

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

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**J.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Chicago, IL, Employer**

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**Docket No. 25-0925  
Issued: January 29, 2026**

*Appearances:*

*Stephanie Leet, Esq., for the appellant<sup>1</sup>*

*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 30, 2025 appellant, through counsel, filed a timely appeal from an August 1, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the August 1, 2025 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 his burden of proof to establish disability from work for the period April 6 through June 28, 2024 causally related to his accepted October 30, 2023 employment injury.

## **FACTUAL HISTORY**

On November 2, 2023 appellant, then a 57-year-old laborer custodial worker, filed a traumatic injury claim (Form CA-1) alleging that on October 30, 2023 he injured his neck, left elbow, left wrist, left buttock, and low back when he slipped and fell on a floor he was stripping and waxing while in the performance of duty. He stopped work on the date of the injury. OWCP accepted appellant's claim for strain of muscle, fascia, and tendon of the lower back, and sprain of the left elbow.

In a March 7, 2024 note, Dr. Sehar Fatima, an osteopath and Board-certified family medicine physician, indicated that appellant was seen in her office on that date and advised that he was incapacitated from duty for the period March 7 through April 20, 2024.

A March 18, 2024 magnetic resonance imaging (MRI) scan of the low back contained an impression of spondylosis throughout the lumbar spine with varying levels of central canal and bilateral foraminal stenosis, and mild left-sided multifidus muscle strain which could be acute in the appropriate clinical setting.

In an April 10, 2024 narrative report, Dr. Beejal Y. Amin, a Board-certified neurosurgeon, noted that appellant presented after suffering a slip and fall injury at work on October 30, 2023 and complained of low back pain without radiating leg pain. He indicated that the March 18, 2024 MRI scan of the low back demonstrated degenerative disc disease with central disc bulging and mild stenosis at L2-3 and L3-4, mild stenosis at L4-5, and slight anterolisthesis of the L5 disc on the S1 disc. Dr. Amin diagnosed lumbago and recommended light-duty restrictions of no lifting greater than 10 pounds and no repetitive bending movements.

In an April 10, 2024 duty status report (Form CA-17), Dr. Amin advised that appellant sustained neck, left wrist, left elbow, and lumbar spine injuries on October 30, 2023, listed clinical findings of low back pain, and stated "Yes" in the portion of the form for reporting "diagnosis due to injury." He advised that appellant could work 40 hours per day and lift/carry up to 10 pounds, but could not engage in bending, stooping, or twisting.

On April 17, 2024 the employing establishment offered appellant a position as a modified laborer custodial worker. The position required performing the following activities for up to eight hours each workday: lifting/carrying/pushing/pulling up to 10 pounds, sitting, standing, walking, simple grasping, fine manipulation, and reaching above the shoulder.<sup>4</sup>

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<sup>4</sup> The case record contains documentation indicating that appellant refused the job offer on April 19, 2024.

In an April 18, 2024 report, Dr. Fatima diagnosed back pain and recommended pain management treatment. On April 19, 2024 OWCP received an unsigned “after visit summary” regarding appellant’s medical treatment on April 18, 2024.

On April 21, 2024 appellant filed a claim for compensation (Form CA-7) claiming disability from work for the period April 6 through 19, 2024. He later filed additional CA-7 forms claiming disability from work for the period April 20 through June 28, 2024.

In an April 22, 2024 report, Dr. Neil Malhotra, a Board-certified anesthesiologist, discussed appellant’s October 30, 2023 injury and reported physical examination findings, noting that he had tenderness to palpation of the paraspinal muscles and decreased lumbar flexion/extension with pain. He diagnosed spondylosis without radiculopathy or myelopathy, low back pain, and radiculopathy of the lumbar region.

In an April 22, 2024 note, Dr. Malhotra advised that appellant was incapacitated and should remain off work at least until after his next injection, which was scheduled for May 8, 2024. He opined that the estimated return-to-work date was May 22, 2024. In a Form CA-17 of even date, Dr. Malhotra noted an October 30, 2023 date of injury and listed low back pain as the “diagnosis due to injury.” He advised that appellant could work 40 hours per day and recommended work restrictions, including lifting/carrying up to 20 pounds for one or two hours per day.

On May 9, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Joshua M. Alpert, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation of injury-related disability and residuals.

In a July 11, 2024 report, Dr. Alpert discussed appellant’s factual and medical history, noting that he slipped and fell at work on October 30, 2023 and sustained injuries to his back and left elbow. He advised that appellant reported low back pain of 6 to 9 on a scale of 10. Dr. Alpert reported the results of his physical examination, noting pain with flexion and extension of the lumbar spine and paraspinal muscular tenderness on the left and right. The examination of the left elbow was normal. Dr. Alpert opined that appellant had residuals of his October 30, 2023 employment injury, opining that he had low back pain from a “lumbar sprain/strain contusion” with aggravation of his preexisting asymptomatic lumbar arthritis. He indicated that appellant had no residuals nor restrictions regarding his work-related left elbow injury. Dr. Alpert further opined that appellant’s work-related lumbar spine condition prevented him from performing his full-duty custodial work and only allowed him to perform “desk work activities.” In a July 17, 2024 work capacity evaluation (Form OWCP-5c), he advised that appellant could only perform sedentary or light-duty work for eight hours per day with restrictions of no walking or standing for more than one hour per day and no reaching, twisting, bending, stooping, operating a motor vehicle, pushing, pulling, lifting, squatting, kneeling, or climbing.

