United States Department of Labor
Employees' Compensation Appeals Board

O.A., Appellant	)	
and	)	**Docket No. 25-0244**
	)	**Issued: June 17, 2025**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE NATIONAL OFFICE, San Diego, CA, Employer	)	

Appearances:
Brett E. Blumstein, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 24, 2025 appellant, through counsel, filed a timely appeal from a September 6, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 September 26, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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 disability from work for the period June 16, 2020 through August 27, 2021, causally related to her accepted employment injury.

FACTUAL HISTORY

On May 14, 2020 appellant, then a 53-year-old internal revenue agent, filed an occupational disease claim (Form CA-2) alleging that she sustained a back injury when she got up and felt a sharp pain in her lower back due to factors of her federal employment. She noted that she first became aware of her condition and realized its relation to her federal employment on March 2, 2020. Appellant stopped work on April 27, 2020.

On January 5, 2021 OWCP accepted appellant's claim for strain of muscle, fascia and tendon at neck level, and strain of muscle, fascia and tendon of lower back.

On February 26, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work during the period June 3, 2020 through February 26, 2021. She continued to file CA-7 forms for additional periods of disability thereafter.

In a February 22, 2021 report, Dr. Sidney H. Levine, a Board-certified orthopedic surgeon, discussed appellant's medical history and provided findings on evaluation. He noted that on March 2, 2020, appellant was working from home and experienced excruciating pain in her lower back when she was sitting at her desk and reached for her notebook from her computer bag. Appellant complained of low back pain, upper back pain, neck pain, and headaches, which progressed with her employment duties. Dr. Levine reviewed diagnostic studies and diagnosed minimal cervical disc disease, cervical neck strain, mild scoliosis and kyphosis, midback strain, and low back strain with mild multilevel lumbar disc degeneration with a small central and right paracentral disc extrusion. He opined that appellant's symptoms arose as a result of her March 2, 2020 employment injury which appeared to be a cumulative trauma based on the history provided. Dr. Levine further opined that appellant was disabled from carrying out her full and regular duties, but could perform modified work activities with a lifting limit of 20 pounds and no repetitive bending, pushing or pulling, or prolonged sitting or standing, with the ability to freely alternate between sitting and standing.

In an undated attending physician's report (Form CA-20), received on April 12, 2021, Dr. Ken Brinegar, a chiropractor, diagnosed cervical and lumbar strains. He opined that appellant was totally disabled from work from March 2, 2020 through June 2, 2021 due to her work-related injury.

By decision dated June 2, 2021, OWCP reported that wage-loss compensation had been paid for the period June 3 through 15, 2020. However, it denied the remaining claimed disability from work for the period June 16, 2020 through February 26, 2021. OWCP found that the medical evidence of record was insufficient to establish the remaining claimed disability from work causally related to the accepted employment injury.

By decision dated June 4, 2021, OWCP denied appellant's claim for disability from work during the period March 15 through 26, 2021. It found 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 June 8, 2021 OWCP referred appellant, along with the medical record, a SOAF, and a series of questions to Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, 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 15, 2021, OWCP denied appellant's claim for disability from work during the period March 1 through May 7, 2021. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period causally related to the accepted employment injury.

By decision dated July 16, 2021, OWCP denied appellant's claim for disability from work during the period May 10 through June 4, 2021. It found that the medical evidence of record was insufficient to establish that she was disabled from work during the claimed period due to her accepted employment injury.

OWCP subsequently received Dr. Einbund's July 8, 2021 second opinion report. Dr. Einbund documented appellant's physical examination findings, discussed history of injury, and summarized various diagnostic studies. He reported that appellant's accepted work-related neck and lumbar strain injuries, which dated back to more than one year, had resolved and required no further medical treatment. Dr. Einbund noted no muscle spasticity on examination, reported that examination of the cervical spine was essentially within normal limits, and that the lumbar spine findings no longer refer to strain injury but rather to her preexisting underlying multi-level disc degeneration. He concluded that appellant's preexisting underlying degeneration in the cervical and lumbar spine required work restrictions, noting that she was limited from lifting more than 35 pounds and not in excess of 2.66 hours a day. Dr. Einbund opined that appellant was capable of returning to her date-of-injury job with lifting restrictions and required no further medical treatment. In a work capacity evaluation (Form OWCP-5c) dated July 16, 2021, he determined that appellant was capable of performing her job with restrictions of no lifting more than 35 pounds and not in excess of 2.66 hours a day.

By decision dated October 12, 2021, OWCP denied appellant's claim for disability from work during the period June 7 through July 2, 2021. It found that the medical evidence of record was insufficient to establish that she was disabled from work during the claimed period due to her accepted employment injury.

