

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

E.S., Appellant

and

**U.S. POSTAL SERVICE, WEIRTON POST
OFFICE, Weirton, WV, Employer**

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) **Docket No. 25-0696**
) **Issued: August 21, 2025**
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Appearances:

Alan J. Shapiro, Esq., for the appellant¹
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 July 15, 2025 appellant, through counsel, filed a timely appeal from a July 7, 2025 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

¹ 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 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.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the July 7, 2025 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish the remaining claimed disability from work commencing January 13, 2025, as causally related to her accepted June 3, 2024 employment injury.

FACTUAL HISTORY

On October 10, 2024 appellant, then a 53-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed right neck, shoulder, elbow, shoulder blade, and wrist pain due to factors of her federal employment including repetitive lifting of equipment and parcels for five to six hours per day.⁴ She noted that she first became aware of her condition and realized its relationship to her federal employment on June 3, 2024. Appellant did not immediately stop work.

An August 19, 2024 x-ray of the right shoulder revealed moderate-to-severe degenerative joint changes at the glenohumeral and acromioclavicular (AC) joints but no evidence of acute fracture.

In a November 27, 2024 attending physician's report (Form CA-20), Dr. Hyun Kim, Board-certified in physiatry and internal medicine, diagnosed right shoulder sprain and cervical strain. In a duty status report (Form CA-17) of even date, he released appellant to return to work without restrictions, noting that she would need time off from work to attend physical therapy appointments.

By decision dated December 18, 2024, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a causal relationship between the diagnosed conditions and the accepted employment factors. Therefore, the requirements had not been met to establish that she sustained an injury as defined by FECA.

OWCP thereafter received a November 25, 2024 medical report by Dr. Damian Rispoli, a Board-certified orthopedic surgeon, who noted appellant's history of right shoulder pain due to her employment duties since 2009, right shoulder arthroscopic surgery in April 2010, and a right shoulder intraarticular injection on August 19, 2024. He performed a physical examination and observed reduced range of motion (ROM) with pain at the end ranges. Dr. Rispoli administered a second intra-articular glenohumeral joint injection to the right shoulder.

A magnetic resonance imaging (MRI) scan of the cervical spine dated December 4, 2024 demonstrated diffuse disc bulging and herniations from C2 through C5. An MRI scan of the right shoulder of even date revealed mild contusions of the supraspinatus, anterior infrapinatus, subscapularis, and bicipital tendons and a superior labrum tear.

In a January 16, 2025 medical report, Dr. Kim performed a physical examination and observed drooping of the right shoulder, reduced ROM of the neck and right shoulder, and reduced

⁴ OWCP assigned the present claim OWCP File No. xxxxxx113. Appellant previously filed a Form CA-2 on July 8, 2009 for a repetitive injury, which OWCP accepted for sprain of right shoulder and upper arm and aggravations of superior glenoid labrum lesion, instability, and degenerative joint disease of the right shoulder under OWCP File No. xxxxxx119. OWCP administratively combined OWCP File Nos. xxxxxx113 and xxxxxx119, with the latter serving as the master file.

strength in both shoulders. He diagnosed right shoulder sprain and cervical strain. In a Form CA-17 of even date, Dr. Kim diagnosed right labrum tear and recommended work restrictions of four hours per day with lifting no more than 10 pounds on an intermittent basis and no reaching overhead with the right arm.

In a January 21, 2025 narrative letter, Dr. Kim diagnosed right shoulder sprain, neck strain, right shoulder superior glenoid labrum lesion, and permanent aggravation of cervical disc disorder with radiculopathy due to appellant's repetitive work duties. He indicated that he "completed CA-17 today with patient having no restrictions but must be able to leave work by noon on Tuesdays to attend therapy."⁵

OWCP also received physical therapy reports dated December 10, 2024 through February 27, 2025.

Following requests for reconsideration by appellant, by decision dated March 5, 2025, OWCP vacated the December 18, 2024 initial denial, finding that appellant had established a neck strain and right shoulder sprain as causally related to the accepted employment factors. However, it denied expansion of the acceptance of the claim to include aggravations of preexisting superior glenoid labrum lesion of right shoulder and cervical disc disorder as causally related to the accepted employment injury.

