

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

F.D., Appellant)	
)	
)	
and)	Docket No. 25-0880
)	Issued: January 23, 2026
DEPARTMENT OF AGRICULTURE,)	
AGRICULTURAL MARKETING SERVICE,)	
SPECIALTY CROPS INSPECTION DIVISION,)	
Bronx, NY, Employer)	
)	

Appearances:

Capp P. Taylor, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On September 13, 2025 appellant, through counsel, filed a timely appeal from a September 5, 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 disability from work for the periods December 11, 2013 through October 25, 2015 and September 2, 2016 through March 22, 2018, causally related to his accepted employment injury.

FACTUAL HISTORY

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

On June 4, 2013 appellant, then a 38-year-old agricultural commodity grader, filed a traumatic injury claim (Form CA-1) alleging that on May 30, 2013 he injured his right shoulder, the right side of his neck, and his back, when he slipped and caught himself before he fell while carrying a carton of grapes on his right shoulder in the performance of duty. He returned to limited-duty work on June 2, 2013. OWCP assigned the claim OWCP File No. xxxxxx474 and accepted it for right shoulder sprain.⁴

In reports dated February 10 through May 7, 2014, Dr. Lyzette Velazquez, a Board-certified neurologist, recounted a history of injury and treatment. She diagnosed cervical spondylosis with myelopathy, lumbosacral neuritis, and shoulder sprain. Dr. Velazquez held appellant off work commencing February 10, 2013.

In a May 22, 2014 report, Dr. Arnold B. Wilson, a Board-certified orthopedic surgeon, related the history of appellant's May 20, 2013 employment injury and diagnosed neck, lower back, and right shoulder injuries with a possible shoulder dislocation. He opined that appellant remained disabled from work.

In a February 12, 2015 report, Dr. Wilson related that appellant had stopped work on December 13, 2013. He noted results from a July 18, 2013 nerve conduction velocity study of the upper extremities, and a September 10, 2013 magnetic resonance imaging (MRI) scan of the cervical spine and opined that limited-duty work from May through mid-December 2013 caused additional nerve root irritation and inflammation. Dr. Wilson determined that appellant was disabled from work commencing December 13, 2013.

³ *Order Remanding Case*, Docket No. 24-0555 (issued July 25, 2024).

⁴ On January 2, 2014 appellant filed a notice of recurrence (Form CA-2a) alleging that while performing limited-duty work on December 11, 2013, his neck and back conditions had worsened such that his physician held him off work. He attributed the recurrence of disability to standing, walking, bending, stretching, and lifting while at work following the claimed May 30, 2013 employment incident. OWCP developed the recurrence claim as an occupational disease claim. It assigned OWCP File No. xxxxxx795 and, on March 23, 2018, accepted it for impingement syndrome of right shoulder, right shoulder sprain, and partial right rotator cuff tear, resolved as of March 12, 2018. OWCP has administratively combined OWCP File Nos. xxxxxx795 and xxxxxx474, with the latter designated as the master file.

In reports dated July 9, 2014 through September 9, 2015, Dr. Wilson diagnosed multilevel herniated cervical discs, cervical radiculopathy, right shoulder impingement, and a possible right labral tear. He continued to hold appellant off work and recommended right shoulder arthroscopy.

Dr. Sireen Gopal, Board-certified in physiatry, pain medicine, and neuromuscular medicine, in reports dated March 26 through April 23, 2015, diagnosed cervical radiculitis, cervical spondylosis, lumbar radiculopathy, and worsening of lumbosacral arthritis. He advised that appellant remained disabled from work.

On October 26, 2015 appellant underwent OWCP-authorized right shoulder arthroscopy with extensive debridement and subacromial decompression, performed by Dr. Wilson.

In reports dated December 1, 2015 through July 7, 2016, Dr. Wilson opined that appellant remained disabled from work through September 1, 2016.

On April 20, 2020 appellant filed a claim for compensation (Form CA-7), under OWCP File No. xxxxxx474, for total disability from work for the period December 11, 2013 through March 22, 2018.

In a development letter dated October 8, 2021, OWCP informed appellant of the deficiencies of his disability claim. It advised him of the type of factual and medical evidence needed and afforded him 30 days to respond.

OWCP subsequently received an October 26, 2016 supplemental report, wherein Dr. Wilson noted that appellant's job duties required extensive use of his upper extremities as well as walking, bending, and stretching. Dr. Wilson explained that, "[s]pecifically, as far as the upper extremities, the job required an extensive amount of lifting and carrying equipment as well as lifting and carrying product for inspection." He continued that, "Even though the weight restrictions were lessened he was still required to make these movements and utilize the upper extremities on an extensive basis. This continued extensive use of the upper extremities between June 2013 and December 2013 caused additional aggravations as indicated in my previous report of February 12, 2015."

On June 2, 2023 OWCP expanded its acceptance of the claim to include right shoulder impingement syndrome and right rotator cuff tear or rupture.

By decision dated December 22, 2023, OWCP denied appellant's claim for disability from work for the period December 11, 2013 through March 22, 2018, finding that he "did not submit any evidence in support of [his] claim for wage loss."

