

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

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<b>B.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-0500</b>
	)	<b>Issued: December 10, 2021</b>
<b>DEPARTMENT OF LABOR, OFFICE OF</b>	)	
<b>WORKERS' COMPENSATION PROGRAMS,</b>	)	
<b>New York, NY, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On February 8, 2021 appellant filed a timely appeal from a January 22, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish total disability from work for the period June 26 to September 2, 2018 causally related to the accepted May 11, 2018 employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the January 22, 2021 decision, OWCP received additional evidence. 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.*

## **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>3</sup> The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On May 15, 2018 appellant, then a 31-year-old claims examiner, filed a traumatic injury claim (Form CA-1) alleging that on May 11, 2018 she sustained bilateral shoulder and back strains when she attempted to open a heavy door with her left hand, while pushing a chair with her right hand. She stopped work on the date of injury. Appellant returned to work on June 27, 2018, stopped work again on June 29, 2018, and returned to work on September 4, 2018.<sup>4</sup> After initial denial of the claim, by decision dated April 5, 2019, OWCP accepted the claim for bilateral shoulder and lumbar strains.

On March 3, 2020 appellant filed claims for wage-loss compensation (Form CA-7) alleging disability for the periods June 26 through July 25, 2018, and July 25 through September 2, 2018.

In a development letter dated March 10, 2020, OWCP advised appellant of the necessary medical evidence to support disability during the periods claimed. It afforded her 30 days to respond.

In a July 2, 2018 disability form report, Dr. Dante T. Lazo, a Board-certified internist, noted that appellant had been seen that day for a May 11, 2018 injury and advised she was disabled from work for eight weeks due to bilateral shoulder and lower back pain and weakness.

An August 20, 2018 attending physician's report, Part B of the Form CA-16, from Dr. Lazo indicated that appellant was totally disabled from work for the period May 11 through September 2, 2018. Dr. Lazo described how the May 11, 2018 injury occurred and diagnosed lumbar and shoulder strain. He checked a box marked "Yes" to the questions of whether there was a history or evidence of concurrent or preexisting injury and whether the condition had been aggravated by the employment activity. Dr. Lazo noted that appellant had been involved in a motor vehicle accident on April 6, 2018, during which she sustained shoulder and back injuries.

In a state workers' compensation form report dated August 20, 2018, Dr. Lazo noted a May 11, 2018 injury date and described the employment incident. He diagnosed bilateral shoulder joint and lumbar sprains based upon physical findings of bilateral shoulder abnormal range of motion (ROM), shoulder weakness, and pain/tenderness in the lower back and shoulders. Dr. Lazo opined that appellant was disabled from work due to pain and weakness.

By decision dated May 29, 2020, OWCP denied appellant's claim for wage-loss compensation for the period June 26 through September 2, 2018, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period causally related to her accepted May 11, 2018 employment injury. It noted the record also contained

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<sup>3</sup> *Order Granting Remand*, Docket No. 19-0240 (issued March 22, 2019).

<sup>4</sup> The employing establishment issued an authorization for examination and/or treatment (Form CA-16) on May 21, 2018.

evidence of preexisting conditions due to a nonemployment-related April 16, 2018 automobile accident, which was not addressed by the medical evidence submitted by appellant.

On July 1, 2020 appellant requested reconsideration.

OWCP continued to receive medical evidence. Dr. Lazo, in a May 21, 2018 narrative report, noted appellant's history of injury on May 11, 2018. He related that appellant's physical examination findings included: decreased lumbar and bilateral shoulder ROM; lumbar spasm, tenderness, and trigger points on palpation; negative straight leg raising; and 3/5 muscle strength, and he diagnosed shoulder joint, lower back and pelvis sprains.

In a state workers' compensation form report dated August 31, 2018, Dr. Lazo reiterated findings from his prior report. He released appellant to return to work on September 4, 2018. On August 31, 2018 Dr. Lazo also completed an attending physician's report, Part B of the Form CA-16, relating that appellant could return to work on September 4, 2018.

By decision dated September 22, 2020, OWCP denied modification. It found the medical evidence submitted failed to discuss appellant's injuries caused by the April 2018 motor vehicle accident and did not provide medical rationale explaining how the accepted May 11, 2018 work injury caused disability.

On October 21, 2020 appellant filed a request for reconsideration.

In support of her request for reconsideration, appellant submitted disability notes previously of record from Dr. Lazo and an additional note dated August 1, 2018. Dr. Lazo again diagnosed bilateral shoulder and lumbar sprains due to a May 11, 2018 accident. He reiterated that appellant would be disabled from work for an additional four weeks.

