

³ The Board notes that following the October 23, 2025 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish total disability from work for the period October 5, 2024 through June 26, 2025, causally related to his accepted November 6, 2023 employment injury.

FACTUAL HISTORY

On December 16, 2023 appellant, then a 53-year-old heavy tractor trailer operator, filed an occupational disease claim (Form CA-2) alleging that he sustained a back injury due to factors of his federal employment. He noted that he first became aware of his condition and realized the relationship to his federal employment on November 6, 2023. On the reverse side of the claim form, the employing establishment indicated that appellant had been on limited duty since July 2023 and that he stopped work on November 7, 2023. OWCP accepted a left-sided lumbar disc herniation with radiculopathy. It paid appellant wage-loss compensation for disability from work on the supplemental rolls for the period November 7, 2023 through October 4, 2024.

On April 1, 2025 appellant filed a claim for compensation (Form CA-7) for total disability from work during the period October 5, 2024 through March 21, 2025.

In a September 18, 2024 report, Dr. Bruce Montella, an orthopedic surgeon, noted appellant's symptoms and provided an impression of other intervertebral disc displacement, lumbar region with associated diagnosis of other intervertebral disc degeneration, lumbosacral region. He opined that appellant was unable to return to work and that he supported a finding of permanent full and total disability from work.

In a development letter dated April 8, 2025, OWCP notified appellant of the deficiencies of his disability claim and advised him of the type of evidence needed for the claimed dates of disability. It afforded him 30 days to respond.

In an April 8, 2025 report, Dr. Montella continued to report appellant's symptoms and provide impressions of other intervertebral disc displacement, lumbar region and other intervertebral disc degeneration, lumbosacral region. He also continued to opine that appellant was disabled from work and that he supported appellant's permanent full and total disability from work. In April 8, 2025 orders, Dr. Montella referred appellant to physical therapy and opined that appellant was unable to return to work.

On April 21, 2025 OWCP referred appellant, together with the case record and a statement of accepted facts (SOAF), to Dr. Steven Milos, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature of his condition, the extent of disability and appropriate treatment recommendations.

On May 8, 2025 appellant filed a Form CA-7 for disability from work for the period March 22 through May 2, 2025.

In reports dated October 30, 2024 and May 27, 2025, Dr. Montella provided impressions of other intervertebral disc displacement, lumbar region and other intervertebral disc degeneration, lumbosacral region. He also opined that appellant was totally disabled from work.

By decision dated June 9, 2025, OWCP denied appellant's claim for wage-loss compensation for the period commencing October 5, 2024, finding that the medical evidence of record was insufficient to establish disability from work causally related to the accepted employment injury.

In a July 8, 2025 report, Dr. Montella reiterated his prior findings.

On July 9, 2025 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Appellant submitted additional CA-7 forms claiming disability from work for the period May 3 through July 25, 2025.

In a June 27, 2025 report, Dr. Milos reviewed the SOAF and appellant's medical treatment history. He performed a physical examination and observed limited functionality with difficulty standing and sitting, an unsteady antalgic gait, and limited mobility in the lumbar region limiting his functional activity. Dr. Milos provided an impression of lumbar degenerative disc disease and opined that appellant continued to suffer from active residuals of the accepted condition. He opined that while appellant was not currently capable of performing his date-of-injury job as a heavy-duty truck driver, he could work eight hours a day in a sedentary capacity as a permanent restriction. Dr. Milos opined that appellant was at maximum medical improvement, as he was not a surgical candidate and had not responded to previous treatments, and that he should continue with home exercises and over-the-counter medications as needed. A June 27, 2025 work capacity evaluation (Form OWCP-5c) was provided.

In an August 28, 2025 letter, the employing establishment indicated that there was no work available within appellant's restrictions. It noted that a work search within a 50-mile radius from the facility was being conducted to see if work within appellant's restrictions was available.

By decision dated October 23, 2025, OWCP's hearing representative affirmed in part and set aside in part OWCP's June 9, 2025 decision. The hearing representative affirmed the denial of total disability wage-loss compensation for the period October 5, 2024 through June 26, 2025. The hearing representative remanded the case for a supplemental opinion from Dr. Milos on the issues of whether the case should be expanded to include a lumbar degenerative disc disorder condition, whether appellant continued to suffer from residuals of the accepted left-sided lumbar disc herniation with radiculopathy condition, and whether the prescribed work restrictions were the result of the work-related conditions, to be followed by a *de novo* decision regarding wage-loss compensation entitlement beginning June 27, 2025.

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

⁴ *Supra* note 2.

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

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

ANALYSIS

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

In support of his disability claim, appellant provided reports from Dr. Montella dated September 18, 2024 through July 8, 2025 in which he opined that appellant was totally disabled from work due to intervertebral disc displacement, lumbar region with associated diagnosis of other intervertebral disc degeneration, lumbosacral region.

On April 21, 2025 OWCP referred appellant to Dr. Milos for a second opinion evaluation to determine the nature of his condition, and the extent of disability. It did not specifically request that Dr. Milos address appellant's disability status commencing October 5, 2024. In his June 27, 2025 report, Dr. Milos did not address the claimed period of total disability from October 5, 2024. He did however find that appellant had residuals of the accepted employment injury and that appellant could return to full-time sedentary work. Following receipt of Dr. Milos' report, OWCP proceeded with further development of the record to determine whether work was available within the medical restrictions provided by Dr. Milos, as of the date of his evaluation, June 27, 2025.

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

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.K.*, Docket No. 26-0004 (issued February 18, 2026); *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 *C.L.*, Docket No. 26-0005 (issued January 29, 2026); *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.

to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹¹ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹²

The case must therefore be remanded for further development. On remand, OWCP shall obtain a supplemental report from Dr. Milos specifying whether appellant was disabled from work from October 5, 2024 through June 26, 2025, causally related to the accepted employment conditions. If Dr. Milos 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.¹³ 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 October 23, 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: July 16, 2026
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

¹¹ 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).

¹² *Id.*; see also *R.M.*, Docket No. 16-0147 (issued June 17, 2016).

¹³ See *D.A.*, Docket No. 25-0909 (issued February 18, 2026). See also *J.H.*, Docket No. 19-1476 (issued March 23, 2021); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Talmdge Miller*, 47 ECAB 673 (1996).