

FACTUAL HISTORY

On February 29, 2007 appellant, then a 51-year-old materials handler, suffered an employment-related lumbosacral sprain and sciatica when he was hit by a forklift door. He returned to modified duty. An October 2, 2008 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated degenerative changes at the L3-4 and L4-5 levels with moderate central spinal canal stenosis and neural foraminal encroachment at L3-4, mild central canal stenosis and recess encroachment at L4-5, and mild bilateral recess encroachment at L5-S1. Appellant stopped work on November 14, 2008 and received wage-loss compensation.

By report dated October 14, 2009, Dr. Alfred C. Shen, a Board-certified neurosurgeon, advised that appellant could return to modified duty with restrictions of standing limited to two hours; no repetitive bending, stooping and squatting, and a 25-pound lifting restriction. In an October 21, 2009 report, Dr. Bunsri T. Sophon, a Board-certified orthopedic surgeon, who performed a second-opinion evaluation for OWCP. He reviewed the history of injury and medical treatment, and appellant's complaint of low back pain. Dr. Sophon provided physical examination findings and diagnosed lumbosacral strain causally related to the 2007 employment injury. He advised that appellant could return to work with restrictions of no twisting; six hours of sitting, walking and standing; four hours of bending, stooping and lifting no more than 20 pounds.

Appellant returned to a modified sedentary position on October 25, 2009. His duties were described as conducting monthly anti-terrorism measures, documenting observations and providing a monthly report; conducting a three-week inventory survey of parts and solvent usage for green alternatives; assisting program managers with administrative support for compliance in air, water, remediation and solid waste management and were performed in an office setting with occasional site visits to gather data. On February 24, 2010 the employing establishment offered appellant a light-duty assignment within the restrictions provided by Dr. Shen.² Appellant refused the offered position.

Appellant stopped work on March 1, 2010 and filed a CA-7 claim for compensation for the period March 1 to 12, 2010. In a March 1, 2010 report, Dr. Shen noted appellant's report that he had been unable to work for several days due to increasing back pain that radiated along the buttocks, posterior lateral thigh and into the knee and was aggravated with prolonged sitting, bending and twisting. He provided physical examination findings, stating that appellant's examination was unchanged from his last visit with no evidence of focal tenderness and full strength in the lower extremities. Dr. Shen diagnosed left greater than right L4 radiculopathy, L3-4 disc bulge with foraminal stenosis, lumbar spondylosis, lumbar sprain/strain and mild L4-5 foraminal stenosis. He advised that appellant would be temporarily totally disabled through April 22, 2010.

Appellant was paid wage-loss compensation from March 1 through 12, 2010. In a March 18, 2010 report, Dr. Albert Lai, a Board-certified physiatrist, noted the history of injury

² The duties were described as performing a variety of duties involving recyclables, including loading and operating mobile heavy equipment, trucks and forklifts; operating hand tools; performing operator maintenance on all equipment used and completing required paperwork.

and appellant's complaint of lower back and left lower extremity pain which he rated as 10/10. He provided physical examination findings and diagnosed thoracic or lumbosacral neuritis or radiculitis and disc displacement of the thoracic/lumbar spine.

Appellant submitted additional wage-loss compensation claims. A telephone memorandum dated April 5, 2010 between OWCP and Sean Campbell of the employing establishment human resources department noted that appellant's modified-duty officer position had not been withdrawn and the work was still available. In letters dated April 8 and 26, 2010, OWCP informed appellant of the evidence needed to support his claims for compensation. Appellant was asked to explain if his light-duty job had changed and to provide a report from a physician addressing why his condition had worsened such that he could no longer perform the duties of the modified position.

Dr. Shen submitted reports advising that appellant was temporarily totally disabled. On May 12, 2010 he placed appellant on temporary total disability as of March 1, 2010 due to increasing symptoms that precluded a return to modified duty. Dr. Shen stated that appellant was developing increasing back pain as well as leg pain symptoms that were radicular in nature, radiating from the buttocks down the posterolateral thigh and into the anterior knee. He felt this to be an increase in appellant's L4 radiculopathy symptoms. Dr. Shen advised that sitting was limited to about 30 minutes and standing to about two hours. He stated that appellant's pain level was moderate at baseline and became severe with prolonged activities including prolonged sitting and standing and with repetitive bending and stooping and was aggravated by appellant's modified work duties. Dr. Shen advised that, objectively, there was no palpable tenderness along the lumbar spine, and that appellant's activities were limited due to the increasing pain, noting that in September 2009, his pain level was 2/10 in severity and that on March 1, 2010 it was 7/10, which he characterized as a marked increase. He also advised that appellant had been taking more medications on a daily basis to try to manage his pain. Dr. Shen advised that he believed that, if appellant continued his current activities at work, his underlying injury would be aggravated and this would require additional pain medications and even possibly surgery to relieve his pain, and that he placed appellant on temporary total disability to try and prevent further exacerbation of his underlying pain.

By decision dated May 21, 2010, OWCP denied appellant's claim for disability compensation from March 14 to May 8, 2010 finding that that medical evidence was insufficient to establish that he was precluded from performing his modified-duty activities.

