

<sup>2</sup> The Board notes that, following March 26, 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.*

## **FACTUAL HISTORY**

On April 29, 2021 appellant, then a 40-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on April 26, 2021 she injured her back, hip, leg, and knee when her right leg went through a hole on a customer's porch while in the performance of duty. She stopped work on April 28, 2021. OWCP accepted the claim for contusions of the right knee and hip, and a lower back tendon strain.

In a July 1, 2021 work note, Dr. John I. Foster, III, a Board-certified orthopedic surgeon, released appellant to return to seated-duty work with restrictions of no lifting, pushing, or pulling greater than 10 pounds; no mail delivery; and the ability to alternate sitting and standing as needed.

On July 21, 2021, appellant began filing claims for compensation (Form CA-7) for disability from work, effective July 23, 2021.

In a development letter dated July 29, 2021, OWCP informed appellant of the deficiencies of her 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 July 22, 2021 work status note by Dr. Foster, who continued appellant's restrictions.

On August 24, 2021 appellant underwent a right sacroiliac (SI) joint injection by Dr. Chinonye Orizu, a Board-certified anesthesiologist and pain medicine specialist.

A September 1, 2021 magnetic resonance imaging (MRI) scan of the lumbar spine revealed minor spondylosis without significant canal or foraminal stenosis. An MRI scan of the right knee of even date was normal. An MRI scan of the right hip of even date revealed questionable focal tearing of the anterior superior labrum.

By decision dated October 20, 2021, 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 April 26, 2021 employment injury.

OWCP thereafter received a medical report dated July 1, 2021, wherein Dr. Foster related appellant's complaints of low back and right hip, leg, and knee pain, which she attributed to the April 26, 2021 employment injury. He performed a physical examination and observed marked tenderness of the lumbar spine, right trochanteric bursa, iliac crest, and medial joint line of the right knee, mild right SI joint tenderness, active full range of motion (ROM) of the midline of the lumbar spine and right knee, reduced ROM of the right hip, multiple longitudinal scratches with loss of pigmentation in the anterior right hip, positive straight leg raise on the right, and negative straight leg raise on the left. Dr. Foster diagnosed acute lumbar myofascial strain, lumbar herniated disc, SI sprain, right hip contusion, trochanteric bursitis of the right hip, right knee contusion, and peripheral tear of medial meniscus of the right knee.

In follow-up reports dated September 2, 2021 through August 31, 2022, Dr. Foster documented physical examination findings, administered two right greater trochanteric injections, and continued appellant's restrictions.

OWCP also received physical therapy records.

On September 21, 2022, appellant, through her then-counsel, requested reconsideration of OWCP's October 20, 2021 decision.

In medical reports dated September 21 and October 12, 2022, Dr. Foster continued to release appellant to return to work with no lifting, pushing, or pulling greater than 10 pounds and the ability to alternate sitting and standing as needed.

By decision dated October 18, 2022, OWCP denied modification of the October 20, 2021 decision.

On December 5, 2022, appellant underwent bilateral SI joint injections by Dr. Christopher Taylor, a Board-certified physiatrist. He diagnosed SI joint sprain. On February 6, 2023 Dr. Taylor administered bilateral S1 and S2 lateral branch blocks and a left dorsal primary ramus of L5 block.

In a medical report dated May 17, 2023, Dr. Kamal C. Kabakibou, a Board-certified anesthesiologist and internal medicine specialist, noted that appellant complained of pain and numbness in her back and hips, which she attributed to the April 26, 2021 employment injury. He performed a physical examination of the lumbar spine and observed facet pain and pain with ROM. Dr. Kabakibou diagnosed lower back strain, hip and knee contusions, bilateral trochanteric bursitis, lumbar disc displacement, spondylosis without myelopathy or radiculopathy, and peripheral tear of the right meniscus. He recommended radiofrequency thermocoagulation of the lumbar spine and released appellant to return to full-time light-duty office work with no home delivery.

On May 19, 2023, OWCP prepared a statement of accepted facts (SOAF), which noted the accepted conditions as contusion of right knee, contusion of right hip, and strain of fascia and tendon of lower back.

