deficits secondary to a C3-4 cervical disc spinal stenosis and spinal cord injury with cord signal change with a recommendation for an urgent C3-4 ACDF procedure for decompression of the spinal cord. Dr. Karsy did not, however, offer an opinion on whether appellant was disabled from work during the claimed period causally related to the accepted March 31, 2023 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>16</sup> As such, this report is insufficient to establish appellant's disability claim.

In an undated report and a June 29, 2024 addendum report, Dr. Karsy summarized the treatment he provided and discussed examination findings prior to and subsequent to appellant's November 15, 2023 C3-4 ACDF procedure for decompression of the spinal cord. He opined, in his undated report, that appellant would not be able to return to work as his work required the full use of his upper and lower extremities for lifting objects as well as freely ambulating. In the June 29, 2024 addendum report, Dr. Karsy indicated that appellant remained a Nurick grade 4 (gait abnormality prevents employment). He did not, however, provide sufficient rationale in either report explaining the nature of the relationship between the claimed disability and the accepted March 31, 2023 employment injury.<sup>17</sup> As such, these reports are insufficient to establish appellant's disability claim.

In a November 6, 2023 report, Dr. Khatri noted the history of the employment injury, documented physical examination findings, and related that the recommended surgery was scheduled for November 15, 2023. While she opined that appellant had not been able to perform his job functions since April 1, 2023, Dr. Khatri did not provide an opinion on causal relationship between the claimed disability and the accepted employment injury.<sup>18</sup> As such, this report is of no probative value and is insufficient to establish appellant's disability claim.

Dr. Colavita, in his June 23, 2023 report, and Dr. Hauser, in his March 20, 2024 report, documented physical examination findings. Neither physician, however, offered an opinion on whether appellant was disabled from work during the claimed period causally related to the accepted March 31, 2023 employment injury. As noted, 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>19</sup> Therefore, this evidence is insufficient to establish appellant's disability claim.

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<sup>16</sup> See *F.J.*, Docket No. 25-0094 (issued February 19, 2025); *A.D.*, Docket No. 24-0411 (issued June 20, 2024); *T.H.*, Docket No. 21-1429 (issued November 2, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>17</sup> See *F.J.*, Docket No. 25-0094 (issued February 19, 2025); *M.F.*, Docket No. 24-0445 (issued May 23, 2024); *T.H.*, Docket No. 23-0811 (issued February 13, 2024); *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *R.C.*, Docket No. 17-0748 (issued July 10, 2018); *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>18</sup> *Supra* note 16.

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

OWCP also received a February 7, 2024 report by Dr. Elia, which provided diagnoses of bilateral arthritis of the knees. Dr. Elia however did not offer an opinion on whether appellant was disabled from work during the claimed period causally related to the accepted March 31, 2023 employment injury. Therefore, this report is of no probative value and are insufficient to establish appellant's disability claim.<sup>20</sup>

Appellant also submitted an August 30, 2023 Form CA-20, wherein Dr. Fras, noted the history of the March 31, 2023 injury and diagnoses of cervical disc herniation C3-4, cervical stenosis and myelopathy. He opined that these conditions were caused or aggravated by the work activity and recommended surgery. Dr. Fras found that appellant was disabled from work from April 4, 2023 through April 4, 2024. However, he did not provide an opinion on causal relationship. As explained above, 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>21</sup> Therefore, this evidence is also insufficient to establish appellant's disability claim.

Appellant further submitted several reports from physical therapists. The Board has long held that certain healthcare providers such as physical therapists are not considered physicians as defined under FECA.<sup>22</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>23</sup> Therefore, this evidence is insufficient to establish appellant's disability claim.

The record also contains several diagnostic reports. The Board has held, however, that diagnostic testing reports, standing alone, lack probative value on the issue of causal relationship and disability as they do not address the relationship between the accepted employment injury and a diagnosed condition.<sup>24</sup> For this reason, this evidence is also insufficient to establish appellant's disability claim.

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Section 8101(2) of FECA provides as follows: 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a (May 2023); *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* *N.C.*, Docket No. 21-0934 (issued February 7, 2022) (nurse practitioners and physical therapists are not considered physicians as defined under FECA); *R.W.*, Docket No. 25-0096 (issued January 31, 2025) (physical therapists are not considered physicians as defined under FECA).

<sup>23</sup> *Id.*

<sup>24</sup> *See B.B.*, Docket No. 25-0172 (issued February 4, 2025); *J.A.*, Docket No. 23-0256 (issued December 10, 2024); *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

As the medical evidence of record is insufficient to establish disability from work for the period commencing May 30, 2023, causally related to his accepted March 31, 2023 employment injury, the Board finds that appellant has not met his burden of proof.<sup>25</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 his burden of proof to establish disability from work for the period commencing May 30, 2023, causally related to his accepted March 31, 2023 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 10, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2025  
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>25</sup> To the extent that appellant is alleging that she missed time from work to undergo medical care due to the accepted March 31, 2023 employment injury, he may file a Form CA-7 and submit evidence that he attended an examination or treatment for the accepted work injury on the dates claimed. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013); see *S.M.*, Docket No. 17-1557 (issued September 4, 2018). For a routine medical appointment, a maximum of four hours of compensation may be allowed. *J.B.*, Docket No. 22-1301 (issued March 26, 2024); *A.F.*, Docket No. 20-0522 (issued November 4, 2020).