

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

A.J., Appellant

and

**U.S. POSTAL SERVICE, LOUISVILLE POST
OFFICE, Louisville, KY, Employer**

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**Docket No. 25-0250
Issued: May 27, 2025**

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 January 27, 2025 appellant filed a timely appeal from a December 18, 2024 merit 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.²

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability from work commencing April 10, 2024, causally related to her accepted September 26, 2021 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of OWCP's December 18, 2024 decision, appellant submitted new 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 July 18, 2023 appellant, then a 44-year-old customer service supervisor, filed an occupational disease claim (Form CA-2) alleging that she developed reflex sympathetic dystrophy and osteoarthritis due to factors of her federal employment, including standing, walking, and climbing stairs for a long and extended period on an average of 12 hours per day, 6 days per week.³ She noted that she first became aware of her conditions on September 26, 2021 and realized their relationship to her federal employment on June 20, 2023. Appellant stopped work on June 26, 2023. OWCP accepted the claim for lesion of plantar nerve, left lower limb; and temporary aggravation of strain of muscle, fascia and tendon of the lower back. It paid her wage-loss compensation on the supplemental rolls commencing June 25, 2023.

On December 27, 2023 the employing establishment offered appellant a part-time, modified-duty supervisor customer service position for 4 hours per day, 20 hours per week. Appellant accepted the offer on that date. OWCP subsequently paid appellant wage-loss compensation on the supplemental rolls for partial disability. During the period March 27 to April 9, 2024, appellant used annual leave to cover her disability from work. On April 10, 2024 appellant stopped work.

In a return-to-work certificate dated March 5, 2024, Karla Jarvis, a family nurse practitioner, indicated that appellant was incapacitated from work through April 1, 2024.

In a return-to-work certificate dated March 28, 2024, Sarah Zerhusen, a nurse practitioner, placed appellant off work until May 23, 2024, after an epidural. Appellant's diagnoses were listed as lumbar radiculopathy, lumbar spondylolisthesis and spondylosis, and degeneration of lumbar intervertebral disc.

In a May 31, 2024 letter, OWCP requested that Dr. Michael J. Doyle, an attending Board-certified neurosurgeon, submit a report addressing appellant's current condition and work capacity.

OWCP subsequently received medical evidence, including a June 2, 2024 letter, wherein Ms. Jarvis, noted that appellant had been off work since May 18, 2024, and that she could not return to work until May 18, 2025 due to her service-connected lumbar, left foot, right and left knee, and chest conditions for which she had received disability ratings.

In a June 11, 2024 work capacity evaluation (Form OWCP-5c), Dr. Doyle indicated that appellant had lumbar radiculopathy, lumbar spondylolisthesis, and lumbar spondylosis. He further indicated that she was unable to return to work as she was awaiting authorization for a procedure.

³ OWCP assigned the present claim OWCP File No. xxxxxx554. Appellant has prior claims before OWCP. In OWCP File No. xxxxxx295, OWCP accepted that on June 13, 2008 appellant sustained a right-hand injury when she cleared a jam and smashed her third and fourth fingers. In OWCP File No. xxxxxx762, it denied appellant's claim for a back injury sustained on September 29, 2009. In OWCP File No. xxxxxx016, OWCP accepted that appellant sustained a sprain of the lumbar spine on October 28, 2014, when she reached to pick up a package while in the performance of duty. OWCP has administratively combined appellant's claims with OWCP File No. xxxxxx554 serving as the master file.

On July 2, 2024 appellant filed claims for compensation (Form CA-7) for disability from work for the period April 10 through June 28, 2024.

In a development letter dated July 9, 2024, OWCP informed appellant of the deficiencies of her claim for compensation for the period commencing April 10, 2024. It advised her of the type of medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

Appellant filed additional CA-7 forms claiming compensation for disability from work during the period June 29 through August 9, 2024.

OWCP received a report dated March 28, 2024, wherein Ms. Zerhusen, provided diagnoses of lumbar radiculopathy, lumbar spondylolisthesis, degeneration of lumbar intervertebral disc, and lumbar spondylosis. Ms. Zerhusen related that, appellant could not work an entire shift due to her pain.

OWCP also received diagnostic studies dated July 22, 2024, including x-rays of appellant's right and left knees, and left hip.

By decision dated September 4, 2024, OWCP denied appellant's claim for compensation for disability from work commencing April 10, 2024, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period due to her accepted employment injury.

OWCP subsequently received a May 23, 2024 report, wherein Ms. Zerhusen, indicated that appellant had spondylolisthesis and degenerative changes causing radiculopathy, and multilevel degenerative disc disease with nerve root impingement most notably at L5-S1. She noted that appellant was to remain off work until completion of an epidural steroid injection.