In medical reports dated November 23, 2022 through October 4, 2023, Dr. Foster continued to release appellant to return to work with no lifting, pushing, or pulling greater than 10 pounds and the ability to alternate sitting and standing as needed. As of December 14, 2022 he reintroduced a restriction of no mail delivery.

On August 19, 2023, appellant accepted a part-time modified carrier technician position with the employing establishment. The duties of the position included casing and splitting routes for two hours per day. The physical demands of the position included no lifting, pushing, or pulling greater than 10 pounds, sitting and standing as needed, and no driving.

On September 22, 2023, OWCP referred appellant, along with the case record, the May 19, 2023 SOAF, and a series of questions to Dr. Alexander Doman, an orthopedist, for a second opinion examination to determine the status of her accepted conditions and work capacity.

On October 6, 2023, appellant, through her then-counsel, requested reconsideration of OWCP's October 18, 2022 decision.

In an October 12, 2023 report, Dr. Doman noted appellant's history of an injury on April 29, 2021 and reviewed medical reports and diagnostic testing. He performed an examination and observed normal reflexes, intact strength, negative straight leg raises, full ROM without instability of the hips, and no signs of muscular atrophy. Dr. Doman claimed appellant exhibited

extreme symptom magnification, was a malingering patient, and indicated there was no causal relationship between her subjective complaints and the described injury. He opined that the accepted right knee and hip contusions and lumbar sprain had fully resolved. Dr. Doman indicated that appellant could perform her preinjury position without restrictions and was not in need of any further medical treatment for the accepted April 26, 2021 employment injury.

By decision dated October 26, 2023, OWCP denied modification of its October 18, 2022 decision.

In medical reports dated November 1 through December 6, 2023, Dr. Foster indicated that he had not observed any evidence that appellant was malingering. He recommended a functional capacity evaluation (FCE) to obtain more objective data and continued prior restrictions of lifting, pushing, and pulling up to 10 pounds, change of position as needed, and no mail delivery.

A December 6, 2023 MRI scan of the pelvis revealed no abnormalities in the hips. An MRI scan of the lumbar spine, also dated December 6, 2023, revealed straightening of the normal lumbar lordosis and a circumferential bulge with broad-based posterior herniation and an acute annular tear at L4-5 causing moderate bilateral neural foraminal stenosis.

In medical reports dated November 28 through December 10, 2023, Dr. Ateeqahmed Patel, a general surgeon, noted the history of the April 26, 2021 employment injury and appellant's complaints. He performed a physical examination and observed slightly reduced ROM of the lumbar spine and hips and positive Bechterew's, straight leg raise, Braggard's, Lewin-Gaenslen, iliac compression, Ely's, and Nachlas tests. Dr. Patel diagnosed contusions of the right hip and knee, lumbar spondylopathy, right and left hip contractures, sacroiliitis, and lower back strain. He released appellant to return to work full time with no lifting over 10 pounds.

OWCP also received a November 28, 2023 note by Dr. Edward Hunt, a chiropractor, who diagnosed contusions of the right knee and hip, and lumbar strain.

On December 20, 2023, appellant requested reconsideration of OWCP's October 26, 2023 decision.

An FCE dated January 2, 2024 indicated that appellant was able to perform her position as a route carrier with modifications of occasional lifting up to 35 pounds to shoulder height and 25 pounds overhead; carrying up to 35 pounds; pushing and pulling up to 50 pounds; frequent sitting; occasional standing, walking, dynamic and static bending, squatting, and kneeling; continuous hand tasks; and no climbing ladders.

In follow-up medical reports dated January 3 through March 13, 2024, Dr. Foster documented appellant's complaints and physical examination findings and continued to release her to return to work with restrictions of no lifting, pushing, or pulling greater than 10 pounds, change of positions as needed, and no mail delivery.

In a January 4, 2024 medical report, Dr. Jeffrey Baron, an orthopedic spine surgeon, indicated that appellant was working two hours per day and complained of back pain with sitting and standing. He documented physical examination findings and diagnosed low back strain and chronic back pain. Dr. Baron recommended repeat medial branch blocks, followed by radiofrequency ablation.