By decision dated October 13, 2021, OWCP denied appellant's claim for disability from work during the period July 5 through 16, 2021. It found that the medical evidence of record was insufficient to establish that she was disabled from work during the claimed period due to her accepted employment injury.

By decision dated December 16, 2021, OWCP denied appellant's claim for disability from work during the period July 19 through August 27, 2021, and continuing. It found that the medical

evidence of record was insufficient to establish that she was disabled from work during the claimed period due to her accepted employment injury.[4]

In support of her disability claim, appellant submitted reports dated April 11 and 20, 2022 from Dr. John B. Dorsey, a Board-certified orthopedic surgeon. Dr. Dorsey discussed appellant's examination findings, provided a history of injury, and evaluated diagnostic studies. He reported that appellant's claim was accepted for strain of muscle, fascia and tendon at neck level and strain of muscle, fascia and tendon of lower back, and requested that the claim be expanded to include the additional diagnoses of cervical spine disc extrusions at C6-7 and lumbar spine foraminal disc extrusion and impingement of the traversing right S1 nerve root.

Dr. Dorsey concluded that Dr. Einbund's findings were inconsistent with appellant's difficulties. He opined that appellant had significant difficulties that would limit her to temporary disability from April 28, 2020 through November 3, 2021. Dr. Dorsey explained that, since that time, appellant had been limited to a very sedentary occupation, one that did not require constant sitting and one in which she was allowed to sit or stand with restrictions of lifting of no greater than 15 pounds and pushing/pulling no greater than 20 pounds. He further reported that she was not allowed to continue keyboard and mouse use longer than 30 minutes out of every hour since November 03, 2021. Dr. Dorsey reported that appellant was restricted from traveling to and from homes and offices and should strictly continue working in-house or at home with appropriately-modified ergonomic workstations in both locations. He further reported that she should avoid lifting, pushing, or pulling greater than 15 pounds and should avoid repetitively ascending/ descending stairs, stooping, squatting, holding a continuous gaze on a monitor with her neck in one position for an extended period of time, and to avoid manipulation or grasping or gripping with her hands and particularly typing on a keyboard and using a mouse on a prolonged basis, no more than 30 minutes out of every 60 minutes.

On May 10, 2022 appellant requested reconsideration of the June 2 and 4, July 15 and 16, October 12 and 13, and December 16 and 20, 2021 OWCP decisions.

By decision dated August 4, 2022, OWCP denied modification of the June 2 and 4, July 15 and 16, October 12, and 13, and December 16 and 20, 2021 OWCP decisions. It found that the medical evidence of record was insufficient to establish that she was disabled from work for the period June 16, 2020 through August 27, 2021 due to her accepted employment injury.

On August 3, 2023 appellant, through counsel, requested reconsideration.

In support thereof, appellant submitted a June 29, 2023 medical report, wherein Dr. Dorsey opined that appellant's claim should be expanded to include additional diagnoses. He opined that appellant was not capable of lifting, carrying, pushing, or pulling weight up to 35 pounds, as was suggested by Dr. Einbund, which was tantamount to her regular work duties. Instead, Dr. Dorsey recommended keyboarding limitations to prevent added soft tissue injuries and musculoskeletal disorders to the cervical spine and upper extremities caused by sustained exposure to force, repetitive motion, and awkward posture. He further disagreed with Dr. Einbund and opined that appellant's lumbar strain symptoms had not resolved and she was not capable of returning to work

[4] By decision dated December 20, 2021, OWCP reported that wage-loss compensation had been paid for 132 hours for the period April 28 through June 2, 2020. However, it denied the remaining claimed disability from work for the period March 3 through June 2, 2020. It found that the medical evidence of record was insufficient to establish the remaining claimed disability from work due to her accepted employment injury.

with restrictions. Dr. Dorsey explained that a disc herniation was not associated with mechanical wear and tear and appellant had preexisting lumbar and cervical degenerative disorders and her present complaints were not yet resolved as they were not solely attributed to the presence of multi-level disc degeneration. He opined that appellant was totally disabled and unable to return to work.

By decision dated September 1, 2023, OWCP denied modification of the August 4, 2022 decision.

On August 31, 2024 appellant, through counsel, requested reconsideration.

In support thereof, appellant submitted an August 28, 2024 report from Dr. Glenna Tolbert, a Board-certified physiatrist. Dr. Tolbert opined that appellant has not been able to perform her job functions for the period June 3, 2020 through February 26, 2021 due to her accepted employment conditions.

By decision dated September 6, 2024, OWCP denied modification of the September 1, 2023 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.[5]

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

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

[5] *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).

[6] 20 C.F.R. § 10.5(f).