Appellant also submitted reports, dating back to early-2024, in which physical therapists described physical therapy sessions.

By decision dated July 18, 2024, OWCP denied appellant's claim, finding that he had not met his burden of proof to establish disability from work for the period April 6 through June 28, 2024 causally related to his accepted October 30, 2023 employment injury.

On July 24, 2024 OWCP received an April 10, 2024 note, wherein Dr. Amin advised that appellant could return to light-duty work with restrictions of no lifting greater than 10 pounds and no repetitive bending or twisting movements. It also received a July 24, 2024 report, wherein Dr. Amin diagnosed chronic midline low back pain without sciatica. In a July 25, 2024 Form CA-17, Dr. Amin indicated that appellant could not perform his regular work.

In a July 29, 2024 report, Dr. Malhotra diagnosed spondylosis without radiculopathy or myelopathy, low back pain, radiculopathy of the lumbar region, and strain of muscle, fascia, and tendon of the lower back. In a Form CA-17 of even date, he noted that appellant could not perform his regular work.

On November 13, 2024 OWCP requested that Dr. Alpert provide a supplemental report clarifying appellant's injury-related disability and residuals. In a November 22, 2024 report, he advised that, with regard to the back, appellant could not perform full-duty work and could only perform desk work activities due to his ongoing back pain. Dr. Alpert indicated that it appeared that appellant sustained an acute injury on October 30, 2023 when he fell directly on his back. He noted that appellant's back pain was consistent with diagnostic testing demonstrating arthritic changes which were aggravated due to this injury. Dr. Alpert opined that, for a patient such as appellant who did not previously seek back treatment and had diagnostic testing which demonstrated back findings, it would be reasonable to state that "when he fell directly on his back at work not only did he suffer a low back soft tissue contusion but [he] also aggravated the preexisting asymptomatic arthritic condition."

On December 27, 2024 OWCP expanded the accepted conditions to include adult osteochondrosis of the lumbar spine.

In a February 5, 2025 report, Dr. Malhotra diagnosed spondylosis without radiculopathy or myelopathy, low back pain, radiculopathy of the lumbar region, and strain of muscle, fascia, and tendon of the lower back.

On July 16, 2025 appellant, through counsel, requested reconsideration of the July 18, 2024 decision. No additional medical evidence was received.

By decision dated August 1, 2025, OWCP denied modification of its July 18, 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>5</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>6</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>7</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>8</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>9</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>10</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>11</sup>

### **ANALYSIS**

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

In a July 11, 2024 report, Dr. Alpert, the OWCP referral physician, opined that appellant’s lumbar spine condition related to the October 30, 2023 employment injury prevented

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<sup>5</sup> *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>6</sup> 20 C.F.R. § 10.5(f).

<sup>7</sup> *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>8</sup> *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

<sup>9</sup> *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

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

<sup>11</sup> *K.A.*, Docket No. 19-1564 (issued June 3, 2020); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

him from performing his full-duty custodial work and only allowed him to perform “desk work activities.” In a July 17, 2024 Form OWCP-5c, he advised that appellant could only perform sedentary or light-duty work for eight hours per day with restrictions of no walking or standing for more than one hour per day and no reaching, twisting, bending, stooping, operating a motor vehicle, pushing, pulling, lifting, squatting, kneeling, or climbing. In a November 22, 2024 supplemental report, Dr. Alpert advised that, with regard to the back, appellant could not perform full-duty work and could only perform desk work activities due to his ongoing back pain. However, he was not asked to address the specific claimed period of disability.<sup>12</sup>

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 to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.<sup>13</sup> Once OWCP undertakes development of the medical evidence, it must resolve the relevant issues in the case.<sup>14</sup>

The case must therefore be remanded for further development. On remand, OWCP shall obtain a supplemental report from Dr. Alpert specifying whether appellant was disabled from work during the period April 6 through June 28, 2024 causally related to his accepted October 30, 2023 employment injury. If Dr. Alpert is unable to provide a supplemental report, OWCP shall refer appellant, along with the case record and a SOAF to a new second opinion physician for the purpose of obtaining a rationalized medical opinion on the issue.<sup>15</sup> 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.

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<sup>12</sup> *A.B.*, Docket No. 25-0504 (issued June 20, 2025); *C.R.*, Docket No. 25-0245 (issued April 3, 2025); *J.V.*, Docket No. 24-0621 (issued September 19, 2024); *D.F.*, Docket No. 25-0111 (issued December 17, 2024); *J.A.*, Docket No. 24-0889 (issued December 11, 2024); *M.R.*, Docket No. 24-0562 (issued September 26, 2024).

<sup>13</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>14</sup> *See K.A.*, Docket No. 23-0773 (issued November 1, 2024); *S.A.*, Docket No. 18-1024 (issued March 12, 2020); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>15</sup> *J.H.*, Docket No. 19-1476 (issued March 23, 2021); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Talmadge Miller*, 47 ECAB 673 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 1, 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: January 29, 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