By separate decision also dated March 5, 2025, OWCP formally accepted the claim for right shoulder sprain and neck strain.

OWCP continued to receive evidence, including a March 6, 2025 narrative report by Dr. Kim, who reiterated his opinion that the diagnoses of right shoulder superior glenoid labrum lesion and permanent aggravation of cervical disc disorder with radiculopathy were causally related to work duties.

On March 13, 2025, appellant began filing claims for compensation (Form CA-7) for leave without pay (LWOP) and leave buy back (LBB) commencing November 27, 2024. OWCP also received time analysis forms (Form CA-7a) dated March 14, 2025, noting 64 hours of leave used for medical appointments on November 27 and December 4, 26, and 31, 2024 and January 28, February 4, and 11, 2025, and LWOP commencing January 13, 2025.

In a development letter dated March 18, 2025, 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 submit the necessary evidence.

OWCP thereafter received a November 27, 2024 medical report by Dr. Kim, who noted appellant's complaints and documented examination findings. Dr. Kim diagnosed right shoulder sprain, cervical strain, superior glenoid labrum lesion of right shoulder, and cervical disc disorder with radiculopathy.

OWCP also received additional physical therapy reports.

⁵ The record as transmitted to the Board does not contain a Form CA-17 dated January 21, 2025 by Dr. Kim.

In an April 8, 2025 narrative report, Dr. Katherine Burke noted appellant's prior history, job duties, and complaints. She requested expansion of appellant's claim to include superior glenoid labrum lesion of right shoulder and permanent aggravation of cervical disc disorder with radiculopathy.

In a medical report dated April 28, 2025, Dr. Burke documented physical examination findings and administered acupuncture and trigger point injections. In a Form CA-17 of even date, she diagnosed right labrum tear and released appellant to return to work four hours per day with no lifting greater than 10 pounds, intermittently, and no pushing, pulling, fine manipulation, reaching above shoulder height, or driving.

In a May 13, 2025 medical report, Dr. Mark Rodosky, a Board-certified orthopedic surgeon and sports medicine specialist, noted that appellant stopped working on or about January 10, 2025. He reviewed MRI scans from April 2025, obtained x-rays, and documented examination findings for the left and right shoulders. Dr. Rodosky diagnosed right shoulder glenohumeral osteoarthritis, associated soft tissue pathology including partial labrum tears and partial rotator cuff tears, and left shoulder subacromial impingement. He recommended conservative treatment to the left shoulder and surgery to the right shoulder. Dr. Rodosky opined that appellant was disabled from all work as of that date with the employing establishment due to bilateral shoulder issues and significant arthritis on the right side.

By decision dated May 13, 2025, OWCP denied appellant's claim for compensation, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period, causally related to the accepted employment injury.

On May 15, 2025 appellant, through counsel, requested a review of the written record before a representative.

OWCP thereafter received an April 10, 2025 medical report by Dr. Mark Allen, a Board-certified anesthesiologist and pain medicine physician, who noted that appellant related complaints of right shoulder and neck pain, which she attributed to her employment duties. He reviewed x-rays and MRI scans and documented physical examination findings. Dr. Allen diagnosed neck strain and sprain of right shoulder.

In a May 14, 2025 medical report, Dr. Burke noted that appellant had received an injection to her left shoulder, was scheduled for surgery to the right shoulder on June 13, 2025, and that the surgeon had placed her out of work. She diagnosed left shoulder superior glenoid labrum tear and osteoarthritis due to compensatory overuse and superior glenoid lesion on the right necessitating surgery.

In a June 19, 2025 medical report, Dr. Albert Lin, a Board-certified orthopedic surgeon, reviewed appellant's history, diagnostic studies, and complaints. He documented physical examination findings and diagnosed right shoulder adhesive capsulitis. Dr. Lin recommended right shoulder arthroscopy with capsular debridement and manipulation under anesthesia.

