

November 15, 2012 and returned to work on December 3, 2012. On January 2, 2013 OWCP accepted the claim for lumbosacral sprain, head contusion, abdominal sprain, bilateral arm sprain, cervical sprain, and thoracic sprain.

The record reflects that appellant telecommuted, working three hours a day, as of March 18, 2013.

On April 22, 2013 appellant filed a Form CA-7 claim for compensation for the period April 8 to June 27, 2013.

In an April 4, 2013 report, Dr. Louis D. Zegarelli, an osteopathic family practitioner, provided an assessment of chronic mechanical lumbosacral dorsal sprain/pain syndrome, resolved cervicothoracic sprain, resolved head contusion with post-traumatic cephalgia/concussion syndrome, resolved abdominal wall contusion, resolved right/left shoulder strain, and resolved right/left eustachian tube dysfunction associated with head trauma. He noted that the magnetic resonance imaging (MRI) scans of the lumbar spine did not show significant abnormality. Dr. Zegarelli related that he had a lengthy discussion with appellant regarding possible pain generators that could be causing her persistent refractory lumbosacral pain. He reported that appellant appeared to experience increased frustration over her work situation and recommended placing her in an off-work status with an estimated four to six weeks return to regular work activities.

In an April 25, 2013 report, Dr. Zegarelli noted that appellant's refractory lumbosacral dysfunction was unchanged and she continued to suffer chronic persistent mechanical lumbosacral pain/sprain syndrome with multiple undetermined pain generators, including noxious stimuli and emotional responses. He recommended that appellant be placed into off-work status to minimize stressors, improve her functional capability and direct her attention solely to her rehabilitation. A consultation with a clinical psychologist to assess psychological response to her injury was recommended.

In a May 10, 2013 report, Dr. James Stanley, a Board-certified orthopedic surgeon, noted the history of injury and appellant's medical course. An impression of resolving cervical strain with intermittent occipital headaches, resolving lumbar strain, possible facet and/or disc injury in the thoracic spine with incomplete thoracic spine workup, and lower extremity pain and subjective weakness on the right side was provided. Dr. Stanley recommended additional MRI scan studies of the thoracic and lumbar spine and continued her on Dr. Zegarelli's work restrictions. In a May 15, 2013 report, he noted that appellant had been off work per Dr. Zegarelli because the employing establishment would not accommodate her attempts to work from home by computer and telephone and she was unable to tolerate the pain of the drive to the office and sitting in her office all day. Dr. Stanley noted the MRI scan showed no obvious disc injury and provided an impression of status post motor vehicle accident with soft tissue injuries with resolved cervical sprain and persistent pain likely due to thoracic sprain and facet syndrome. He noted that appellant was not a surgical candidate but she had definite pain that needed treatment. Dr. Stanley advised appellant would remain off work pending Dr. Zegarelli's instruction.

In a May 20, 2013 report, Jessie C. Ingram, Ph.D., a clinical psychologist, noted the history of injury and OWCP's accepted conditions. An impression of pain disorder associated with both psychological factors and chronic medical condition and moderate to severe anxiety disorder was provided. In June 3 and 26, 2013 reports, Dr. Ingram discussed the interdisciplinary chronic pain management program and requested that OWCP authorize such for appellant.

In May 21 and 31, 2013 reports, Dr. Zegarelli provided an assessment of chronic mechanical thoracolumbar sacral dorsal sprain/pain syndrome, chronic mechanical thoracic somatic dysfunction/myositis, chronic mechanical lumbosacral somatic dysfunction/myositis, and anxiety/depression associated with chronic persistent pain and "work issues." He indicated that appellant was off work as her functional capabilities did not meet her employer's work requirements and the work environment was significantly stressful to appellant which hampered her ability to heal.

In a June 4, 2013 report from Dr. Christina Bartis, a Board-certified anesthesiologist, provided a medical plan for appellant's pain. Physical therapy reports dated June 7, 8, 18, 19, 21, 27, and 28, 2013 were provided along with a July 8, 2013 operative report for an L4-5 lumbar epidural injection.

On June 13, 2013 Dr. Zegarelli provided an assessment of chronic mechanical lumbosacral dorsal myofibrositis, thoracic myofibrositis, and thoracolumbar myositis. As appellant was changing treating physicians, he released her from care, but noted that she should continue psychosocial therapy and pain management/injection therapy.

In a June 13, 2013 report, Dr. Ed Wolski, a specialist in pain medicine, indicated appellant was being treated for thoracic sprain, lumbar sprain, muscle spasms, sciatica, lumbar disc displacement and thoracolumbar radiculitis. He opined that she was totally disabled from work from June 7 through August 7, 2013, at which time she would be reevaluated. Dr. Wolski indicated that she could not accomplish her required job duties, but could work up to two hours a day from home if telework was available.

