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T.Y., Appellant)	
)	
and)	Docket No. 25-0255
)	Issued: April 2, 2025
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, FEDERAL)	
CORRECTIONAL COMPLEX VICTORVILLE,)	
Victorville, CA, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 16, 2025 appellant, through counsel, filed a timely appeal from a July 22, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the July 22, 2024 decision, OWCP received additional evidence. 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 his burden of proof to establish total disability from work for the period March 2 through May 15, 2022, causally related to his accepted March 11, 2019 employment injury.

FACTUAL HISTORY

On March 12, 2019 appellant, then a 34-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on March 11, 2019 he sustained a human bite to his right hand, and injured his back, and left leg when he intervened in an altercation and apprehending an inmate who bit him while in the performance of duty. He stopped work on March 11, 2019. OWCP accepted the claim for sprain of the lumbar ligaments, lumbar radiculopathy, open bite of the right hand, and contusion of the left knee. It paid appellant wage-loss compensation on the supplemental rolls commencing April 28, 2019.

On February 28, 2020 appellant underwent an OWCP-authorized L5-S1 anterior lumbar interbody fusion due to lumbar isthmic spondylolisthesis and radiculopathy. He underwent a second authorized back surgery on September 23, 2020 including a completed L5-S1 facetectomy, partial left L5-S1 facetectomy and foraminotomies, an L5-S1 midline dorsolateral fusion with bone screw instrumentation, and local bone graft. Tim Try Phan, a physical therapist, provided appellant with therapy beginning September 28, 2020.

On September 9, 2020 OWCP expanded the acceptance of the claim to include the additional condition of lumbar spondylolisthesis.

Appellant returned to full-duty work on December 4, 2020. On June 30, 2021 he accepted a limited- light-duty position.

In a December 15, 2021 report, Dr. Jung Jin Lee, a Board-certified internist, noted a history of lumbar fusion, and diagnosed lumbar radiculopathy, chronic low back pain, bite of the right hand, and left knee contusion. On December 23, 2021 he provided work restrictions including standing and walking no more than 10 to 15 minutes per hour each, climbing stairs for no more than five minutes per hour, and lifting, carrying, pushing, and pulling no more than 10 pounds.

On December 30, 2021 the employing establishment determined that based on Dr. Lee's work restrictions appellant was not fit for duty as a correction worker and could not hold a law enforcement officer position.

On January 17 and February 4, 2022 Dr. Lee further limited appellant's restrictions on walking and standing to 10 minutes an hour each. He also found that appellant should be allowed to change positions from sit to stand. Dr. Lee completed a January 19, 2022 work capacity evaluation, Form OWCP-5c, finding that appellant was permanently disabled from his date-of-injury position and capable of performing sedentary strength level work.

The employing establishment offered appellant a limited- light-duty position performing financial management/administrative duties on February 28, 2022 within the restrictions of standing and walking no more than 10 minutes an hour, each, climbing stairs no more than 5 minutes per hour, and lifting, carrying, pushing, and pulling no greater than 10 pounds.

On March 2, 2022 Dr. Moshe H. Wilker, a Board-certified orthopedic surgeon, diagnosed status post lumbar fusion and right wrist de Quervain's tenosynovitis which he attributed to the accepted employment injury. He recommended right wrist de Quervain's release and lumbar spine surgery for adjacent segment disease. Dr. Wilker listed appellant's permanent restrictions as no pushing, lifting, or pulling more than 10 pounds, no walking or sitting more than 10 minutes, and no inmate contact.

In a March 3, 2022 letter, the employing establishment noted that on March 1, 2022 appellant reported to work for a limited- light-duty position in the financial management position. Appellant then asserted that he required his cell phone on his person at all times. Appellant's supervisor denied this request as cell phones were not permitted behind secure areas. Appellant requested special permission to have his cell phone.

Commencing on March 4, 2022 appellant filed claims for compensation (Form CA-7) for disability from work for the period beginning March 2 through May 15, 2022.

In a development letter dated March 17, 2022, OWCP informed appellant of the deficiencies of his claims for compensation. It advised him of the type of factual and medical evidence needed to establish his claims and afforded him 30 days to submit the necessary evidence.

OWCP continued to receive evidence. In a March 2, 2022 treatment note, Dr. Wilker found that appellant had reached maximum medical improvement and that he could return to work limiting up to 20 pounds.

In reports dated March 15 through September 19, 2022, Dr. Gary L. Baker, a physician Board-certified in pain management, diagnosed lumbar radiculopathy, failed lumbar back surgery syndrome, status post fusion of the lumbar spine, lumbar revision L4-S1, and chronic pain.