Appellant, through counsel, timely appealed OWCP's December 22, 2023 decision to the Board. By order dated July 25, 2024,⁵ the Board remanded the case for OWCP to consider and address the reports from Dr. Velazquez dated February 10 through May 7, 2014, the reports from

⁵ *Supra* note 3.

Dr. Wilson dated May 22, 2014 through July 7, 2016, and the reports from Dr. Gopal dated March 16 through April 23, 2015, followed by a *de novo* decision.

On March 25, 2025 OWCP paid appellant wage-loss compensation for total disability for the period October 26, 2015, the date appellant underwent his authorized right shoulder surgical procedure, through September 1, 2016.

By *de novo* decision dated April 17, 2025, OWCP noted its acceptance of appellant's disability claim for the period October 26, 2015 through September 1, 2016 and its payment of compensation for that period. It denied appellant's disability claim for the periods December 11, 2013 through October 25, 2015 and September 2, 2016 through March 22, 2018 as the medical evidence of record was insufficient to establish disability from work during the claimed periods causally related to the accepted employment injury.

On July 5, 2025 appellant, through counsel, requested reconsideration. No additional medical evidence was received.

By decision dated July 21, 2025, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

On July 31, 2025 appellant, through counsel, again requested reconsideration.

Thereafter, OWCP received a July 1, 2025 report wherein Dr. Wilson summarized appellant's history of injury and medical treatment. Dr. Wilson noted that a review of his chart notes dated August 28, October 8, May 22, and July 9, 2014, and February 11 and April 22, 2015, indicated that appellant remained totally disabled from work due to the accepted right shoulder conditions. He explained that "[t]his is because the physical aspects of his job involve extensive use of the upper extremities as well as walking, bending and stretching including an extensive amount of lifting and carrying equipment as well as lifting and carrying products for inspection." Dr. Wilson opined that based on his own clinical findings, as well as the reports of Drs. Velazquez and Gopal, appellant was totally disabled from work commencing December 13, 2013.

By decision dated September 5, 2025, OWCP denied modification of its April 17, 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 that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁷ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled

⁶ *Supra* note 2.

⁷ See D.S., Docket No. 20-0638 (issued November 17, 2020); F.H., Docket No. 18-0160 (issued August 23, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

from work as a result of the accepted employment injury.⁸ 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.⁹

Under FECA the term “disability” means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹⁰ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.¹¹

The question of whether an employee is disabled from work is an issue that must be resolved by competent medical evidence.¹² The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought. 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.¹³

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.¹⁴ The opinion of the physician 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 factors identified by the employee.¹⁵

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.¹⁶

⁸ See *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *M.C.*, Docket No. 18-0919 (issued October 18, 2018).

⁹ See *K.C.*, Docket No. 17-1612 (issued October 16, 2018).

¹⁰ 20 C.F.R. § 10.5(f); *M.W.*, Docket No. 23-1059 (issued January 26, 2024); *S.T.*, Docket No. 18-0412 (issued October 22, 2018).

¹¹ *N.A.*, Docket No. 23-0532 (issued January 24, 2024); *J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Merle J. Marceau*, 53 ECAB 197 (2001).

¹² *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *R.C.*, 59 ECAB 546, 551 (2008).

¹³ *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹⁴ *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁵ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁶ *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Fereidoon Kharabi*, *supra* note 13.

ANALYSIS

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

In an October 26, 2016 report, Dr. Wilson noted that appellant's job duties required extensive use of his upper extremities as well as walking, bending, and stretching. He explained that, “[s]pecifically, as far as the upper extremities, the job required an extensive amount of lifting and carrying equipment as well as lifting and carrying product for inspection.” Dr. Wilson continued that, “Even though the weight restrictions were lessened he was still required to make these movements and utilize the upper extremities on an extensive basis. This continued extensive use of the upper extremities between June 2013 and December 2013 caused additional aggravations as indicated in my previous report of February 12, 2015.” In a July 1, 2025 report, Dr. Wilson summarized appellant's history of injury and medical treatment. He noted that a review of his chart notes dated August 28, October 8, May 22, and July 9, 2014, and February 11 and April 22, 2015, indicated that appellant remained totally disabled from work due to the accepted right shoulder conditions. He explained that “[t]his is because the physical aspects of his job involve extensive use of the upper extremities as well as walking, bending and stretching including an extensive amount of lifting and carrying equipment as well as lifting and carrying products for inspection.” Dr. Wilson opined that based on his own clinical findings, as well as the reports of Drs. Velazquez and Gopal, appellant was totally disabled from work commencing December 13, 2013. The Board finds that while Dr. Wilson's opinion is insufficient to establish the disability claim, it is sufficient to require further development of the medical evidence.¹⁷ It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation, but OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁸

The case must therefore be remanded for further development. On remand, OWCP shall refer appellant, along with a statement of accepted facts, the medical record, and a series of questions to a specialist in the appropriate field of medicine. The referral physician shall provide a rationalized opinion on whether appellant's claimed disability is causally related to the accepted employment injury. If the referral physician opines that the claimed disability is not causally related, he or she must explain with rationale how or why their opinion differs from that of Dr. Wilson. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

¹⁷ See *M.J.*, Docket No. 24-0800 (issued November 7, 2024); *J.M.*, Docket No. 22-0916 (issued September 30, 2024); *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁸ *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2025 decision of the Office of Workers' Compensation is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 23, 2026

Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board