In a June 25, 2013 report, Dr. Robert Holladay, IV, a Board-certified orthopedic surgeon and OWCP referral physician, noted the history of injury, reviewed the medical record and statement of accepted facts, and presented examination findings. A clinical impression of cervical and thoracic spine strain/sprain, shoulder strain/sprain, lumbar spine strain/sprain and contusion to face and scalp were provided. Based upon his clinical examination and review of the medical records and history, Dr. Holladay opined that appellant was physically capable of working. He indicated there was no evidence of objective acute structural change as a result of the November 14, 2012 work injury and at most she sustained contusions and soft tissue strain/sprain. Dr. Holladay noted that appellant was over six months past the motor vehicle accident and there were no objectively identifiable conditions which would result in functional limitations as the result of the mechanism of injury. He opined that appellant was physically capable of returning to her full job activities effective April 8, 2013 to the present. Dr. Holladay reported that, while appellant reported a moderate degree of subjective complaints, there were no objective findings on clinical examination or diagnostic testing that would support those ongoing

subjective complaints. Thus, he recommended appellant return to full-time unrestricted work activities. Dr. Holladay advised there was no need to do work from home by use of a computer.

OWCP informed appellant on June 25, 2013 that the claim had been expanded to include contusion of the face, scalp, and neck.

On July 1, 2013 an OWCP medical adviser opined that the diagnosis of chronic pain and anxiety were justified in response to the traumatic episode.

By decision dated July 17, 2013, OWCP denied appellant's claim for wage-loss compensation from April 8 through June 27, 2013 as the medical evidence of file was not sufficient to establish disability for work.

On July 23, 2013 appellant's counsel requested a telephonic hearing, which was held before an OWCP hearing representative on December 23, 2013.

The record reflects on December 18, 2013, OWCP accepted the additional condition of chronic pain syndrome and, on March 7, 2014, it accepted the conditions of generalized anxiety disorder and thoracic or lumbosacral neuritis or radiculitis.

By decision dated March 27, 2014, an OWCP hearing representative affirmed the July 17, 2013 denial. He found that when the July 17, 2013 decision was rendered, the record supported that the accepted employment-related conditions had resolved and supported her ability to return to her full-time regular duties during the period at issue. Determinative weight was accorded to Dr. Holladay's second opinion evaluation. The hearing representative, however, remanded the case for a *de novo* decision as to whether the subsequently accepted condition of chronic pain syndrome caused disability from April 8 through June 27, 2013.

On April 22, 2014 OWCP issued an addendum to the statement of accepted facts which noted that appellant's claim was upgraded to include the conditions of chronic pain syndrome, generalized anxiety disorder, and thoracic or lumbosacral neuritis or radiculitis. The second opinion examiner was asked to respond to the question of whether the accepted employment-related condition of chronic pain syndrome caused disability from April 8 to June 27, 2013.²

On May 1, 2014 appellant was advised that the second opinion examination would be performed by Dr. Marvin E. Van Hal, a Board-certified orthopedic surgeon.

In a June 19, 2014 report, Dr. Van Hal noted the history of injury, appellant's medical course, reviewed the record and the statement of accepted facts, and presented examination findings. He noted that appellant had anxiety, and that anxiety disorder had been accepted as causally related to the accepted injury. In response to OWCP's question of whether the accepted employment-related chronic pain syndrome was present and prevented appellant from performing regular duties during the period of disability claimed from April 8 to June 27, 2013,

² In May 2014, under OWCP File No. xxxxxx074, date of injury January 7, 2014, OWCP accepted conditions of right knee cruciate ligament derangement of medial and lateral meniscus, bilateral knee strain, bilateral plantar fibromatosis, bilateral wrist sprain, bilateral ankle sprain, and right carpal tunnel. The current case and file number xxxxxx074 were eventually combined, with the current claim serving as the master claim number.

Dr. Van Hal noted that appellant's doctor took appellant off work due to administrative issues. Apparently, appellant's supervisor would not allow her to do telework. She wanted to return to work in February 2013 and telework for approximately one month. However, the supervisor gave her such limited hours that appellant could not continue with that regimen. Dr. Van Hal advised that given the clinical examination and MRI scan results, there was no basis to conclude that the chronic pain disorder was the issue. Rather, it appeared that it was more the psychosocial issues at work that would preclude appellant from being able to return to regular-duty work. By appellant's own report, her work was not heavy and she indicated that she wanted to return to work and was going to utilize the telework situation to facilitate that. Dr. Van Hal indicated that there appeared to be psychosocial issues and litigation pending which may have a significant impact in her recovery. Thus, he opined that there was no basis for appellant's disability from April 8 through June 27, 2013 related to the motor vehicle accident or the alleged chronic pain disorder. In a July 7, 2014 addendum, Dr. Van Hal reported on appellant's June 20, 2014 functional capacity evaluation (FCE) analysis. He opined that appellant was able to do seven to eight hours of sitting, four hours of walking, standing and reaching above the shoulder. Dr. Van Hal found no restrictions for operating motor vehicles, unrestricted repetitive use of hands and wrists, and pushing and pulling restricted to 35 pounds and lifting restricted to 20 pounds.

