

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

M.C., Appellant

and

U.S. POSTAL SERVICE, EVANSTON POST
OFFICE, Evanston, IL Employer

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**Docket No. 26-0252
Issued: May 6, 2026**

Appearances:
Stephanie Leet, Esq., for the appellant¹
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 16, 2026 appellant, through counsel, filed a timely appeal from a November 21, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish total disability from work during the period July 31, 2022 through June 8, 2025, causally related to the accepted February 15, 2021 employment injury.

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.*

FACTUAL HISTORY

On October 25, 2021 appellant, then a 36-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on February 15, 2021 he sustained injury to his left arm, the right side of his neck, and a hernia when lifting heavy boxes while in the performance of duty. He stopped work on February 15, 2021 and returned on February 25, 2021.³

On September 16, 2021 Dr. Srikanth Divi, a Board-certified orthopedic surgeon, performed a single level C6-7 anterior cervical discectomy.

In a January 25, 2022 note, Dr. David A. Vermilyen, a Board-certified internist, found that appellant could return to his normal work duties.

On June 13, 2022 OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Theodore J. Suchy, an osteopath, Board-certified in orthopedic surgery, for a second opinion examination to determine whether appellant had any employment-related condition or disability.

In his July 5, 2022 report, Dr. Suchy reviewed the SOAF and medical treatment history. He performed a physical examination and observed no evidence of muscle atrophy or of any residual cervical radiculopathy. Dr. Suchy diagnosed status post anterior cervical discectomy with interbody fusion C6-7 for left upper extremity radiculopathy. He opined that appellant had no objective findings of cervical radiculopathy and had reached maximum medical improvement (MMI) with no need for further medical treatment. Dr. Suchy further found that appellant could perform his regular activities without restriction. In a work capacity evaluation (Form OWCP-5c) of even date, he advised that appellant could return to his regular work, without restrictions.

After development of the medical evidence, OWCP accepted appellant's claim for cervical disc disorder at C6-7 with radiculopathy.

In an October 18, 2022 report, Dr. Vermilyen related that he had released appellant to return to work on February 25, 2021 based on his understanding of his lack of continuing cervical symptoms. He noted that appellant later asserted that he continued to experience substantial pain in both arms between February 25 and April 12, 2021, which limited his ability to return to work. Dr. Vermilyen concluded, "Had I known that he was still experiencing such discomfort, I would have recommended he refrain from working."

On August 22, 2022 OWCP referred appellant, along with a SOAF, the medical record, and a series of questions, to Dr. Babak Lami, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether appellant had any employment-related disability from February 15, 2021 through January 25, 2022.

In his September 18, 2024 report, Dr. Lami reviewed the SOAF and medical treatment history. He performed a physical examination and observed full cervical range of motion and motor examination of the upper extremities. Dr. Lami determined that following the accepted February 2021 employment injury appellant "may have not been able to perform his full duty due to his pain," that he was totally disabled for three months after surgery, that he then could

³ On May 7, 2021 the employing establishment terminated appellant for failure to maintain regular attendance.

have returned to light duty until January 2022, and that he could have worked full duty after January 25, 2022.

On June 14, 2025 appellant filed a claim for compensation (Form CA-7) claiming disability from work for the period July 31, 2022 through June 8, 2025.

In a June 20, 2025 development letter, OWCP notified appellant of the deficiencies of his disability claim and advised him of the type of evidence needed for the unsupported claimed dates of disability. It afforded him 30 days to respond. No additional evidence was received.

By decision dated July 22, 2025, OWCP denied appellant's claim for disability during the period July 31, 2022 through June 8, 2025, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period due to the accepted February 15, 2021 employment injury.

On July 29, 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 November 21, 2025, OWCP's hearing representative affirmed OWCP's July 22, 2025 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.⁴

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.⁵ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁶ 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.⁷ 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.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

⁴ *T.J.*, Docket No. 26-0177 (issued March 25, 2026); *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).

⁵ 20 C.F.R. § 10.5(f).

⁶ See *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁷ See *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

⁸ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

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.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 appellant has not met his burden of proof to establish total disability from work during the period July 31, 2022 through June 8, 2025, causally related to the accepted February 15, 2021 employment injury.

In support of his disability claim, appellant provided an October 18, 2022 report from Dr. Vermynen relating that he had released appellant to return to work on February 25, 2021 based on his understanding of appellant's lack of cervical symptoms. Dr. Vermynen noted that appellant later asserted that he continued to experience substantial pain in both arms between February 25, and April 12, 2021, which limited his ability to return to work.¹¹ He concluded, "Had I known that he was still experiencing such discomfort, I would have recommended he refrain from working." The Board has held that pain is a description of a symptom, not a clear diagnosis of a medical condition.¹² Dr. Vermynen further related that, if appellant had reported discomfort, which apparently he did not, then he would have provided work restrictions. While he provided a general opinion that he would have provided work restrictions, he did not specifically address the claimed period of disability from July 31, 2022 through June 8, 2025 or attribute appellant's inability to work during that period to the accepted February 15, 2021 employment injury.¹³ Thus, this evidence is insufficient to establish appellant's disability claim.¹⁴

The remainder of the medical evidence of record from appellant's physicians Dr. Vermynen and Divi, and from OWCP's referral physicians Drs. Suchy and Lami supports appellant's ability to return to full-duty work on and after January 25, 2022.

⁹ *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁰ *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).

¹¹ As noted above, OWCP paid wage-loss compensation for the period February 16, 2021 through January 25, 2022 which includes the period February 25, 2021 and April 12, 2021 addressed in Dr. Vermynen's October 18, 2022 report.

¹² *T.K.*, Docket No. 26-0004 (issued February 18, 2026); *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

¹³ See *T.K.*, *id.*; *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).

¹⁴ See *T.K.*; *C.L.*, *id.*; *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, *supra* note 9.

As the medical evidence of record is insufficient to establish causal relationship between the claimed period of disability from July 31, 2022 through June 8, 2025 and the accepted February 15, 2021 employment injury, the Board finds that appellant has not met his 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 his burden of proof to establish total disability from work during the period July 31, 2022 through June 8, 2025, causally related to the accepted February 15, 2021 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 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