In a November 25, 2020 note, Dr. Erie Augustin advised that appellant had reached maximum medical improvement and required no further medical treatment. He noted an April 6, 2018 motor vehicle accident and May 11, 2018 work injury. Dr. Augustin diagnosed neck, bilateral shoulder, upper and lower back, and left knee injuries and noted that appellant underwent shoulder surgery on June 13, 2018.

By decision dated January 22, 2021, OWCP denied modification, finding that the record failed to contain an opinion based on an accurate medical and injury history explaining how her disability from work during the period claimed was causally related to the accepted May 11, 2018 employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.<sup>6</sup> The term disability is defined as the incapacity, because of an employment injury, to

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<sup>5</sup> *Supra* note 1.

<sup>6</sup> *See A.S.*, Docket No. 20-0406 (issued August 18, 2021); *B.K.*, Docket No. 18-0386 (issued September 14, 2018); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

earn the wages the employee was receiving at the time of the injury.<sup>7</sup> 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.<sup>8</sup>

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 the reliable, probative, and substantial medical evidence.<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 specific employment factors identified by the claimant.<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 appellant has not met her burden of proof to establish total disability from work for the period June 26 to September 2, 2018 causally related to the accepted May 11, 2018 employment injury.

Appellant was involved in an April 6, 2018 nonwork-related motor vehicle accident and remained out of work until May 7, 2018. She alleged that she sustained a torn right shoulder rotator cuff from the motor vehicle accident and that she aggravated her condition during the May 11, 2018 employment incident. On June 13, 2018 appellant underwent a right shoulder partial synovectomy arthroscopy, extensive debridement of right shoulder labral tear and rotator cuff tear subscapularis tendon, and right shoulder subacromial decompression with acromioplasty. She attempted to return to work on June 27, 2018<sup>?</sup> and stopped work again on June 29, 2018.

OWCP received a series of reports from Dr. Lazo in support of appellant's claim, wherein he indicated that appellant was totally disabled through September 2, 2018. However, Dr. Lazo offered no rationalized medical opinion as to whether appellant's accepted conditions were the cause of her disability. The Board has held that medical evidence that does not provide an opinion regarding whether a period of disability is due to an accepted employment condition is of no

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<sup>7</sup> 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>8</sup> *See A.S.*, *supra* note 6; *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, *supra* note 6.

<sup>9</sup> *A.S.*, *id.*; *Amelia S. Jefferson*, *id.*; *William A. Archer*, 55 ECAB 674 (2004).

<sup>10</sup> *T.L.*, Docket No. 20-0978 (issued August 2, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

<sup>11</sup> *C.T.*, Docket No. 20-0786 (issued August 20, 2021); *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, *supra* note 9; *Fereidoon Kharabi*, 52 ECAB 291 (2001).

probative value and, thus, is insufficient to establish a claim.<sup>12</sup> Dr. Lazo also did not discuss appellant's April 2018 motor vehicle accident and whether or not appellant continued to be disabled due to that injury. A discussion of appellant's prior injury is necessary as appellant underwent surgical treatment including right shoulder partial synovectomy arthroscopy, extensive debridement of right shoulder labral tear and rotator cuff tear subscapularis tendon, and right shoulder subacromial decompression with acromioplasty on June 13, 2018 and Dr. Lazo did not address whether this procedure and any resulting disability were directly caused or aggravated by appellant's May 11, 2018 employment injury. The need for a rationalized medical opinion was particularly important because appellant had preexisting shoulder conditions.<sup>13</sup> Consequently, Dr. Lazo's reports are insufficient to establish that appellant was disabled from work during the period June 26 through September 2, 2018 due to her May 11, 2018 employment injury.<sup>14</sup>

The remaining medical evidence fails to address the claimed periods of disability from June 26 through September 2, 2018 and, thus, lacks probative value and is insufficient to meet appellant's burden of proof.<sup>15</sup>

As appellant has not submitted medical evidence sufficient to establish disability during the claimed period due to her accepted injury, the Board finds that she has not met her burden of proof.<sup>16</sup>

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 her burden of proof to establish total disability from work for the period June 26 to September 2, 2018 causally related to the accepted May 11, 2018 employment injury.

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<sup>12</sup> See *S.D.*, Docket No. 20-1255 (issued February 3, 2021); *L.L.*, Docket No. 19-1794 (issued October 2, 2020); *C.R.*, Docket No. 19-1427 (issued January 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>14</sup> *Id.*

<sup>15</sup> *K.R.*, Docket No. 20-0681 (issued January 12, 2021); *M.A.*, Docket No. 19-1119 (issued November 25, 2019).

<sup>16</sup> *K.A.*, Docket No. 17-1718 (issued February 12, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.<sup>17</sup>

Issued: December 10, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>17</sup>The Board notes that the employing establishment issued a Form CA-16, dated November 10, 2020. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); V.S., Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).