[7] *See L.W.,* Docket No. 17-1685 (issued October 9, 2018).

[8] *See K.H.,* Docket No. 19-1635 (issued March 5, 2020).

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

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.[10]

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.[11] 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.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period June 16, 2020 through August 27, 2021, causally related to her accepted employment injury.

In support of her disability claim, appellant submitted a series of reports by Dr. Dorsey including a June 29, 2023 report. Dr. Dorsey explained that the conditions of cervical spine disc extrusions at C6-7 and lumbar spine foraminal disc extrusion and impingement of the traversing right S1 nerve root should be accepted in appellant's claim. He further reported that appellant was disabled because the employing establishment could not accommodate her after she was released to work on June 10, 2020. While Dr. Dorsey opined that appellant's injuries were caused by the employment injury, resulting in disability, he did not provide rationale explaining why she was disabled from work due to the accepted employment injury.[13] The Board has held that a mere conclusion without the necessary rationale as to whether a medical condition or disability is due to an accepted employment condition is insufficient to establish a disability claim.[14]

Furthermore, while Dr. Dorsey opined that appellant was temporarily totally disabled from work from April 28, 2020 through November 03, 2021, he did not offer a rationalized medical explanation to support his opinion. The Board has held that medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition or disability is of limited probative value on the issue of causal relationship.[15] Thus, this evidence is insufficient to establish appellant's claim.

In an undated Form CA-20 report received on April 12, 2021, Dr. Brinegar, a chiropractor, diagnosed cervical lumbar strain and advised that appellant was totally disabled from March 2, 2020 through June 2, 2021 due to her work-related injury. This report, however, is of no probative

[10] *S.J.,* Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

[11] *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).

[12] *Id.*

[13] *H.K.*, Docket No. 23-0739 (issued September 27, 2023).

[14] *J.M.*, Docket No. 21-1261 (issued September 11, 2023); *C.V.,* Docket No. 18-1106 (issued March 20, 2019); *M.E.,* Docket No. 18-0330 (issued September 14, 2018); *A.D.,* 58 ECAB 149 (2006).

[15] *Id.*

medical value because he did not diagnose a spinal subluxation as demonstrated by x-ray to exist, and therefore, does not qualify as a physician under FECA.[16]

In a February 22, 2021 report, Dr. Levine discussed appellant's history of injury and diagnosed minimal cervical disc disease, cervical neck strain, mild scoliosis and kyphosis, midback strain, and low back strain superimposed on mild multilevel lumbar disc degeneration with a small central and right paracentral disc extrusion. He opined that appellant's symptoms arose as a result of her accepted March 2, 2020 employment injury, which appeared to be a cumulative trauma. He further opined that appellant was disabled from carrying out her full and regular duties, but could perform modified work activities with a lifting limit of 20 pounds and no repetitive bending, pushing or pulling, or prolonged sitting or standing, with the ability to freely alternate between sitting and standing. However this report negates total disability from work during the claimed period. Thus, it is of no probative value and is insufficient to establish the disability claim.[17]

In an August 28, 2024 report, Dr. Tolbert opined that appellant had not been able to perform her job functions for the period June 3, 2020, through February 26, 2021 due to her accepted employment conditions. Dr. Tolbert, however, did not explain with medical rationale how appellant had continuing disability causally related to the accepted employment injury.[18] Accordingly, this report is of limited probative value and is insufficient to establish the disability claim.[19]

In a July 20, 2021 report, Dr. Einbund opined that appellant was capable of returning to her date-of-injury job with lifting restrictions and required no further medical treatment. In a Form OWCP-5c dated July 16, 2021, he determined that appellant was capable of performing her job with restrictions of no lifting more than 35 pounds and not in excess of 2.66 hours a day. These reports do not support total disability from work; therefore, they are insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish disability from work during the claimed period causally related to her accepted employment injury, the Board finds that appellant has not met her burden of proof.

[16] Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable 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(3) (May 2023). Chiropractors are considered physicians under FECA only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary. *See* 5 U.S.C. § 8101(2); *P.T.,* Docket No. 21-0110 (issued December 8, 2021); *R.N.,* Docket No. 19-1685 (issued February 26, 2020); *Merton J. Sills,* 39 ECAB 572, 575 (1988).

[17] *S.H.*, Docket No. 21-0640 (issued February 2, 2023).

[18] *See E.H.*, Docket No. 23-0503 (issued July 20, 2023); *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *J.F.*, Docket No. 17-1716 (issued March 1, 2018).

[19] *L.L.*, Docket No. 24-0887 (issued November 21, 2024).

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 disability from work for the period June 16, 2020 through August 27, 2021, causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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