

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

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<p><b>J.B., Appellant</b></p> <p>and</p> <p><b>U.S. POSTAL SERVICE, POST OFFICE, Birmingham, AL, Employer</b></p>	) ) ) ) ) )	<b>Docket No. 25-0606</b> <b>Issued: August 1, 2025</b>
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*Appearances:*

*Capp P. Taylor, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 8, 2025 appellant, through counsel, filed a timely appeal from an April 30, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish disability from work, commencing April 16, 2022, causally related to her accepted employment injury.

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<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.

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

## **FACTUAL HISTORY**

This case has previously been before the Board on a different issue. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.<sup>3</sup> The relevant facts are as follows.

On April 30, 2022 appellant, then a 41-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 16, 2022 she injured her neck and arms while in the performance of duty.<sup>4</sup> She explained that her neck locked up and her arms went numb after boxing mail for over three hours. Appellant stopped work on the date of injury and returned to work on April 21, 2022.

In an April 20, 2022 medical report, Dr. Jeremiah J. Maddox, a Board-certified orthopedic surgeon, noted that he had previously performed an anterior cervical discectomy and fusion (ACDF) on appellant, and that she had chronic issues with right arm numbness. He further noted that she related a recent flare-up of significant numbness and dysesthesia in her right hand "four to five days ago." Dr. Maddox performed a physical examination and indicated that he did not observe any significant abnormalities other than chronic numbness of the right hand. He diagnosed a history of cervical spine fusion and recommended a magnetic resonance imaging (MRI) scan of the cervical spine.

An April 26, 2022 cervical MRI scan demonstrated arthroplasty at C4-5, surgical hardware associated with ACDF at C5-6, possible spinal narrowing at C4 and C5, and neural foraminal narrowing.

In a follow-up report dated May 4, 2022, Dr. Maddox reviewed the MRI scan and documented physical examination findings. He compared the April 26, 2022 MRI scan with a prior myelogram from 2020 and noted a new finding of C3-4 stenosis and left-sided disc herniation at C6-7, which had increased in size. Dr. Maddox diagnosed history of cervical spine fusion and recommended a cervical epidural steroid injection. In a work excuse note of even date, he recommended that appellant remain out of work pending a cervical epidural steroid injection.

By decision dated June 13, 2022, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish that an incident occurred on April 16, 2022, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence, including a March 16, 2023 medical report by Dr. Maddox, who indicated that he performed revision ACDF surgery on appellant with removal of hardware on August 23, 2022. He further noted that she described an incident on April 16, 2022 where she experienced a new onset of pain in her arms and neck. Dr. Maddox noted that it was "reasonable to conclude" that the incident resulted in the C3-4 disc herniation, and that "her previous surgery could have increased the changes of adjacent level breakdown."

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<sup>3</sup> Docket No. 24-0089 (issued April 4, 2024).

<sup>4</sup> Appellant previously filed a traumatic injury claim for a December 12, 2019 injury to her cervical spine, which OWCP denied under OWCP File No. xxxxxx339.

On March 28, 2023 appellant, through counsel, requested reconsideration of OWCP's June 13, 2022 decision. In support thereof, appellant submitted a January 20, 2023 statement, which indicated that she returned to work following the July 15, 2020 ACDF surgery and was able to perform her duties including working at the retail counter, assisting customers, and other employees, answering the telephones, and boxing mail until April 16, 2022. The physical demands of her position included standing, walking, sitting, writing, reaching for up to two hours per day, and lifting and pulling trays of mail weighing up to 20 pounds. Appellant related that on April 16, 2022 "while bending down and grabbing a tray I felt something pull in my neck" and that "shortly thereafter, I noticed my left and right arms were going numb and my neck was locked up." She sought treatment with Dr. Maddox, who administered epidural steroid injections and performed revision surgery on August 23, 2022.

