

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

<p>M.H., Appellant</p> <p>and</p> <p>U.S. POSTAL SERVICE, POST OFFICE, San Antonio, TX, Employer</p>	<p>))))))</p>	<p>Docket No. 25-0526</p> <p>Issued: July 2, 2025</p>
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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

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 12, 2025 appellant filed a timely appeal from November 26 and December 11, 2024 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the December 11, 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of total disability commencing August 24, 2024, causally related to her accepted July 5, 2024 employment injury.

FACTUAL HISTORY

On July 5, 2024 appellant, then a 40-year-old sales and services distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on that date she experienced pain in her lower back, right thigh, and right ankle when she was pinned by a metal cart while in the performance of duty. She stopped work on July 5, 2024.

A report of work status (Form CA-3) indicated that appellant stopped work on July 5, 2024 and returned to full-time regular duty with no restrictions on July 9, 2024.

A triage nurse report dated July 17, 2024, noted appellant had been on light-duty work following back surgery in 2023 and returned to full-time light-duty work on July 9, 2024.

In reports dated July 24, August 2, and 16, 2024 report, Dr. David Holland, a Board-certified family medicine physician, diagnosed lumbar and right ankle contusions and lumbar strain. He provided work restrictions due to appellant's ankle and back conditions of up to 10 pounds of lifting or carrying; up to one hour of bending/stooping, no twisting or repetitive bending/stooping; six to eight hours of sitting; one to two hours of standing and walking, and no climbing stairs or ladders. In the August 16, 2024 report, Dr. Holland added the restriction of pushing/pulling limited to 40 pounds.

In duty status reports (Form CA-17) dated July 19, August 2, and 16, 2024, Dr. Holland recounted appellant's diagnoses of lumbar and ankle contusions and lumbar strain. He advised that she could work a modified job eight hours per day and reiterated her work restrictions.

OWCP accepted the claim for lower back and pelvis, right ankle, and left lower leg contusions, right ankle sprain, and lumbar strain.³

On September 26, 2024 appellant filed a claim for compensation (Form CA-7) for disability from work during the period August 23 through September 26, 2024. However, on the reverse side of the claim form, the employing establishment indicated that she worked on August 23, 2024. Appellant related that management had not provided work within her restrictions. The employing establishment noted that a job offer would be provided to return appellant to work.

³ On October 31, 2023 appellant filed a traumatic injury (Form CA-1) alleging that on September 21, 2023 she sustained a lumbar injury when she had to constantly bend to lift and load packages into a sorter as proper equipment was not provided to perform this action. OWCP assigned that claim File No. xxxxxxx512 and denied it by decisions dated January 3 and 30, 2024.

A memorandum of telephone call (Form CA-110) dated October 1, 2024 recounted that OWCP spoke with the employing establishment who confirmed that appellant had been working, but then had stopped. The employing establishment stated that work was available for her during the period claimed on the Form CA-7.

In a development letter dated October 1, 2024, OWCP advised appellant of the deficiencies in her claim for disability compensation and requested that she submit a reasoned opinion from a physician supporting that she was unable to work during the claimed period due to the accepted employment injury. It afforded her 30 days to submit the requested information. A development letter was not sent to the employing establishment.

In a statement dated October 7, 2024, appellant related that she had requested work assignments from her supervisor and was told to fill out a PS Form 3971 because her supervisor did not have time to review her work restrictions. She explained that she was off work because her manager never offered her any work under her restrictions, and not because her doctor held her off work. Appellant stated that she was not offered any work within her restrictions until October 3, 2024.

OWCP received a work capacity evaluation (Form OWCP-5c) dated August 29, 2024 from Dr. Zachary Lovato, an osteopathic Board-certified orthopedic surgeon, which provided appellant's work restrictions of up to eight hours of sitting; up to two hours of walking, standing, reaching, and reaching above the shoulder, no twisting or bending/stooping, squatting, kneeling, or climbing; and up to two hours of pushing, pulling, and lifting no more than 20 pounds.

On October 15, 2024 appellant filed a Form CA-7 claiming wage-loss compensation for disability from work for the period August 23 through October 3, 2024. She again indicated that management had not provided work within her restrictions until offering her modified job on October 3, 2023. The employing establishment noted that appellant did not return to her date-of-injury job but had accepted a job offer and returned to work on October 4, 2024.

In a statement dated October 15, 2024, appellant asserted that she never returned to full duty following her injury, but was released to return to work with restrictions. In support of her assertion, she attached a limited-duty modified job offer dated October 3, 2024. Appellant also submitted a July 5, 2024 hospital emergency department return to work form advising that she could return to work on July 9, 2024 with restrictions.

A Form CA-110 dated November 14, 2024 confirmed that OWCP spoke with appellant who clarified that she returned to full-time light-duty work on July 9, 2024. According to appellant, her manager wanted her to return to full-duty work, but she had restrictions on file. She was off work as of August 23, 2024 because the employing establishment did not provide her work within her medical restrictions. Appellant accepted an October 3, 2024 job offer and returned to full-time light-duty work on October 4, 2024.

