

employment-related lumbar sprain with radiculopathy. Appellant received wage-loss compensation for the period September 11 to 14 and September 27 to October 7, 2010.² By decision dated March 23, 2012, OWCP denied her claim for wage-loss compensation for the commencing period October 16, 2010.

Appellant filed claims for compensation for the period May 3 to 18, 2012. By letter dated May 21, 2012, OWCP informed her of the evidence needed to perfect her disability claim.

The medical evidence relevant to the period of claimed disability includes an April 18, 2010 magnetic resonance imaging (MRI) scan of the lumbar spine that demonstrated moderate disc height loss at L3-4 and L4-5 and a disc bulge at L5-S1. In reports dated May 2, 2012, Dr. Julie Margaret Fuller, Board-certified in internal and occupational medicine, noted that appellant was seen in the emergency room for low back and right leg pain which was so severe that she could not move the leg at one point. She reviewed the MRI scan study and advised that on examination of the back, there was no muscle spasm, tenderness of the lumbar paraspinal muscles and a positive straight leg raise test on the right. Dr. Fuller advised that appellant should be off work for approximately 12 days to recover from exacerbation of spinal stenosis and radicular symptoms. She placed appellant off work from May 2 to 8, 2012 due to uncontrolled pain in her low back and noted that appellant was at risk for fall until the pain was controlled. On May 14, 2012 Dr. Fuller listed appellant's complaint of constant pain in the back, radiating down the right leg. She placed appellant off work through June 5, 2012 due to uncontrolled pain due to spinal stenosis and neuroforaminal stenosis, again noting that she was at risk for fall until the pain was controlled. In a disability slip dated June 1, 2012, Dr. Fuller indicated that appellant should remain off work through June 10, 2012. She advised that appellant could return to work on June 11, 2012 with permanent physical restrictions.

By decision dated June 28, 2012, OWCP denied appellant's claim for compensation for the period May 3 to 18, 2012. It found that the medical evidence established that she was disabled due to a condition that was not accepted as employment related.

On July 20, 2012 appellant requested reconsideration of the June 28, 2012 decision.

Appellant submitted a June 22, 2010 MRI scan study of the lumbar spine that demonstrated scoliosis, degenerative changes at L2-3, L3-4, L4-5 and L5-S1 with spinal stenosis and neural foraminal narrowing. In reports dated June 1 and 8, 2012, Dr. Fuller again advised that appellant could return to work with permanent restrictions on June 11, 2012. On June 29, 2012 she indicated that appellant had returned to work with permanent restrictions but continued to complain of severe pain and difficulty moving her right leg. Dr. Fuller found that appellant was temporarily totally disabled that day. In a July 13, 2012 report, Dr. Patricia Harrison, Board-certified in anesthesiology and pain management, noted a history that appellant had injured her back at work pushing a large gate and had constant and chronic low back pain with radiation to both legs. She diagnosed lumbosacral radiculopathy and spinal stenosis of the

² In a September 27, 2011 report, Dr. John F. Lawrence, an OWCP referral physician Board-certified in orthopedic surgery, diagnosed lumbar discogenic disease. A January 6, 2012 electrodiagnostic study of the right lower extremity demonstrated no evidence of lumbar radiculopathy. In a supplementary report dated March 9, 2012, Dr. Lawrence advised that appellant had clear evidence of degenerative disc disease of the lumbosacral spine.

lumbar region. In reports dated July 16 and September 7, 2012, Dr. Fuller described appellant's current condition. On September 11, 2012 Dr. Kaochoy S. Saechao, an associate of Dr. Fuller, Board-certified in occupational medicine, described appellant's current physical findings and advised that she had permanent restrictions at work.

In a merit decision dated October 22, 2012, OWCP denied modification of the June 28, 2012 decision.

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 FECA⁴ 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

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹ 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 employee.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period

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).

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

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

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 Board finds that appellant did not meet her burden of proof to establish that she was disabled for the period May 3 to 18, 2012 due to the accepted lumbar condition.

On July 1, 2010 OWCP accepted that appellant sustained an employment-related lumbar sprain and lumbar radiculopathy. Appellant received wage-loss compensation for the period September 11 to 14 and September 27 to October 7, 2010. She thereafter claimed compensation for the period May 3 to 18, 2012.

Neither Dr. Harrison nor Dr. Saechao discussed the period of claimed disability. Moreover, neither physician advised that appellant could not work. Their reports are insufficient to establish that appellant was totally disabled for the period claimed.

Dr. Fuller submitted reports dated May 1 and 14, 2012. She provided physical examination findings and advised that appellant could not work due to uncontrolled pain caused by spinal and neuroforaminal stenosis and that she had a risk of falling. Dr. Fuller submitted additional reports reiterating her findings and conclusions and advising that appellant should remain off work until June 11, 2012. Spinal stenosis and neuroforaminal stenosis have not been accepted as employment related. Furthermore, Dr. Fuller did not profess any knowledge of appellant's specific job duties or provide a rationalized explanation as to why she could not work during the claimed period. She submitted additional reports but did not discuss the period of claimed disability.

When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation¹² and the Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.¹³ 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.¹⁴ As there is no rationalized medical evidence contemporaneous with the period of claimed disability, appellant failed to meet

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

¹² *G.T.*, 59 ECAB 447 (2008).

¹³ *See Albert C. Brown*, 52 ECAB 152 (2000).

¹⁴ *William A. Archer*, *supra* note 7.

her burden of proof to establish entitlement to total disability compensation for the period May 3 to 18, 2013 due to the accepted conditions.¹⁵

The Board, however, finds this case is not in posture for decision regarding whether appellant's entitlement to wage-loss compensation for attending medical appointments. If a claimant has returned to work following an accepted injury or the onset of an occupational disease and must leave work and lose pay or use leave to undergo treatment, examination or testing for the accepted condition, compensation should be paid for wage loss under section 8105 of FECA, while undergoing the medical services and for a reasonable time spent traveling to and from the location where services were rendered.¹⁶ The medical evidence in this case establishes that appellant was seen for medical visits for low back conditions during the claimed period of disability. The case will therefore be remanded to OWCP for adjudication regarding her entitlement to wage loss for attending appropriate medical treatment.

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 she was entitled to disability compensation for the period May 3 to 18, 2012 due to the accepted lumbar conditions. The Board further finds this case is not in posture for decision regarding whether she would be entitled to compensation for lost wages incidental to appropriate medical treatment.

¹⁵ See *Tammy L. Medley*, *supra* note 6.

¹⁶ 5 U.S.C. § 8105. Any leave used cannot be compensated until it is converted to leave without pay. For a routine medical appointment, a maximum of four hours of compensation is usually allowed. See *William A. Archer*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2012 decision of the Office of Workers' Compensation is affirmed in part and set aside in part, and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: July 16, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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