On May 25, 2010 appellant requested a review of the written record. On August 4, 2010, his attorney requested a telephone hearing. He submitted additional reports from Dr. Shen who noted that appellant's pain had increased. Appellant provided physical examination findings and advised that appellant continued to be totally disabled. An August 16, 2010 magnetic resonance imaging (MRI) of the lumbar spine demonstrated spondylosis and degenerative disc disease with dominant degenerative findings of moderate central canal stenosis at L3-4 associated with mild bilateral neural foraminal encroachment. Dr. Lai provided pharmacologic assessment and management reports. He reiterated his diagnoses and recommended lumbar transforaminal epidural injection. In August 23, 2010 report, Dr. Shen noted his review of the MRI scan study, provided examination findings and reiterated his diagnoses. He recommended a discogram.

At the October 8, 2010 hearing October 8, 2010, appellant described his regular work duties and the 2007 employment injury. After he returned to work, he was doing mostly sedentary office work and walking into the field, but that the pain became so bad he could no longer work. The hearing representative advised appellant that his physician needed to explain how the additional diagnosed conditions were caused by the employment injury. Dr. Lai performed a discogram on October 13, 2010 that demonstrated concordant pain at L4-5 only. A postdiscogram computerized tomography (CT) scan of the lumbar spine demonstrated well-maintained stature and alignment of the lumbar vertebrae with no spondylolisthesis, compression deformity, fracture or bony destructive change and mild-to-moderate disc narrowing at the L3-4 level, and a disc bulge at L4-5. Dr. Shen continued to submit reports describing appellant's condition and advising that he was totally disabled. He recommended decompression surgery with interbody fusion.

By decision dated January 4, 2011, an OWCP hearing representative affirmed the May 21, 2010 decision, finding that the medical evidence was not sufficient to establish that appellant's disability for the period March 14 through May 8, 2010 was causally related to the accepted condition.

LEGAL PRECEDENT

Under FECA the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.³ Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA,⁴ and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁵ Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁶

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁷ Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.⁸

³ See *Prince E. Wallace*, 52 ECAB 357 (2001).

⁴ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁵ *Donald E. Ewals*, 51 ECAB 428 (2000).

⁶ *Tammy L. Medley*, 55 ECAB 182 (2003); see *Donald E. Ewals*, *id.*

⁷ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁸ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 diagnosed condition and the specific employment factors identified by the claimant.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS

The accepted conditions in this case are lumbosacral strain and sciatica. Appellant was paid wage-loss compensation for the period November 14, 2008 to October 25, 2009. He returned to a modified position with duties that were mostly sedentary, performed in an office setting. Appellant stopped work on March 1, 2010, received monetary compensation for the period March 1 to 12, 2010, and claimed total disability compensation thereafter. The Board finds that he did not meet his burden of proof to establish that he was totally disabled due to the accepted conditions for the period March 14 through May 8, 2010.

It is the employee's burden to establish disability.¹² Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.¹³ There is no evidence to show that appellant's modified office position was withdrawn as Mr. Kelly reported that the position remained available on April 5, 2010. The medical evidence is not sufficient to establish that appellant was totally disabled for the period March 14 through May 8, 2010 due to the accepted conditions.

The medical evidence relevant to the claimed period of disability includes reports from Dr. Lai, an attending physiatrist, who did not provide any opinion regarding appellant's ability to work. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁴ Dr. Lai's reports are insufficient to establish total disability for the period claimed due to the accepted lumbosacral strain of sciatica.

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² *See Yvonne R. McGinnis*, 50 ECAB 272 (1999).

¹³ *Tammy L. Medley*, *supra* note 6.

¹⁴ *Willie M. Miller*, 53 ECAB 697 (2002).

Dr. Shen, an attending neurosurgeon, advised that appellant could not work beginning on March 1, 2010 due to increased symptoms with back and leg pain that were radicular in nature. He diagnosed left greater than right L4 radiculopathy, L3-4 disc bulge with foraminal stenosis, lumbar spondylosis, and mild L4-5 foraminal stenosis, none of which were accepted as employment related. Dr. Shen advised that appellant's increase in symptoms was due to L4 radiculopathy, against an accepted condition. Moreover, he based his opinion on appellant's subjective complaints rather than discussing the impact of objective findings. Dr. Shen and did not profess any knowledge of appellant's specific modified job duties or provide a rationalized explanation as to why he could not work for the claimed period. His opinion is insufficient to meet appellant's burden to show that he was totally disabled for the claimed period.

The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.¹⁵ While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹⁶

As there is no rationalized medical evidence contemporaneous with the period of claimed disability, appellant failed to meet his burden of proof to establish entitlement to total disability compensation for the period March 14 through May 8, 2010.¹⁷

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 did not establish that he was entitled to wage-loss compensation for the period March 14 through May 8, 2010.

¹⁵ See *Albert C. Brown*, 52 ECAB 152 (2000).

¹⁶ *A.D.*, 58 ECAB 149 (2006).

¹⁷ See *Tammy L. Medley*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 21, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board