

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

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<b>C.W., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 25-0243</b>
	)	<b>Issued: July 17, 2025</b>
<b>U.S. POSTAL SERVICE, BROWNSVILLE POST OFFICE, Brownsville, OR, 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 January 24, 2025 appellant filed a timely appeal from an October 3, 2024 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.<sup>2</sup>

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

<sup>2</sup> The Board notes that, following the October 3, 2024 decision, appellant submitted additional evidence to OWCP. 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 intermittent disability from work during the period April 6 through November 15, 2022, causally related to her accepted employment injury.

## **FACTUAL HISTORY**

On December 13, 2021 appellant, then a 42-year-old postmaster, filed an occupational disease claim (Form CA-2) alleging that she developed emotional and physical conditions including anxiety, depression, broken tooth, bruxism, temporomandibular joint (TMJ), heart palpitations, increased blood pressure, panic attacks, and sleep issues due to factors of her federal employment, including stress caused by her work environment and lack of staffing. She noted that she first became aware of her claimed conditions and realized their relationship to factors of her federal employment on August 12, 2020. Appellant stopped work on December 13, 2021. OWCP accepted appellant's claim for aggravation of rheumatoid arthritis.

On June 19, 2022 appellant filed claims for compensation (Form CA-7) for intermittent disability from work during the period January 17 through June 24, 2022.

In support of her claim, appellant submitted medical notes from Dr. Laura Gregg, a Board-certified internist and rheumatologist, dated March 10 through June 10, 2022 documenting treatment for her conditions.

In a development letter dated July 6, 2022, OWCP informed appellant of the deficiencies of her claim for intermittent wage-loss compensation for disability from work commencing January 17, 2022. It advised her of the type of medical evidence needed to establish her claim and afforded her 30 days to respond.

In support of her claim, appellant submitted additional medical reports including a July 15, 2022 medical report, wherein Dr. Gregg discussed appellant's ongoing rheumatoid arthritis flare-ups, which she opined was a result of the physical and mental stress of her job and exacerbated her underlying condition. Dr. Gregg further asserted that appellant's condition resulted in her incapacitation on April 6 and 27, May 2, 3, and 23, June 13 through 17, and June 20 through 24, 2022.

By decision dated September 22, 2022, OWCP denied appellant's claim for intermittent disability from work during the period January 17 through June 20, 2022. It found that the medical evidence of record was insufficient to establish that she was disabled from work during the claimed period causally related to her accepted employment injury.

By decision dated September 30, 2022, OWCP denied appellant's claim for intermittent disability from work during the period June 13 through 24, 2022. It found that the medical evidence of record was insufficient to establish that she was disabled from work during the claimed period causally related to her accepted employment injury.

Appellant subsequently filed additional Form CA-7 claims for intermittent disability from work during the period December 7, 2021 through March 25, 2022. In support thereof, she

continued to submit medical reports from Dr. Gregg documenting treatment of her medical conditions.

On October 21, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On July 2, 2023 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. Paul J. McMahon, a Board-certified psychiatrist, for a second opinion evaluation and determination regarding whether she had any disability or residuals causally related to the accepted employment injury.

By decision dated July 10, 2023, OWCP's hearing representative vacated the September 22 and 30, 2022 decisions and remanded the case for further development of the medical evidence, including referral of an OWCP second opinion physician regarding the claimed emotional condition and claims for disability from work commencing December 7, 2021.

On July 21, 2023 Dr. McMahon evaluated appellant, documented her physical examination findings, discussed her history of injury, and summarized various diagnostic studies. He diagnosed major depressive disorder, recurrent, moderate, and generalized anxiety, which he opined developed as a direct result of the accepted employment injury. Dr. McMahon reported that appellant's conditions had not yet resolved, as they were all the more complicated by her chronic relapsing rheumatoid arthritis flare-ups making a full recovery less likely. He reviewed the SOAF, which listed her dates of claimed intermittent disability from December 7, 2021 through June 24, 2022. Dr. McMahon indicated that it was not clear how appellant's mental health contributed to each of the dates listed as absent from work. He noted that some of Dr. Gregg's reports indicated anxiety and depression as a contributing factor of her absence, and that appellant related her absences on each of these dates to a flare-up of her rheumatoid arthritis, noting that historically flare-ups exacerbated her mental health symptoms. Dr. McMahon opined that she was currently unable to return to her date-of-injury job, even with restrictions, and would be unable to return to work until she underwent further treatment resulting in full recovery.

By decision dated August 17, 2023, OWCP expanded the acceptance of appellant's claim to include the additional conditions of generalized anxiety disorder and moderate major depressive disorder, recurrent. It based its decision on Dr. McMahon's July 21, 2023 report.

Appellant continued to file Form CA-7 claims for compensation for disability from work.

