

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

E.M., Appellant)	
and)	Docket No. 25-0060
U.S. POSTAL SERVICE, FRANKFORD POST OFFICE, Philadelphia, PA, Employer)	Issued: June 17, 2025
)	

Appearances:

Case Submitted on the Record

Appellant, pro se

Office of Solicitor, for the Director

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 24, 2024 appellant filed a timely appeal from an August 8, 2024 merit decision and a September 13, 2024 nonmerit decision 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish entitlement to wage-loss compensation for disability from work, during the period May 22 through June 3, 2021, causally related to her accepted April 19, 2021 employment injury; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 4, 2021 appellant, then a 48-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 19, 2021² she sustained a right knee condition when she fell as she was attempting to open a gate to deliver mail while in the performance of duty.³ On the reverse side of the claim form, appellant's supervisor indicated that she stopped work on the date of injury.

In support of her claim, appellant submitted reports dated April 19, 2021 from Dr. Amy W. Witkin, an osteopathic physician Board-certified in emergency medicine. Dr. Witkin related that appellant was treated for a right knee injury and that x-rays of the right knee indicated unremarkable findings. He opined that appellant could return to work on April 24, 2021, and that she was provided with crutches.

A triage nurse activity log dated May 10, 2021 indicated that appellant had not returned to work, and that her case was closed. It was noted that appellant was not working due to right knee pain and swelling, and that extended use of the right lower extremity required use of a knee brace and crutches.

In a report dated May 13, 2021, Dr. Craig A. Rubenstein, Board-certified in sports medicine, noted that on April 19, 2021 appellant pushed a door that fell and hit her right knee, and also injured her right shoulder. He assessed sprain of the right rotator cuff capsule, right shoulder strain, trapezius strain, right shoulder contusion, and right knee pain. Dr. Rubenstein recommended that appellant remain on restricted duty. OWCP continued to receive progress reports from Dr. Rubenstein.

In a report dated October 11, 2021, Dr. Rubenstein related that he initially saw appellant for her employment injury on May 13, 2021. At that time, her primary complaint was her shoulder, but she also had knee complaints after being hit by a door that fell at work on April 19, 2021. Appellant had a preexisting diagnosis of chondromalacia, for which she had been treated in the past, but her new injury caused exacerbation of chondromalacia and mild medical collateral ligament (MCL) strain.

OWCP continued to receive progress reports from Dr. Rubenstein.

By decision dated July 8, 2021, OWCP denied appellant's claim. Appellant subsequently requested reconsideration, but by decision dated November 8, 2021, OWCP denied modification.

² The Board notes that while appellant's Form CA-1 states a date of injury of April 21, 2021, OWCP accepted her traumatic injury claim as having occurred on April 19, 2021.

³ OWCP assigned the present claim OWCP File No. xxxxxx797. Appellant has a prior claim for a lower back condition due to her postal vehicle being rear-ended on December 22, 2018. OWCP assigned that claim OWCP File No. xxxxxx137 and accepted it for right knee sprain and thoracic strain of the muscle and tendon of the back wall. Appellant's claims have been administratively combined by OWCP, with OWCP File No. xxxxxx797 serving as the master file.

On March 29, 2023 OWCP accepted appellant's claim for right knee contusion, right knee sprain of the medial collateral ligament, and right knee aggravation of patellar chondromalacia that occurred while in the performance of duty on April 19, 2021.

On April 1 and 2, 2023 appellant filed claims for wage-loss compensation (Form CA-7) for disability from work during the period May 22, 2021 through February 24, 2023.

In a development letter dated April 20, 2023, OWCP informed appellant of the deficiencies of her disability claim. It advised her of the type of additional medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.⁴

In a narrative report dated May 2, 2023, Dr. Rubenstein noted that he treated appellant for an injury sustained in April 2021 when she was hit by a metal door on the front of the knee while delivering mail. He stated that prior to this incident, she had a long history of treatment for patellar chondromalacia. Dr. Rubenstein noted that at her first visit relative to the April 2021 injury he diagnosed contusion, exacerbation of patellar chondromalacia, and sprain of the medial collateral ligament. In a July 15, 2021 visit, he determined that the medial collateral ligament sprain had fully healed, but that appellant continued to experience kneecap pain and patellar chondromalacia. In an August 2021 visit, Dr. Rubenstein noted that she continued to have kneecap pain related to chondromalacia and administered a steroid injection. In a September 16, 2021 visit, he noted that the injection did not significantly alleviate her pain. Dr. Rubenstein reviewed magnetic resonance imaging (MRI) scan results on December 14, 2021 that demonstrated mild degenerative changes with no significant ligamentous or meniscal injury and administered another steroid injection. In a February 2022 visit, appellant indicated to Dr. Rubenstein that the steroid injection worked to alleviate her pain only in a very short-term manner. Dr. Rubenstein administered further steroid injections on May 24 and December 30, 2022. He advised that appellant had recovered completely from her medial collateral ligament sprain. Dr. Rubenstein stated that her current issues dealing with patellar chondromalacia and degenerative joint disease were longstanding issues and preexisted the injury, within a reasonable degree of medical certainty.