By decision dated July 7, 2025, OWCP's hearing representative reversed, in part, the May 13, 2025 decision, finding that appellant was entitled to wage-loss compensation for time lost from work to attend medical appointments for the accepted employment injury on January 28, February 4, 11, 20, and 27, and March 6, 2025. Additionally, the hearing representative affirmed the May 13, 2025 OWCP decision, in part, by denying the remaining claimed wage loss for

disability from work, noting that it began on January 13, 2025. The hearing representative also instructed OWCP to advise appellant of her obligation to file a completed leave buy back (LBB) worksheet/certification and election (Form CA-7b) for the claimed LBB on November 27 and December 4, 26, and 31, 2024.⁶

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.⁷ 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.⁸ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁹ 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.¹⁰ 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.¹¹

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.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

⁶ The hearing representative also noted that appellant’s requests for expansion of the acceptance of her claim to include right shoulder labrum lesion, permanent aggravation of cervical disc disorder, and a left shoulder condition remained under development at the time of the July 7, 2025 decision.

⁷ *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).

⁸ 20 C.F.R. § 10.5(f).

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

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

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

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

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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish the remaining claimed disability commencing January 13, 2025 as causally related to her accepted June 3, 2024 employment injury.

In support of her claim for compensation, appellant submitted medical reports and CA-17 forms dated January 16, 2025 by Dr. Kim and April 28, 2025 by Dr. Burke who diagnosed a right labrum tear and released appellant to return to part-time work with restrictions. In an April 8, 2025 narrative report, Dr. Burke opined that appellant had been unable to work eight hours per day since November 24, 2024 due to a right labrum tear. Although they outlined work restrictions, Drs. Kim and Burke did not indicate that appellant was disabled from work due to the accepted June 3, 2024 employment injury and, therefore, these reports are of no probative value.¹⁴ As such, these reports are insufficient to establish appellant's disability claim.

In his January 21, 2025 medical report, Dr. Kim indicated that appellant was capable of working without restrictions but would need to leave work early on Tuesdays for physical therapy appointments. Accordingly, this report does not address disability and thus does not establish appellant's claim.¹⁵

In his March 6, 2025 narrative report, Dr. Kim diagnosed a right shoulder superior glenoid labrum lesion and permanent aggravation of cervical disc disorder with radiculopathy. In an April 10, 2025 medical report, Dr. Allen diagnosed neck strain and sprain of right shoulder. In a June 19, 2025 medical report, Dr. Lin diagnosed right shoulder adhesive capsulitis and recommended surgery. However, none of these physicians offered an opinion as to whether appellant was disabled from work due to the accepted conditions during the claimed period. 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.¹⁶ Therefore, this evidence is of no probative value and is insufficient to establish appellant's claim for compensation.

In a May 13, 2025 medical report, Dr. Rodosky opined that appellant was totally disabled from all work due to bilateral shoulder injuries. In a report dated May 14, 2025, Dr. Burke concurred with Dr. Rodosky's opinion. However, neither physician provided sufficient rationale to explain how appellant's accepted conditions resulted in the claimed disability. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain sufficient medical rationale explaining causal relationship between the claimed disability and the

¹⁴ *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).

¹⁵ *Id.*

¹⁶ *See id.*; *see also S.M.*, Docket No. 22-1209 (issued February 27, 2024); *A.S.*, Docket No. 21-1263 (issued July 24, 2023).

accepted employment injury.¹⁷ Therefore, these reports are insufficient to establish appellant's disability claim.

OWCP also received physical therapy records. Physical therapists, however, are not considered physicians as defined under FECA, and their medical findings and opinions are insufficient to establish entitlement to compensation benefits.¹⁸

The remainder of the evidence of record consisted of diagnostic study reports. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship.¹⁹

As the medical evidence of record is insufficient to establish disability from work commencing January 13, 2025, as causally related to the accepted 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 establish the remaining claimed period of disability commencing January 13, 2025, causally related to her accepted employment injury.

¹⁷ See *J.R.*, Docket No. 23-0215 (issued July 28, 2023); *H.A.*, Docket No. 20-1555 (issued December 22, 2022); *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).

¹⁸ Section 8101(2) of FECA provides that a 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); *N.C.*, Docket No. 21-0934 (issued February 7, 2022) (as physical therapists are not considered physicians as defined under FECA, their medical findings and opinions are insufficient to establish entitlement to compensation benefits); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA).

¹⁹ *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 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