



## **FACTUAL HISTORY**

On May 12, 2009 appellant, then a 31-year-old rural carrier associate, filed a claim alleging that on May 8, 2009 she injured her low back and neck in a motor vehicle accident.<sup>2</sup> OWCP accepted her claim for lumbar strain.

On July 2, 2009 appellant filed a claim for compensation from June 29 through July 3, 2009.

In a report dated May 27, 2009, Dr. Bhisit Bhothinard, a Board-certified neurologist, evaluated appellant at the request of her attending physician. He noted that the truck that she was driving on May 8, 2009 rolled over. Dr. Bhothinard discussed appellant's current complaints of shaking over her whole body. He opined that she was demonstrating "considerable amount of psychological overlay with the convulsion reaction." In a duty status report dated June 3, 2009, Dr. Bhothinard opined that appellant required a release from a psychiatrist prior to resuming work.

A magnetic resonance imaging (MRI) scan study of the lumbar spine showed a broad-based disc herniation extending into the neural foramina causing moderate narrowing on the left and moderate compression of the left exiting nerve roots.

In a report dated June 4, 2009, Dr. Peter Somers, Board-certified in family medicine, related that he initially diagnosed low back pain and muscle spasm following appellant's work injury and found that she should remain off work for one week. When appellant experienced increased pain, he referred her to a neurologist who diagnosed a psychosomatic condition. In a form report dated July 1, 2009, Dr. Somers diagnosed a disc bulge at L4-5 and constant shaking. He found that appellant was partially disabled. In a duty status report of the same date, Dr. Somers advised that she was unable to perform her job duties.<sup>3</sup>

On July 6, 2009 Dr. Aaron Koonce, a Board-certified neurologist, evaluated appellant for back pain, numbness and a tremor. He reviewed the history of her motor vehicle accident. On examination Dr. Koonce found a "melodramatic" examination. He diagnosed paresthesia and lumbar disc displacement. Dr. Koonce found that appellant's condition was psychosomatic.<sup>4</sup>

By decision dated September 14, 2009, OWCP denied appellant's claim for compensation beginning June 29, 2009.

In letters dated September 16, 2009, OWCP requested that Dr. Bhothinard, Dr. Koonce and Dr. Paul Santiago, a Board-certified neurosurgeon, discuss whether appellant had continued findings of lumbar strain or any other condition due to her May 8, 2009 employment injury. It further requested that the physicians address whether she could return to her usual employment.

---

<sup>2</sup> At the time of her injury, appellant worked one day per week.

<sup>3</sup> In a duty status report dated August 19, 2009, Dr. Somers found that appellant was not able to work.

<sup>4</sup> An electromyogram obtained on July 16, 2009 revealed normal findings.

In a report dated September 21, 2009, Dr. Santiago reviewed appellant's history of a motor vehicle accident with low back pain radiating into both sides. He diagnosed post-traumatic lumbar strain and polyradiculopathy. Dr. Santiago stated, "If indeed [appellant] did suffer significant lumbar strain or traumatic injury to her nerve roots, this may take years to improve to a tolerable level."

In a report dated September 29, 2009, Dr. Koonce noted that appellant overturned her vehicle into a ditch on May 8, 2009 when she swerved to avoid an animal.<sup>5</sup> He related that a neurological examination yielded no abnormal findings. Dr. Koonce diagnosed a conversion disorder and stated:

"While there may be no definite physical explanation for [appellant's] symptoms and no reason that [she] could not return to her duties based upon [the] lack of physical findings, the conversion disorder can certainly in and of itself be disabling. Therefore, it is entirely possible based upon these psychological facts [she] may not be able to return to work unless these issues are addressed by a mental health professional."

By letter dated November 30, 2009, OWCP referred appellant to Dr. James T. Galyon, a Board-certified orthopedic surgeon, for a second opinion examination. On December 31, 2009 Dr. Galyon noted that she was not wearing her seat belt at the time of her May 8, 2009 motor vehicle accident because she "could not reach across to the mailboxes while wearing her seatbelt." On examination he found a mildly positive straight leg raise and tenderness over the sciatic notch of the left leg. Dr. Galyon determined that an MRI scan study showed a disc herniation compression on the left nerve root. He recommended evaluation by a neurosurgeon to determine whether appellant required surgery. Dr. Galyon diagnosed a herniated disc at L4-5 with left nerve root compression. He stated:

"I do believe that the findings are causally related to the motor vehicle accident. [Appellant] denies having had any previous back problems consistent with this. The mechanism would be that she was thrown about in the truck as it left the highway and [slid] into a ditch. [Appellant] was unrestrained in the driver's seat for reasons already explained.