Dr. Wilker completed an April 25, 2022 treatment note and provided appellant's work restrictions of no prolonged sitting or standing and no pushing, pulling, or lifting greater than 10 pounds. He asserted that he was unable to perform the duties of his date-of-injury position as these duties would further exacerbate his accepted conditions. Dr. Wilker determined that appellant was unable to work from March 2, 2022.

On May 13, 2022 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, for a second opinion examination. It requested that he address the questions of whether appellant's work-related conditions had resolved, the need for further medical treatment, and his employment-related work restrictions, if any.

Dr. Einbund completed a June 30, 2022 report reviewing the SOAF and medical records. He performed a physical examination and diagnosed bite of the right hand resolved, contusion of the left knee resolved, and L5-S1 spondylolisthesis with moderate-to-severe bilateral neural foraminal stenosis with radiculopathy status post fusions on February 28 and September 23, 2020. Dr. Einbund related that appellant had persistent abnormal findings related to his lumbar spine including limited range of motion, a limping gait, and decreased plantar sensation. He determined that he was not capable of returning to his date-of-injury position, was limited to sedentary work, and should not have any inmate contact. Dr. Einbund completed a Form OWCP-5c indicating that appellant had reached maximum medical improvement and that he could perform sedentary strength level work eight hours a day with no inmate contact.

On July 22, 2022 OWCP requested a supplemental report from Dr. Einbund addressing whether appellant could perform the duties of the February 28, 2022 job offer.

In his August 16, 2022 supplemental report, Dr. Einbund found that appellant was capable of performing the February 28, 2022 modified-duty position.

On August 29, 2022 OWCP requested a supplemental report from Dr. Einbund reviewing appellant's work restrictions and opining whether he could perform the modified-duty position offered by the employing establishment.

In his September 19, 2022 supplemental report, Dr. Einbund reviewed Dr. Wilker's March 2, 2022 report and the lifting restriction of 20 pounds. He further noted that Dr. Wilker found that appellant was totally disabled on April 25, 2022, but that there were no objective findings on diagnostic studies on physical evaluation to substantiate the change in work restrictions. Dr. Einbund concluded that appellant was capable of sedentary work with no inmate contact.

By decision dated October 21, 2022, OWCP denied appellant's claim for wage-loss compensation, finding that the medical evidence of record was insufficient to establish disability from work for the period March 2 through May 15, 2022.

OWCP continued to receive evidence. Appellant was separated from employment on May 16, 2022 due to the physical inability to perform the duties of his position. OWCP paid wage-loss compensation on the supplemental rolls for total disability beginning May 16, 2022.

In reports dated October 26 and December 13, 2022, Dr. Wilker diagnosed lumbar sprain, lumbar radiculopathy, bite of the right hand, contusion of the left knee, and lumbar spondylolisthesis. He provided findings on physical examination and explained that adjacent segment disease was a symptomatic deterioration of the adjacent spinal levels at the site of a previous lumbar fusion surgery and that as appellant's symptoms persisted, he experienced adjacent segment disease. Dr. Wilker requested authorization for a lumbar decompression and fusion at L4-5. He provided work restrictions including no prolonged sitting or standing and no pushing, pulling, or lifting greater than 10 pounds with no inmate contact. Dr. Wilker determined that because when working at the employing establishment, appellant was in the vicinity of inmates and due to the potential need to defend himself and teammates in an unforeseeable event, he was temporarily totally disabled due to his ongoing and persistent lower back pain beginning March 2, 2022.

On March 17, 2023 Dr. Wilker released appellant to return to full-duty work from March 16 through April 27, 2023.

On March 29, 2023 appellant filed a Form CA-7 for disability from work for the period beginning March 12, 2023.

In a development letter dated April 11, 2023, OWCP informed appellant of the deficiencies of his claim for compensation. It advised him of the type of factual and medical evidence needed to establish his claims and afforded him 30 days to submit the necessary evidence.

On May 2, 2023 appellant, through counsel, requested reconsideration of the October 21, 2022 decision.

OWCP continued to receive evidence. On April 22, 2023 Dr. Wilker found that appellant was temporarily totally disabled from April 22 through July 22, 2023.

On May 22, 2023 OWCP referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Satish K. Lal, a Board-certified orthopedic surgeon, for a second opinion examination. It requested that he address the questions of whether appellant's work-related conditions had resolved, the need for further medical treatment including additional surgery, and his employment-related work restrictions, if any.

