

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

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M.H., Appellant )

and )

U.S. POSTAL SERVICE, SOUTH MOUNTAIN )  
POST OFFICE, Phoenix, AZ, Employer )  
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**Docket No. 22-1370  
Issued: May 24, 2023**

*Appearances:*  
*Appellant, pro se*  
*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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On September 8, 2022 appellant filed a timely appeal from an August 23, 2022 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.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish disability from work for the period November 10 through December 13, 2021 causally related to her accepted October 21, 2021 employment injury.

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

## **FACTUAL HISTORY**

On December 8, 2021 appellant, then a 58-year-old window clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 21, 2021 she sustained a spider bite on her front lower left leg while in the performance of duty. She did not immediately stop work.

On October 30, 2021 Dr. Phat D. Hoang, a Board-certified family practitioner, evaluated appellant for a bug bite that erupted on her left lower extremity approximately a week prior. He noted findings on examination of a macular two-inch area of bruising and erythema with small black eschar and non-pitting edema. Dr. Hoang diagnosed insect bite (nonvenomous) left ankle, initial encounter and bitten or stung by nonvenomous insect and other nonvenomous arthropods. He prescribed an antibiotic. On November 10, 2021 Dr. Hoang treated appellant in follow up for a suspected brown recluse bite sustained on October 21, 2021. Appellant reported that her left leg remained swollen and painful. Dr. Hoang noted a 12-inch vertical and 8-inch horizontal inflamed area with two indented grey/dark brown regions and several petechial erythematous patches. He diagnosed cellulitis of the left lower leg and referred appellant to a wound care specialist. Dr. Hoang related in a November 11, 2021 report that she was seen for left lower leg cellulitis and mobility impairment. He noted examination of the left leg revealed a 12-inch vertical and 10-inch horizontal erythematous patch. Dr. Hoang diagnosed cellulitis of the left leg and mobility impairment. He continued to treat appellant through December 23, 2021 for a brown recluse spider bite that occurred on October 21, 2021. Dr. Hoang noted examination of the lateral aspect of the left lower extremity ankle revealed resolution of the ulcer and mild maceration to underlying tissue. He again diagnosed insect bite (nonvenomous), left ankle, sequela and bitten or stung by nonvenomous insect or other nonvenomous arthropods, sequela. Dr. Hoang noted the first day appellant missed work was November 11, 2021 and she returned on December 13, 2021. He released appellant to work retroactively on December 13, 2021 with instructions to cover her wound with a bandage until completely healed.

On November 2, 2021 appellant was treated in the emergency room by Daniel Teska, a physician assistant, for increased pain and swelling due to a spider bite on the left lower extremity. Mr. Teska diagnosed brown recluse spider bite and discharged appellant home.

Appellant was treated by Dr. Yadwinders Dhillon, a Board-certified family practitioner, from November 15 through December 6, 2021 for cellulitis of the left lower limb. Dr. Dhillon diagnosed gangrene, not elsewhere classified.

By decision dated April 20, 2022, OWCP accepted appellant's claim for insect bite (nonvenomous), of the left ankle.

On June 14, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period November 10 through December 13, 2021.

In a June 24, 2022 development letter, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation. It advised her of the type of additional factual and medical evidence required and afforded her 30 days to submit the necessary evidence.

OWCP received a July 21, 2022 note from Brian Jensen, a physician assistant, who noted appellant sustained a sonoran recluse spider bite to her left lower extremity on October 21, 2021. Appellant continued to work until November 10, 2022<sup>2</sup> when she had increasing pain due to necrosis and surrounding tissue injury. She was treated in the wound center from November 10 through December 13, 2021 and returned to work on December 13, 2021. Mr. Jensen indicated that appellant was not able to work during this period because of moderate-to-severe pain due to an active infection.

By decision dated August 23, 2022, OWCP denied appellant's claim for wage-loss compensation, finding that the medical evidence of record was insufficient to establish disability from work for the period November 10 through December 13, 2021 causally related to the accepted October 21, 2021 employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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>4</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>5</sup> Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues, which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.<sup>6</sup>

Under FECA the term "disability" is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.<sup>7</sup> Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>8</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

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<sup>2</sup> *Id.*

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Id.*; *William A. Archer*, 55 ECAB 674 (2004).

<sup>6</sup> *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<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> *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

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>9</sup>

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence 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>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period November 10 through December 13, 2021 causally related to the accepted October 21, 2021 employment injury.

Dr. Hoang treated appellant on October 30, 2021 for a bug bite that erupted on her left lower extremity. He diagnosed insect bite (nonvenomous) left ankle, initial encounter and bitten or stung by nonvenomous insect and other nonvenomous arthropods. In a report dated November 10, 2021, Dr. Hoang diagnosed cellulitis of the left lower leg and referred appellant to a wound care specialist. Similarly, Dr. Dhillon treated appellant from November 15 through December 6, 2021 for cellulitis of the left lower limb and diagnosed gangrene, not elsewhere classified. Drs. Hoang and Dhillon, however, did not provide an opinion on disability from work during the claimed period. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value.<sup>11</sup> Therefore, this evidence is insufficient to establish appellant's disability claim.

On November 11, 2021 Dr. Hoang diagnosed cellulitis of the left leg and mobility impairment. On December 23, 2021 he diagnosed insect bite (nonvenomous), left ankle, sequela and bitten or stung by nonvenomous insect or other nonvenomous arthropods, sequela. Dr. Hoang noted that the first day appellant missed work was November 11, 2021 and she returned on December 13, 2021. He released her to work as of December 13, 2021. While Dr. Hoang opined that appellant was totally disabled, he did not offer a rationalized medical explanation to support his opinion. The Board has held that medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition or disability is of limited probative value on the issue of causal relationship.<sup>12</sup> Thus, this evidence is also insufficient to establish appellant's disability claim.

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<sup>9</sup> *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>10</sup> *See B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, *supra* note 6; *see also C.S.*, Docket No. 17-1686 (issued February 5, 2019).

<sup>11</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> *C.V.*, Docket No. 18-1106 (issued March 20, 2019); *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *A.D.*, 58 ECAB 149 (2006).

Appellant submitted reports from a physician assistant. The Board, however, has held that medical reports signed solely by a physician assistant<sup>13</sup> are of no probative value as physician assistants are not considered physicians as defined under FECA and are therefore not competent to provide medical opinions.<sup>14</sup>

As the medical evidence of record is insufficient to establish disability from work for the period November 10 through December 13, 2021 causally related to the accepted October 21, 2021 employment injury, the Board finds that appellant has not met her 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 her burden of proof to establish disability from work for the period November 10 through December 13, 2021 causally related to her accepted October 21, 2021 employment injury.

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<sup>13</sup> *C.P.*, Docket No. 19-1716 (issued March 11, 2020) (a physician assistant is not a physician as defined under FECA).

<sup>14</sup> Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 23, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 2023  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board