In January 23 and February 14, 2024 follow-up reports, Dr. Patel continued to release appellant to return to work with a 10-pound lifting restriction.

In a February 28, 2024 medical report, Dr. Brad Prybis, a Board-certified orthopedic surgeon, noted the history of the April 26, 2021 employment injury and appellant's subsequent medical care. He performed a physical examination and observed moderate diffuse tenderness to palpation across the lower lumbar area, pain with flexion and extension of the lumbar spine, and a narrow, antalgic gait. Dr. Prybis reviewed appellant's lumbar MRI scan, obtained x-rays which revealed spondylosis at L4-5, and recommended an anterior lumbar interbody fusion (ALIF) surgery at L4-5.

By decision dated March 19, 2024, OWCP denied modification of its October 26, 2023 decision.

OWCP continued to receive evidence.

In a February 5, 2024 medical report, Dr. Brett Rosenberg, a Board-certified orthopedic surgeon, indicated that he did not believe that appellant's pain was coming from her hips. He released her to return to work with restrictions.

In medical reports dated February 6 through April 16, 2024, Patrick Hendrickson, a physician assistant, released appellant to return to work with a 10-pound lifting restriction.

Dr. Prybis, in follow up reports dated March 26 through May 3, 2024, released appellant to return to work with a 10-pound lifting restriction.

In reports dated May 14 and 15 and June 5, 2024, Dr. Thein Quach, a pain medicine physician, recommended physical therapy and work restrictions.

Dr. Foster, in a follow-up report dated May 22, 2024, released appellant to return to work with a 10-pound lifting restriction.

On June 3, 2024, Dr. Prybis indicated that appellant had elected to proceed with surgery.

On June 21, 2024, appellant underwent ALIF surgery at L4-5 by Dr. Prybis, followed by postoperative follow-up visits from July 10, 2024 through March 18, 2025.

Appellant also received postoperative physical therapy and trigger point injections by Dr. Quach from August 20, 2024 to March 4, 2025 and SI joint injections by Dr. John Musser, a Board-certified physiatrist in March 2025.

By decisions dated April 17, 2024 and February 5, 2025, OWCP expanded its acceptance of appellant's claim to include lumbar spinal stenosis with neurogenic claudication, lumbar spondylosis without myelopathy or radiculopathy, lumbar disc displacement, and sacroiliitis.

On March 12, 2025, appellant requested reconsideration of OWCP's March 19, 2024 decision.

By decision dated March 26, 2025, OWCP denied modification of its March 19, 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 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>

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.<sup>9</sup>

### **ANALYSIS**

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

On September 22, 2023, OWCP referred appellant, along with the medical record, a May 19, 2023 SOAF, and a series of questions to Dr. Doman for a second opinion evaluation to determine the status of her accepted conditions and work capacity. The May 19, 2023 SOAF, however, listed only contusion of right knee, contusion of right hip, and strain of fascia and tendon of lower back as the accepted conditions. By decisions dated April 17, 2024 and February 5, 2025, OWCP had expanded its acceptance of the claim to include lumbar spinal stenosis with neurogenic

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<sup>3</sup> *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).

<sup>4</sup> 20 C.F.R. § 10.5(f).

<sup>5</sup> *See H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>6</sup> *See H.B.*, *id.*; *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> *F.B.*, Docket No. 22-0679 (issued January 23, 2024); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>9</sup> *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

claudication, lumbar spondylosis without myelopathy or radiculopathy, lumbar disc displacement, and sacroiliitis. However, it did not obtain a supplemental report from Dr. Doman after it expanded its acceptance of the claim prior to issuing its March 26, 2025 decision denying appellant's claim for compensation for disability from work commencing July 23, 2021.

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>10</sup> Accordingly, once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>11</sup>

On remand, OWCP shall prepare an updated SOAF listing all of the accepted conditions and request a supplemental report from Dr. Doman regarding whether appellant was disabled from work commencing July 23, 2021, causally related to her accepted April 26, 2021 employment injury. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

### **CONCLUSION**

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

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<sup>10</sup> See *M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

<sup>11</sup> *Id.*; see also *R.M.*, Docket No. 16-0147 (issued June 17, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 26, 2025 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: June 18, 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