In development letters dated September 1 and 18, 2023, OWCP informed appellant of the deficiencies of her disability claims. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

Appellant subsequently submitted a September 28, 2023 report, wherein Dr. Gregg documented treatment for rheumatoid arthritis and immunodeficiency.

By *de novo* decision dated October 19, 2023, OWCP authorized wage-loss compensation for the periods December 7, 2021 through March 25, 2022; June 13 through 24, 2022; and November 22, 2022 and continuing. However, it denied the remaining claimed intermittent disability from work during the period April 6 through November 15, 2022. OWCP found that the

medical evidence of record was insufficient to establish the remaining claimed intermittent disability from work causally related to her accepted employment injury.

On November 7, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated February 27, 2024, OWCP's hearing representative affirmed the October 19, 2023 decision.

On April 2, 2024 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated April 10, 2024, OWCP determined that appellant was not entitled to an oral hearing or review of the written record under 5 U.S.C. § 8124(b)(1) as a matter of right because she had previously requested an oral hearing on the same issue. It further exercised its discretion and determined that the issue in the case could equally well be addressed through a request for reconsideration before OWCP along with the submission of new evidence.

On May 31, 2024 appellant requested reconsideration.

In support thereof, appellant submitted a January 18, 2024 report from Dr. Gregg. Dr. Gregg related that appellant was absent from work on April 6 and 27, May 2, 3, 16, 17, and 23, June 1 and 2, July 12, 21, and 27, August 2, 10, 24, and 25, September 1, October 11, and November 8, 9, and 15, 2022 due to her diagnoses of rheumatoid arthritis, generalized anxiety disorder, and major depressive disorder.

By decision dated June 10, 2024, OWCP denied modification of the February 27, 2024 decision.

On October 1, 2024 appellant requested reconsideration.

By decision dated October 3, 2024, OWCP denied modification of the June 10, 2024 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>3</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>4</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn

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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> 20 C.F.R. § 10.5(f).

wages.<sup>5</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>6</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>7</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>8</sup>

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work causally related to the accepted employment injury.<sup>9</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 their disability and entitlement to compensation.<sup>10</sup>

## ANALYSIS

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

With regard to appellant's accepted emotional/stress-related conditions, in his July 21, 2023 second opinion report, Dr. McMahon reviewed the SOAF, which listed appellant's dates of claimed intermittent disability from December 7, 2021 through June 24, 2022. Dr. McMahon opined that she was currently unable to return to her date-of-injury job, even with restrictions, and would continue to be unable to return to work until she underwent further treatment resulting in full recovery. Although Dr. McMahon opined that appellant was disabled from work for a portion of the claimed period, he did not provide rationale explaining the causal relationship between appellant's claimed disability and the accepted employment injury. The Board has held that a

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<sup>5</sup> See *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>6</sup> See *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

<sup>7</sup> See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

<sup>8</sup> *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

<sup>9</sup> See *B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>10</sup> *Id.*

report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.<sup>11</sup>

With regard to appellant's accepted physical conditions, the Board notes that OWCP failed to properly develop the medical evidence by obtaining a report from a specialist in the appropriate field of medicine for the accepted rheumatoid arthritis condition regarding appellant's disability claim.<sup>12</sup>

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>13</sup> Once it undertook development of the evidence by referring appellant's case for a second opinion evaluation, it had an obligation to do a complete job and obtain a proper evaluation and report that would resolve the issue in this case.<sup>14</sup>

The case must therefore be remanded for further development of the medical evidence. On remand, OWCP shall prepare an updated SOAF, which includes the expanded conditions. It shall then request a rationalized medical opinion from Dr. McMahon regarding whether appellant was disabled from work during the full period April 6 through November 15, 2022 causally related to her accepted employment injury. OWCP shall also refer appellant, along with the medical record, the updated SOAF, and a series of questions, to a specialist in the appropriate field of medicine for a rationalized medical opinion regarding whether appellant sustained intermittent disability from work during the full period April 6 through November 15, 2022 causally related to her accepted aggravation of rheumatoid arthritis.<sup>15</sup> Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.<sup>16</sup>

### **CONCLUSION**

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

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<sup>11</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

<sup>12</sup> *F.H.*, Docket No. 21-0579 (issued December 9, 2021); *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

<sup>13</sup> *R.T.*, Docket No. 20-0575 (issued September 30, 2020); *A.A.*, 59 ECAB 726 (2008).

<sup>14</sup> See *R.L.*, Docket No. 20-1069 (issued April 7, 2021); *W.W.*, Docket No. 18-0093 (issued October 9, 2018); *Peter C. Belkind*, 56 ECAB 580 (2005).

<sup>15</sup> *C.Y.*, Docket No. 23-0814 (issued December 20, 2023).

<sup>16</sup> See *M.G.*, Docket No. 22-1382 (issued January 21, 2025).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 3, 2024 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: July 17, 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