On September 13, 2024 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review regarding the September 4, 2024 decision.

OWCP thereafter received additional medical evidence. In an October 1, 2024 return-to-work certificate, Ms. Zerhusen indicated that appellant may not return to work until her next appointment on January 3, 2025. In reports dated May 23 and October 1, 2024, she diagnosed lumbar radiculopathy, lumbar spondylolisthesis, degeneration of lumbar intervertebral disc, and lumbar spondylosis. Ms. Zerhusen indicated that appellant was to remain off work until she received an epidural steroid injection.

In a May 23, 2024 return-to-work certificate, Dr. Konrad Kijowski, a Board-certified anesthesiologist, noted that appellant was seen in his office on that date.

In a restriction assessment dated November 11, 2024, Ms. Jarvis diagnosed bilateral carpal tunnel syndrome, right and left knee osteoarthritis, lumbar radiculopathy, lumbar degenerative disc disease, and Morton's neuroma neuropathy. She noted appellant's permanent work restrictions. Ms. Jarvis advised that she was unable to complete her work duties due to the diagnosed conditions.

By decision dated December 18, 2024, OWCP's hearing representative found that appellant had not established total disability on or after April 10, 2024, due to her accepted employment injury. The hearing representative also found that on return of the case record, OWCP was to clarify whether appellant's modified job offer remained available for four or more hours per day following April 10, 2024. The hearing representative affirmed in part, and remanded in part the September 4, 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,⁵ including that any disability or specific condition for which compensation is claimed is causally related to the employment 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 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.⁸

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 appellant, 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.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 his or her disability and entitlement to compensation.¹⁰

⁴ *Supra* note 1.

⁵ *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

⁶ *See S.F.*, Docket No. 20-0347 (issued March 31, 2023); *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).

⁷ *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁸ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

⁹ *See B.P.*, Docket No. 23-0909 (issued December 27, 2023); *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹⁰ *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 8 at 293.

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability from work commencing April 10, 2024, causally related to her accepted employment injury.

In support of her claims for compensation, appellant submitted a June 11, 2024 Form OWCP-5c report from Dr. Doyle who opined that appellant could not perform any work activity, while awaiting authorization for a procedure. Dr. Doyle listed appellant's diagnoses as lumbar radiculopathy, spondylolisthesis, and spondylosis. His report addressed a claimed period of disability, however, he did not provide an opinion regarding causal relationship. The Board has held that medical evidence that does not address whether the claimed disability is causally related to the accepted employment-related conditions is of no probative value.¹¹ Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also submitted a May 23, 2024 return-to-work certificate from Dr. Kijowski. Dr. Kijowski merely noted that appellant was seen in his office on that date. He did not specifically address her ability to perform her work duties as a supervisor customer service during the claimed period of disability relative to the accepted employment injury. As Dr. Kijowski did not provide an opinion on causal relationship, his return-to-work certificate is of no probative value.¹² Thus, this evidence is insufficient to establish appellant's claim.

Additionally, appellant submitted reports and return-to-work certificates from nurse practitioners. However, certain healthcare providers such as nurse practitioners are not considered physicians as defined under FECA.¹³ Consequently, this evidence is insufficient to establish appellant's claim.

The remainder of the evidence of record consisted of diagnostic study reports. However, diagnostic studies, standing alone, lack probative value on causal relationship as they do not address whether employment factors caused the diagnosed condition or any period of disability.¹⁴

¹¹ See *N.W.*, Docket No. 25-0270 (issued April 7, 2025); *M.T.*, Docket No. 24-0465 (issued September 27, 2024); *A.O.*, Docket No. 24-0382 (issued May 16, 2024); *F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *Id.*

¹³ Section 8101(2) of FECA defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by 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(1) (May 2023). See also *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the FECA); *N.Y.*, Docket No. 25-0310 (issued March 20, 2025) (nurse practitioners are not competent to render a medical opinion under FECA); *Paul Foster*, 56 ECAB 208 (2004) (nurse practitioners are not considered physicians under FECA).

¹⁴ *T.Y.*, Docket No. 25-0255 (issued April 2, 2025); *B.O.*, Docket No. 25-0049 (issued January 10, 2025); *A.D.*, Docket No. 24-0770 (issued October 22, 2024); *T.L.*, Docket No. 22-0881 (issued July 17, 2024); *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

As the medical evidence of record is insufficient to establish that appellant was totally disabled during the claimed period of disability, 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 total disability from work commencing April 10, 2024, causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 27, 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