By decision dated June 29, 2023, OWCP denied appellant's claim for disability from work during the period May 22, 2021 through February 24, 2023, finding that the evidence of record was insufficient to establish causal relationship between the claimed disability and the accepted employment injury.

On July, 19, 2023 appellant requested reconsideration. In a letter of medical necessity dated July 17, 2023, Dr. Rubenstein noted that appellant had been restricted to working light or sedentary duty from May 13, 2021 through February 7, 2023 due to right knee patella chondromalacia, affected by contusion and bruising due to a work-related injury that occurred on April 19, 2021. He opined that this injury "likely exacerbated and irritated her preexisting condition of chondromalacia patella."

By decision dated August 1, 2023, OWCP denied modification.

⁴ The April 11, 2023 development letter incorrectly noted her date of work stoppage as May 22, 2023.

Appellant requested reconsideration and submitted additional evidence, including progress reports from Dr. Rubenstein.

By decisions dated November 15, 2023, and March 21, 2024, OWCP denied modification.

On August 6, 2024 OWCP requested that the employing establishment provide information regarding whether it had issued a written job offer aligning with the work restrictions provided by Dr. Rubenstein; whether work within appellant's medical restrictions was available during the claimed period; and whether appellant had returned to light or full duty, along with the date she returned (if any), and the duty type. It afforded the employing establishment 15 days to provide the requested information.

In an August 7, 2024 response, a representative of the employing establishment noted that there was no record of a modified job offer for appellant; that the time analysis (CA-7a forms) submitted by appellant stating that no work was available within her medical restrictions were not certified; and that the representative could not confirm whether appellant returned to light duty or full duty.

By decision dated August 8, 2024, OWCP reviewed the merits of appellant's claim and vacated its March 21, 2024 decision in part while affirming it in part. It accepted her claim for disability from June 4, 2021 through February 24, 2023. However, OWCP denied appellant's claim for disability from May 22 through June 3, 2021 finding that she received COP for that period.

On September 10, 2024 appellant again requested reconsideration.

By decision dated September 13, 2024, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

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.⁵ 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.⁶ 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 probative and reliable medical opinion evidence.⁷

⁵ See *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Id.*

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

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. 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.⁹

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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish entitlement to wage-loss compensation for disability from work, during the period May 22 through June 3, 2021, causally related to her accepted April 19, 2021 employment injury.

In support of her disability claim, appellant submitted multiple reports from Dr. Rubenstein. In a report dated May 13, 2021, Dr. Rubenstein noted that on April 19, 2021 appellant pushed a door that fell and hit her right knee, and also injured her right shoulder. In a narrative report dated May 2, 2023, he related that at her first visit relative to the April 2021 injury he diagnosed contusion, exacerbation of patellar chondromalacia, and sprain of the medial collateral ligament. However, Dr. Rubenstein did not provide an opinion on disability. The progress notes from Dr. Rubenstein also did not provide an opinion on disability. 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.¹¹ Thus, this medical evidence is insufficient to establish appellant’s claim.

In a letter of medical necessity dated July 17, 2023, Dr. Rubenstein noted that appellant had been restricted to working light or sedentary duty from May 13, 2021 through February 7, 2023 due to right knee patella chondromalacia, affected by contusion and bruising due to a work-related injury that occurred on April 19, 2021. He opined that this injury “likely exacerbated and irritated her preexisting condition of chondromalacia patella.” Medical opinions that are

⁸ *Id.* at § 10.5(f); *see B.K.*, Docket No. 18-0386 (issued September 14, 2018).

⁹ *Id.*

¹⁰ *A.W.*, Docket No. 18-0589 (issued May 14, 2019); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

¹¹ *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).

speculative or equivocal are of diminished probative value.¹² Therefore, this evidence is insufficient to establish appellant's disability claim.

As the medical evidence of record is insufficient to establish entitlement to wage-loss compensation for disability from work during the claimed period causally related to the accepted April 19, 2021 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 to establish entitlement to wage-loss compensation for disability from work, during the period May 22 through June 3, 2021, causally related to her accepted April 19, 2021 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2024 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: June 17, 2025
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

¹² See *S.W.*, Docket No. 25-0473 (issued May 15, 2025); *L.B.*, Docket No. 23-0099 (issued July 26, 2023); *C.C.*, Docket No. 22-0609 (issued October 25, 2022); *H.A.*, Docket No. 18-1455 (issued August 23, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001)