By decision dated June 9, 2023, OWCP modified its June 13, 2022 decision to reflect that appellant had established the factual and medical components of fact of injury. However, the claim remained denied, because the medical evidence of record was insufficient to establish that her diagnosed medical conditions were causally related to the accepted April 16, 2022 employment incident.

Appellant, through counsel, continued to request reconsideration and submitted medical evidence, including narrative reports by Dr. Maddox who indicated that the stretch of the fibrous cartilage at C3-4 caused the outer part to tear or split, which led the disc to rupture or herniate. By decisions dated August 31, and October 18, 2023, OWCP continued to deny modification of its prior decisions.

On October 31, 2023 appellant, through counsel, appealed to the Board. By decision dated April 4, 2024<sup>5</sup> the Board found that the case was not in posture for a decision as further development of the medical evidence was required. The Board remanded the case to OWCP to administratively combine the present claim, OWCP File No. xxxxxx268, with OWCP File No. xxxxxx339, prepare a statement of accepted facts (SOAF), and obtain a rationalized opinion from a physician in the appropriate field of medicine as to whether the accepted April 16, 2022 employment incident caused, contributed to, or aggravated the claimed conditions.

On May 14, 2024 OWCP prepared a SOAF, which referenced the December 12, 2019 and April 16, 2022 claims, and provided the physical requirements for the position of sales and service distribution associate, including lifting and carrying 35 pounds continuously and 70 pounds intermittently for four to five hours per day.

On May 17, 2024 OWCP referred appellant, along with the case record, the May 14, 2024 SOAF, and a series of questions, to Dr. Tai Q. Chung, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a report dated June 14, 2024, Dr. Chung reviewed the history of the claimed December 12, 2019 and April 16, 2022 injuries, the SOAF, and the medical record. On physical examination, he observed a left anterior surgical incision; tenderness at the posterior midline of the cervical spine, right and left trapezius muscles, and interscapular muscles; reduced range of motion (ROM) of the cervical spine; and normal strength, sensation, and reflexes. Dr. Chung diagnosed a permanent aggravation of cervical degenerative disc disease. He opined that the

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<sup>5</sup> *Supra* note 3.

April 16, 2022<sup>6</sup> employment incident led to the necessity of the August 23, 2022 revision ACDF surgery with removal of hardware. Dr. Chung explained that the arthroplasty at C4-5 and fusion at C5-6 in 2019 resulted in adjacent level or segment disease, which placed extra stress at the C3-4 disc and predisposed appellant to further injury at the time of the April 16, 2022 employment incident. He opined that she was not capable of performing her preinjury position, as she could not lift and carry 35 pounds continuously or 70 pounds intermittently for four to five hours per day. In a work capacity evaluation (Form OWCP-5c) dated June 14, 2024, Dr. Chung indicated that appellant was permanently restricted to full-time sedentary-duty work.

By *de novo* decision dated July 22, 2024, OWCP vacated the August 31, 2023 decision.

By separate decision also dated July 22, 2024, OWCP accepted the claim for permanent aggravations of cervical disc displacement, cervical disc degeneration, and spondylosis without myelopathy or radiculopathy of the cervical region.

On August 8, 2024 appellant, through counsel, requested expansion of the accepted conditions of her claim to include bilateral upper extremity radiculopathy.

On August 29, 2024 OWCP referred appellant's medical record and an updated SOAF to Dr. William Tontz, Jr., a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA).

In a report dated September 11, 2024, Dr. Tontz opined that the acceptance of appellant's claim should be expanded to include a bilateral upper extremity radiculopathy as causally related to the April 16, 2022 employment injury.

By decision dated September 13, 2024, OWCP expanded the acceptance of appellant's April 16, 2022 claim to include cervical radiculopathy, both arms.

OWCP thereafter received a notification of personnel action (Standard Form (SF) 50), which indicated that appellant had been approved by the Office of Personnel Management for a disability retirement, effective June 28, 2022.