By decision dated May 25, 2023, OWCP denied modification of its October 21, 2022 decision.⁴

In a June 28, 2023 report, Dr. Lal reviewed the SOAF and medical records. He performed a physical examination and diagnosed post fusion L5-S1 with low back pain and lower limb radiculopathy, chronic sprain of the right wrist with degenerative changes and possible carpal tunnel syndrome, and mild chondromalacia of the knees, bilaterally. Dr. Lal attributed these conditions to the accepted employment injury and opined that appellant required further medical treatment including the requested back and wrist surgeries. He opined that he could perform sedentary level work, but noted that appellant did not want to return to work until his surgeries were completed. Dr. Lal completed a Form OWCP-5c and indicated that he could return to sedentary work only.

Dr. Baker completed reports dated June 30, 2023 through April 29, 2024 following physical examination and diagnosed lumbar radiculopathy, lumbar failed back surgery syndrome, and chronic pain.

On September 14, 2023 Dr. Wilker performed an authorized L4-5 laminectomy with medial facetectomy and right foraminotomy. OWCP paid wage-loss compensation on the supplemental rolls commencing June 22, 2022 through March 11, 2023 and April 22 through September 9, 2023.

Christine Garbayo, a physical therapist, provided therapy beginning November 16, 2023.

Appellant underwent a lumbar computerized tomography (CT) scan on March 26, 2024 which demonstrated surgical changes and bilateral foraminal stenosis at L4-5 and grade 1 anterolisthesis at L5-S1 and retrolisthesis at L4-5. On April 8, 2023 Dr. Wilker continued to find appellant totally disabled.

On May 24, 2024 appellant, through counsel, requested reconsideration of the May 25, 2023 decision. In a March 26, 2024 report, Dr. Wilker related his treatment of appellant beginning on March 2, 2022. He described the March 11, 2009 employment injury and diagnosed lumbar sprain, lumbar radiculopathy, bite of the right hand, contusion of the left knee, and lumbar spondylolisthesis. Dr. Wilker opined that appellant was totally disabled from March 2 through May 15, 2022 and from March 12 through April 25, 2023. He related that appellant continued to

⁴ By decision dated June 6, 2023, OWCP denied the claim for wage-loss compensation, finding that the medical evidence of record was insufficient to establish disability from work for the period March 12, 2023 through April 25, 2023. On June 4, 2024 appellant, through counsel, requested reconsideration of the June 6, 2023 decision based on Dr. Wilker's March 26, 2024 report. By decision dated August 6, 2024, OWCP vacated the June 6, 2023 decision and accepted that appellant was entitled to wage-loss compensation for total disability for the period March 12 through April 21, 2023.

experience severe symptoms including pain and functional limitations as a result of his work injury that inhibited him from working in any capacity, even sedentary duties. Dr. Wilker described the March 1, 2022 light-duty assignment with restrictions on standing for more than 10 minutes in a hour, no stair climbing, and lifting, carrying, pulling, pushing greater than 10 pounds. He opined:

“Due to th[e] accepted conditions of lumbar radiculopathy and lumbar spondylolisthesis that cause him significant pain and symptoms in his back which radiate to the bilateral legs including numbness and tingling, [appellant] was and remains unable to have the physical ability to perform ANY job duties including the March 1, 2022 job offer, and he also was and remains unable to perform any type of work including sedentary or desk work.” (Emphasis in the original.)

Dr. Wilker found that sitting, standing, lifting, carry or pulling could aggravate his accepted conditions and that appellant was totally disabled beginning March 2, 2022.

By decision dated June 4, 2024, OWCP denied modification of its May 25, 2023 decision.

Dr. Baker completed reports dated May 25 through June 11, 2024, and diagnosed lumbar radiculopathy, lumbar failed back surgery syndrome, and chronic pain following physical examination.

On June 20, 2024 appellant underwent a lumbar CT scan which demonstrated surgical changes and bilateral foraminal stenosis at L4-5.

On July 12, 2024 appellant, through counsel, requested reconsideration of the June 4, 2024 decision. In a July 12, 2024 form report, Dr. Wilker diagnosed lumbar radiculopathy, status post L4-5 laminectomy with posterolateral fusion, and L5-S1 fusion. He related that it was his medical opinion that appellant was totally disabled and unable to work from March 2 through May 15, 2022 and from March 12 through April 25, 2023 due to his accepted employment injuries as any type of work would aggravate his accepted conditions. Dr. Wilker indicated that appellant was totally disabled beginning March 2, 2022.

By decision dated July 22, 2024, OWCP denied modification of the June 4, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.⁶ 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.⁷ 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

⁵ *Supra* note 2.