By decision dated October 30, 2014, OWCP denied appellant's claim for wage loss due to disability during the period April 8 through June 27, 2013 and continuing.

On November 4, 2014 an OWCP medical adviser reviewed the medical record and found that the medical condition of thoracic or lumbosacral neuritis or radiculitis should not be accepted. He noted that the electromyogram (EMG) did not support the presence or radiculopathy in the lumbar region and clinical findings of Dr. Holladay and Dr. Van Hal also did not support the presence of radiculopathy.

On November 10, 2014 appellant's representative requested a telephonic hearing, which was held June 18, 2015. He argued that the probative value of Dr. Van Hal's June 19, 2014 report should be limited as Dr. Van Hal was not advised that appellant had an accepted occupational disease claim on May 9, 2014 under OWCP File No. xxxxxx074, which was accepted for both bilateral upper and lower extremity conditions. Appellant's representative indicated that OWCP doubled the claim in October 2014, but it was reasonable to assume the conditions had been present in 2012 and could reasonably be expected to impact the FCE. Appellant testified that she returned to work in October 2013 and worked until June 2014. She filed her occupational disease claim in January 2014 and it was accepted in May 2014 and expanded to include additional conditions October 2014. Appellant indicated that she was currently in receipt of compensation for disability as a result of approved knee surgery.

In a June 30, 2015 letter, appellant's representative submitted a follow-up brief outlining his hearing arguments and questioning whether Dr. Van Hal was a second opinion or referee examiner. Ongoing treatment records were also received into the record.

By decision dated September 9, 2015, an OWCP hearing representative affirmed OWCP's October 30, 2014 decision regarding the denial of the compensation period April 8 to June 27, 2013. However, as the current claim has been combined with claim number

xxxxxx074, she recommended that OWCP consider further medical development of the work-related conditions that have been allowed under claim number xxxxxx074.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of her claim by the weight of the evidence.⁴ For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.⁵ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁶

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁸ An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁹ 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 her employment, she is entitled to compensation for any loss of wages.

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 their disability and entitlement to compensation.¹⁰

ANALYSIS

On November 14, 2012 appellant was involved in a motor vehicle accident while in the performance of duty. She stopped work on November 15, 2012 and returned to work on

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel A. Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁵ See *Amelia S. Jefferson*, *id*; see also *David H. Goss*, 32 ECAB 24 (1980).

⁶ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁷ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

⁸ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

December 3, 2012. OWCP accepted the claim for a lumbosacral sprain, head contusion, abdominal sprain, bilateral arm sprain, cervical sprain, thoracic sprain. It subsequently expanded the claim to include anxiety condition and chronic pain. Appellant filed a claim for wage-loss compensation for the period April 8 to June 27, 2013 as a result of her November 14, 2012 work injury.

While the April 22, 2014 amended statement of accepted facts properly noted that appellant's claim was upgraded to include the conditions of chronic pain syndrome, generalized anxiety disorder and thoracic or lumbosacral neuritis or radiculitis, the only question posed to the second opinion examiner, Dr. Van Hal, was whether appellant was disabled due to the accepted employment-related chronic pain syndrome during the period of disability claimed. No mention was made of the additional accepted conditions of generalized anxiety disorder and thoracic or lumbosacral neuritis or radiculitis. In his June 19, 2014 report, Dr. Van Hal found that given appellant's clinical examination and MRI scan results, there was no basis to conclude that the chronic pain disorder was the cause of disability during the period in question. Rather, he advised that it appeared that psychosocial issues at work and pending litigation may have a significant impact in her recovery. Thus, Dr. Van Hal opined that he was unable to determine whether appellant was disabled from April 8 through June 27, 2013.

Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹¹ Given that a generalized anxiety disorder condition was accepted, but not addressed by a second opinion specialist, the Board will remand the case for further development on the emotional aspects of this claim during the period of disability claimed. After such further development as necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The case is not in posture for decision as to whether appellant's accepted conditions, including anxiety disorder, caused disability during the period April 8 through June 27, 2013, resulting from the November 14, 2012 work injury.

¹¹ See *Richard F. Williams*, 55 ECAB 343, 346 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 9, 2015 is set aside and remanded for further proceedings consistent with this opinion.

Issued: May 4, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board