On September 24, 2024 appellant began filing claims for compensation (Form CA-7) for disability from work, commencing April 16, 2022.

In a compensation claim development letter dated October 1, 2024, OWCP informed appellant of the deficiencies of her disability claim. It advised her of the type of medical evidence needed and afforded her 30 days to respond. No further evidence was received.

By decision dated December 18, 2024, OWCP denied appellant's disability claim, finding that she had not submitted sufficient medical evidence to establish disability from work during the claimed period causally related to the accepted employment injury. It noted that on June 14, 2024 Dr. Chung found her capable of performing full-time sedentary work.

On March 24, 2025 appellant, through counsel, requested reconsideration of OWCP's December 18, 2024 decision. In support thereof, appellant submitted a narrative report by

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<sup>6</sup> Dr. Chung notes a date of April 30, 2022; however, it is clear from the context that this is a typographical error.

Dr. Maddox dated March 17, 2025, who opined that she had been unable to perform the retail counter position that she described in her January 20, 2023 statement since April 16, 2022 due to her cervical conditions.

By decision dated April 7, 2025, OWCP denied modification of its December 18, 2024 decision, noting that appellant was working with a 20-pound restriction at the time of the April 16, 2022 employment injury and the medical evidence did not demonstrate how her condition changed or worsened on April 16, 2022 to the extent that she was totally disabled as a result of the accepted injury.

On April 26, 2025 appellant, through counsel, requested reconsideration.

By decision dated April 30, 2025, OWCP denied modification of the April 7, 2025 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 that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>7</sup> 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>8</sup> Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>9</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>10</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>11</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>12</sup>

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<sup>7</sup> *S.F.*, Docket No. 20-0347 (issued March 31, 2023); *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>8</sup> 20 C.F.R. § 10.5(f).

<sup>9</sup> See *H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>10</sup> See *H.B.*, *id.*; *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

<sup>11</sup> See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

<sup>12</sup> *F.B.*, Docket No. 22-0679 (issued January 23, 2024); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

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>

## ANALYSIS

The Board finds that this case is not in posture for decision.

On May 17, 2024 OWCP referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Chung for a second opinion evaluation. Based upon Dr. Chung's opinions, it accepted the claim for permanent aggravations of cervical disc displacement, cervical disc degeneration, and spondylosis without myelopathy or radiculopathy of the cervical region, which necessitated revision ACDF surgery with removal of hardware on August 23, 2022, as causally related to the April 16, 2022 employment injury.

In an OWCP-5c form dated June 14, 2024, Dr. Chung indicated that appellant could return to full-time, sedentary-duty work. By decision dated September 13, 2024, OWCP expanded its acceptance of the claim to include cervical radiculopathy, both arms, and thereafter denied her claim for compensation for disability from work commencing April 16, 2022. However, it did not obtain a supplemental report from Dr. Chung which addressed the period for which compensation was claimed after it expanded its acceptance of the claim but prior to issuing its decisions denying appellant's claim for compensation.

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>14</sup> Accordingly, once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>15</sup>

On remand, OWCP shall prepare an updated SOAF listing all of the accepted conditions and a description of the position appellant was performing at the time of the April 16, 2022 employment injury.<sup>16</sup> It shall then request a supplemental report from Dr. Chung regarding whether appellant was disabled from work commencing April 16, 2022, causally related to her accepted April 16, 2022 employment injury. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision with respect to appellant's disability claim.

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<sup>13</sup> *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>14</sup> See *M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

<sup>15</sup> *Id.*; see also *R.M.*, Docket No. 16-0147 (issued June 17, 2016).

<sup>16</sup> *Corlisia Sims*, 46 ECAB 963 (1995) (The test of "disability" under FECA is whether an employment-related impairment prevents the employee from engaging in the kind of work he or she was doing when injured).

**CONCLUSION**

The Board finds that this case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 30, 2025 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 1, 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