⁶ 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).

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

evidence.⁸ Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.⁹

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.¹⁰ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹¹ 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.¹²

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.¹³

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.¹⁴ 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 diagnosed condition and the specific employment factors identified by the claimant.¹⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁶

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish total disability from work for the period March 2 through May 15, 2022, causally related to his employment injury.

OWCP's second opinion physician, Dr. Einbund opined that appellant was not capable of returning to his date-of-injury position, that he was limited to sedentary work, and should not have

⁸ *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).

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

¹⁰ 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).

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

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

¹³ *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*, 52 ECAB 291, 293 (2001).

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

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

¹⁶ *Id.*

any inmate contact. He concluded that appellant was capable of performing sedentary work and that he was not totally disabled due to the accepted employment injury.¹⁷

In a series of reports beginning March 2, 2022, Dr. Wilker provided varied and contradictory work restrictions. He initially listed appellant's permanent restrictions as no pushing, lifting, or pulling more than 10 pounds, no walking or sitting more than 10 minutes, and no inmate contact. In a separate report of even date, Dr. Wilker found that appellant had reached maximum medical improvement and that he could return to work limiting up to 20 pounds. On April 25, 2022 he both listed work restrictions of no prolonged sitting or standing and no pushing, pulling, or lifting greater than 10 pounds and determined that appellant was unable to work from March 2, 2022. On October 26 and December 13, 2022 Dr. Wilker again repeated his prior work restrictions including no prolonged sitting or standing and no pushing, pulling, or lifting greater than 10 pounds with no inmate contact. He also determined that because when working at the employing establishment, appellant was in the vicinity of inmates and due to the potential need to defend himself and teammates in an unforeseeable event, he was temporarily totally disabled due to his ongoing and persistent lower back pain beginning March 2, 2022. In March 26 and July 12, 2024 reports, Dr. Wilker opined that appellant was totally disabled from March 2 through May 15, 2022. He related that appellant continued to experience severe symptoms including pain and functional limitations as a result of his work injury that inhibited him from working in any capacity, even sedentary duties. Dr. Wilker described the March 1, 2022 light-duty assignment and opined that appellant remained unable to have the physical ability to perform any job duties including the March 1, 2022 job offer as sitting, standing, lifting, carrying or pulling could aggravate his accepted conditions. He offered contradictory opinions of appellant's disability status during the claimed period, without further explanation, and he did not sufficiently explain how objective findings on physical examination and diagnostic testing showed that appellant could not perform light-duty work due to the effects of his accepted employment conditions. These reports are of limited probative value regarding disability, because they do not contain sufficient medical rationale explaining how a given medical condition/period of disability has an employment-related cause.¹⁸ Therefore, these reports are insufficient to establish appellant's disability claim.

In a series of reports commencing March 15 2022, Dr. Baker diagnosed lumbar radiculopathy, failed lumbar back surgery syndrome, status post fusion of the lumbar spine, lumbar revision L4-S1, and chronic pain, but did not offer an opinion on whether the accepted employment injury caused disability from employment.¹⁹ Thus, the reports from Dr. Baker are of no probative value and insufficient to establish appellant's disability claim.

¹⁷ *R.F.*, Docket No. 24-0816 (issued October 28, 2024).

¹⁸ *See T.S.*, Docket No. 23-0201 (issued August 2, 2023); *S.K.*, Docket No. 19-0272 (issued July 21, 2020); *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁹ *See A.S.*, Docket No. 25-0106 (issued January 2, 2025); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *see also P.L.*, Docket No. 22-0337 (issued September 9, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Appellant also submitted several diagnostic studies during the claimed period. However, diagnostic studies, standing alone, lack probative value on causal relationship as they do not address whether employment factors caused the diagnosed condition or any period of disability.²⁰

The remainder of the medical evidence consists of reports from physical therapists. The Board has held that certain healthcare providers such as physical therapists are not considered physicians as defined under FECA.²¹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Thus, this evidence is also insufficient to establish the disability claim.

As the medical evidence of record is insufficient to establish that appellant was disabled during the claimed period of disability, the Board finds that appellant has not met his 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 his burden of proof to establish disability from work for the period March 2 through May 15, 2022 causally related to his employment injury.

²⁰ *B.O.*, Docket No. 25-0049 (issued January 10, 2025); *A.D.*, Docket No. 24-0770 (issued October 22, 2024); *T.L.*, Docket No. 22-0881 (issued July 17, 2024); *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

²¹ 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (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 K.D.*, Docket No. 22-0756 (issued November 2022) (a physical therapist is not considered a physician under FECA).

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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