A Form CA-110 dated November 26, 2024 indicated that OWCP spoke with an employing establishment official who noted that appellant's July 5, 2024 medical report did not provide work restrictions. The employing establishment received a Form CA-17 with restrictions on July 19, 2024. Appellant worked from July 9, 2024 and stopped on August 24, 2024. The

employing establishment indicated that work was available as of August 24, 2024, and related that there was no medical report taking appellant off work.

By decision dated November 26, 2024, OWCP denied appellant's claim for wage-loss compensation for total disability for the period August 24, 2024, and continuing.

On December 9, 2024 appellant requested reconsideration. She related that she was unable to work as of August 24, 2024 because her manager was too busy to provide work within her restrictions.

By decision dated December 11, 2024, OWCP denied modification of the November 26, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.⁵ Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of 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

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition that had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. The term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to the work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁸ If the claim for recurrence of disability for work is based on modification of the claimant's duties or physical requirements of the job, the claimant should be asked to describe such changes. If the

⁴ *Supra* note 1.

⁵ See *M.P.*, Docket No. 24-0683 (issued April 11, 2025); *A.W.*, Docket No. 24-0382 (issued May 16, 2024); *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ 20 C.F.R. § 10.5(f); *M.P.*, *id.*; *A.W.*, *id.*; *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁷ *M.P.*, *id.*; *A.W.*, *id.*; *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁸ 20 C.F.R. § 10.5(x); see *D.T.*, Docket No. 19-1064 (issued February 20, 2020).

evidence establishes that the limited-duty position has changed such that it no longer accommodates the claimant's work restrictions, OWCP should accept the recurrence.⁹

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty requirements.¹⁰

In cases where a recurrence is claimed within 90 days of the first return to duty, the focus is on disability rather than causal relationship of the accepted condition(s) to the work injury.¹¹ The Board has held that, if recurrent disability from work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties which the employee cannot perform and demonstrate objective medical findings that form the basis for the renewed disability from work.¹²

ANALYSIS

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

Appellant stopped work on July 5, 2024, the date of her employment injury, and returned to full-time limited duty with restrictions on July 9, 2024. She stopped work again on August 23, 2024, within 90 days of her return to limited-duty work.

Reports dated July 24, August 2, and 16, 2024 from Dr. Holland, and August 29, 2024 from Dr. Lovato, related appellant's work restrictions. Appellant has consistently maintained that the employing establishment did not make work available within her work restrictions as of August 24, 2024. The employing establishment noted on the September 26, 2024 Form CA-7 that a job offer would be provided so that appellant could return to work. A modified job offer was made to appellant in writing on October 3, 2024.

OWCP denied appellant's recurrence claim as of August 24, 2024, finding that appellant had not established disability causally related to the accepted July 5, 2024 employment injury. As appellant claimed a recurrence of disability within 90 days of her first return to duty, OWCP should

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6.a(3) (June 2013); *J.T.*, Docket No. 15-1133 (issued December 21, 2015).

¹⁰ See *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *R.N.*, Docket No. 19-1685 (issued February 26, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹¹ *Supra* note 9 at Chapter 2.1500.5 (June 2013); see also *L.L.*, Docket No. 20-0956 (issued October 19, 2021); *R.E.*, Docket No. 20-0421 (issued May 17, 2021); *K.R.*, Docket No. 19-0413 (issued August 7, 2019); *R.W.*, Docket No. 17-0720 (issued May 21, 2018).

¹² *M.H.*, Docket No. 19-1552 (issued February 2, 2021); *A.B.*, Docket No. 18-0978 (issued September 6, 2019); *J.F.*, 58 ECAB 124 (2006).

have developed and decided the claim under the proper recurrence standard, emphasizing disability rather than causal relationship.¹³

OWCP's procedures provide that OWCP is responsible for requesting evidence.¹⁴ Its procedures further provide that the claims examiner should contact the claimant and employing establishment in writing to obtain evidence and should specifically request the information needed, tailored to the specifics of the individual case.¹⁵

Appellant continued to allege that she provided medical restrictions to the employing establishment, but that the employing establishment did not offer her a position within her medical restrictions until October 3, 2024. In this instance, OWCP did not contact the employing establishment by development letter to obtain a written statement as to the availability of work within appellant's restrictions. The Board is unable to determine whether appellant has met her burden of proof to establish that she sustained a recurrence of disability as of August 24, 2024 as the evidence of record contains discrepancies regarding the employing establishment's statements regarding the availability of such work during the period in question. The Board finds that this case must, therefore, be remanded for further clarification of whether a limited-duty job was made available to appellant commencing August 24, 2024, within her medical restrictions. Following this and any further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹³ *L.L.*, Docket No. 20-0956 (issued October 19, 2021).

¹⁴ *Supra* note 9 at Chapter 2.800.4c(2) (June 2011).

¹⁵ *Id.* at Chapter 2.800.5. *See also V.R.*, Docket No. 16-1167 (issued December 22, 2016).

ORDER

IT IS HEREBY ORDERED THAT the November 26 and December 11, 2024 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 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