"I do not believe that [appellant] will be able to return to work as a rural mail carrier eight hours per day because sitting in a truck leaning from one side to the other to deliver mail would aggravate her problem. I do believe that she needs to have neurosurgical attention to be able to return to her regular work. [Appellant] is currently unable to perform that type of work. The work restrictions would be prolonged sitting, prolonged standing, reaching to the right or the left and nor driving while taking any form of pain medication."

---

<sup>5</sup> On October 29, 2009 Dr. Benjamin H. Soeter, a Board-certified anesthesiologist, diagnosed a lumbar herniated disc and recommended injection. He continued to provide pain management services for appellant.

On January 26, 2010 OWCP expanded acceptance of appellant's claim to include a ruptured lumbar disc. On February 27, 2010 appellant accepted a modified position with the employing establishment.

On September 23, 2010 appellant requested reconsideration of the September 14, 2009 decision. She asserted that she could not work from May 8, 2009 until February 2010 and that the employing establishment did not offer her limited duty during this time.

By decision dated November 5, 2010, OWCP denied modification of its September 14, 2009 decision. It found that appellant's attending physician had not provided a reasoned opinion that she was unable to return to work. OWCP further determined that Dr. Galyon found that she could perform modified employment and that the employing establishment indicated that such work was available.

On appeal, appellant argues that from June 29, 2009 through February 10, 2010 her attending physician did not release her to return to work. She maintains that the employing establishment did not offer her modified duty until February 11, 2010.

### **LEGAL PRECEDENT**

The term disability as used in FECA<sup>6</sup> means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>7</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>8</sup> When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>9</sup> 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 employee's to self-certify their disability and entitlement to compensation.<sup>10</sup>

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.<sup>11</sup> While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that

---

<sup>6</sup> 5 U.S.C. § 8101 *et seq.*; 20 C.F.R. § 10.5(f).

<sup>7</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>11</sup> *Vanessa Young*, 55 ECAB 575 (2004).

justice is done.<sup>12</sup> Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.<sup>13</sup>

### ANALYSIS

OWCP accepted that appellant sustained lumbar strain due to a May 8, 2009 motor vehicle accident. Appellant filed a claim for compensation commencing June 29, 2009. On November 30, 2009 OWCP referred her for a second opinion examination with Dr. Galyon. In a report dated December 31, 2009, Dr. Galyon diagnosed a disc herniation at L4-5 compressing against the left nerve root as a result of the May 8, 2009 motor vehicle accident. He found that appellant was disabled from her usual employment pending surgery and provided work restrictions. Based on Dr. Galyon's opinion, OWCP expanded acceptance of the claim to include a ruptured herniated disc.

As discussed, proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.<sup>14</sup> Further, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do in a manner that will resolve the relevant issues in the case.<sup>15</sup> Dr. Galyon did not specifically address whether appellant was disabled from June 29, 2009 until the time of his evaluation, however, his opinion supports that she experienced disability following her motor vehicle accident. As OWCP sought the opinion of him, it has the responsibility to obtain an opinion that adequately addresses the relevant issues.<sup>16</sup> On remand, it should request that Dr. Galyon provide a supplemental report regarding appellant's ability to work from June 29, 2009 through the time of his examination.<sup>17</sup>

After this and any other further development that OWCP deems necessary, it should issue a *de novo* decision.

### CONCLUSION

The Board finds that the case is not in posture for decision.

---

<sup>12</sup> *Richard E. Simpson*, 55 ECAB 490 (2004).

<sup>13</sup> *Melvin James*, 55 ECAB 406 (2004).

<sup>14</sup> *Jimmy A. Hammons*, 51 ECAB 219 (1999).

<sup>15</sup> *See Melvin James*, *supra* note 13.

<sup>16</sup> *Id.*; *see also Peter C. Belkind*, 56 ECAB 580 (2005).

<sup>17</sup> There is no evidence that the employing establishment offered appellant modified employment during the relevant time period.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 5, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: December 20, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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