

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

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J.K., Appellant)	
)	
and)	Docket No. 26-0015
)	Issued: February 25, 2026
)	
U.S. POSTAL SERVICE, MICHIGAN CITY)	
POST OFFICE, Michigan City, IN, Employer)	
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Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 October 8, 2025 appellant, through counsel, filed a timely appeal from a September 15, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted July 10, 2023 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 21, 2023 appellant, then a 62-year-old lobby monitor, filed a traumatic injury claim (Form CA-1) alleging that on July 10, 2023 he injured his right leg, hip, back, and knee, when sitting on a wooden stool while in the performance of duty.⁴ On the reverse side of the claim form, W.G., an employing establishment supervisor, acknowledged that appellant was injured in the performance of duty, and indicated that his knowledge of the facts about the injury comported with the statements of appellant and/or witnesses. Appellant stopped work on July 10, 2023.

In an August 2, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

OWCP subsequently received July 20 and August 18, and 23, 2023 notes wherein Jean M. DeCavitch, a nurse practitioner, opined that appellant was totally disabled from work beginning July 11, 2023.

In a follow-up letter dated August 31, 2023, OWCP advised appellant that it had conducted an interim review, and the factual and medical evidence remained insufficient to establish his claim. It noted that he had 60 days from the August 2, 2023 letter to submit the necessary evidence. OWCP further advised that if additional evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP continued to receive evidence. A healthcare provider with an illegible signature completed a duty status report (Form CA-17) and a work capacity evaluation (Form OWCP-5c) on July 28, 2023.

In an August 24, 2023 report, Dr. Brandon Zabukovic, a Board-certified family practitioner, related that appellant was receiving treatment for lower back, hip, shoulder, and knee

³ Docket No. 25-0292 (issued March 3, 2025).

⁴ OWCP assigned the present claim OWCP File No. xxxxxx703. Appellant has a previously-accepted December 6, 2021 Form CA-1 for right hip trochanteric bursitis, right shoulder rotator cuff tear, right knee meniscus tear, permanent aggravation of right hip unilateral osteoarthritis, permanent aggravation of right knee unilateral primary osteoarthritis, and permanent aggravation of right shoulder primary osteoarthritis under OWCP File No. xxxxxx403. OWCP has administratively combined OWCP File Nos. xxxxxx403 and xxxxxx703, with the latter serving as the master file.

conditions and was totally disabled from work. On August 25, 2023 Ms. DeCavitch also opined that appellant was totally disabled from work.

By decision dated October 2, 2023, OWCP denied appellant's claim, finding that the factual evidence of record was insufficient to establish that the July 10, 2023 employment incident occurred as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On June 10, 2024 appellant, through counsel, requested reconsideration and submitted additional evidence. In a May 7, 2024 report, Dr. Zabukovic related that on July 10, 2023 appellant reinjured his right hip, right back, and right knee sitting and arising from a stool throughout the day. He asserted that the injury of July 10, 2023 was an exacerbation of the previously-accepted claim for right trochanteric bursitis, right shoulder rotator cuff tear, and right knee meniscal tear. Dr. Zabukovic noted that appellant had accepted a modified-duty position as a lobby assistant, which required him to sit on a stool throughout the workday. He recounted that on July 4, 2023 he began to experience tenderness in his right hip and on July 11, 2023 this pain felt like "nerve pain." Dr. Zabukovic opined that appellant developed lumbar radiculopathy as a result of compensatory movements that altered the mechanics of his spine. He explained that he "favors the right side" due to pain and instability in the right hip and knee causing asymmetrical loading of the spine, leading to nerve compression/irritation in the lumbar region. Dr. Zabukovic also observed that altered gait patterns and posture changes resulting from the accepted hip and knee injuries were also contributing to lumbar radiculopathy by placing excessive stress on the lumbar spine and its nerve roots. He opined that appellant's diagnoses of right hip bursitis, lumbar radiculopathy, and right knee meniscal tear were a direct result of the injuries he sustained at work on December 6, 2021 and July 10, 2023.

By decision dated August 12, 2024, OWCP denied modification.

OWCP continued to receive additional evidence. In notes dated October 6, 2023 and August 15 and September 17, 2024, Dr. Zabukovic asserted that on July 10, 2023 appellant reinjured his right hip, back, and knee at work sitting and arising from a stool throughout the day with no arm rests or back support. He provided the additional diagnosis of lumbar radiculopathy and opined that these conditions were the direct result of the work-related incidents of December 6, 2021 and July 10, 2023.

Appellant, through counsel, appealed to the Board. The Board, by decision dated March 3, 2025,⁵ reversed the August 12, 2024 decision and found that appellant had met his burden of proof to establish a traumatic incident in the performance of duty on July 10, 2023, as alleged. The Board further remanded the case for OWCP to consider the medical evidence and issue a *de novo* decision addressing whether appellant met his burden of proof to establish an injury causally related to the accepted July 10, 2023 employment incident.

⁵ *Supra* note 3.

In a March 18, 2025 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In a follow-up letter dated April 24, 2025, OWCP advised appellant that it had conducted an interim review, and the factual and medical evidence remained insufficient to establish his claim. It noted that he had 60 days from the March 18, 2025 letter to submit the necessary evidence. OWCP further advised that if additional evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No response was received.

By *de novo* decision dated May 20, 2025, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted July 10, 2023 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On June 10, 2025 appellant, through counsel requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated September 15, 2025, OWCP's hearing representative affirmed the May 20, 2025 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed, that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁷ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁸

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second the employee must submit sufficient evidence to establish that the employment incident caused an injury.⁹

⁶ *Supra* note 2.

⁷ *C.G.*, Docket No. 20-0058 (issued September 30, 2021); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.¹¹

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹²

ANALYSIS

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

Dr. Zabukovic, in a May 7, 2024 report, related that on July 10, 2023 appellant reinjured his right hip, right back, and right knee sitting and arising from a stool throughout the day and that this injury was an exacerbation of the previously-accepted claim for right trochanteric bursitis, right shoulder rotator cuff tear, and right knee meniscal tear. He opined that appellant developed lumbar radiculopathy as a result of compensatory movements that altered the mechanics of his spine. Dr. Zabukovic explained that pain and instability in the right hip and knee caused asymmetrical loading of the spine, leading to nerve compression/irritation in the lumbar region. He also observed that altered gait patterns and posture changes resulting from the accepted hip and knee injuries were also contributing to lumbar radiculopathy by placing excessive stress on the lumbar spine and its nerve roots. Dr. Zabukovic opined that appellant's diagnosis of lumbar radiculopathy was a direct result of the injuries he sustained at work on December 6, 2021 and July 10, 2023. Although his opinion is insufficiently rationalized to meet appellant's burden of proof to establish causal relationship, the Board finds that it is of sufficient probative quality to warrant additional development.¹³

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement

¹⁰ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹³ *G.M.*, Docket No. 25-0728 (issued September 12, 2025); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹⁴

The case shall, therefore, be remanded to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant, along with a statement of accepted facts and the medical record to a specialist in the appropriate field of medicine for a reasoned opinion as to whether appellant sustained a medical condition causally related to the accepted factors of his federal employment. If the second-opinion physician disagrees with the opinion of Dr. Zabukovic, he or she must provide a fully-rationalized explanation of why the accepted employment incident is insufficient to have caused or contributed to appellant's medical conditions. After this and other such 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.

ORDER

IT IS HEREBY ORDERED THAT the September 15, 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: February 25, 2026
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

¹⁴ See *K.H.*, Docket No. 25-0896 (issued December 29, 2025); *V.H.*, Docket No. 23-1013 (issued July 24, 2025); *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).