

FACTUAL HISTORY

On March 6, 2008 appellant, then a 46-year-old administrative supervisor, filed a traumatic injury claim alleging that on that day she sustained an aggravation of her neck and shoulder pain due to her employment duties. OWCP accepted her claim for neck sprain, right brachial neuritis or radiculitis and aggravation of closed dislocation of fourth through seventh cervical discs on November 18, 2008.²

On November 25, 2008 Dr. Haroon S. Hyder, a treating Board-certified family practitioner, reported seeing appellant on March 10, 2008 for complaints of right shoulder pain radiating into her arm and numbness. A magnetic resonance imaging (MRI) scan revealed disc protrusions at C4-5 and C6-7 with spinal cord impingement at C5-6. Appellant underwent anterior cervical discectomy and fusion surgery on April 8, 2008. Dr. Hyder attributed her condition to the duties of her position which included filing and carrying heavy charts, pulling, twisting and bending. He related that appellant, due to her chronic pain, had an x-ray interpretation of her lower back on June 16, 2008 and that an MRI scan revealed an L4-5 herniated disc. Dr. Hyder opined that “the extraneous nature of her job may have led to the disc herniation” and that she would be set up for surgery with Jackson B. Salvant, Jr.

On December 4, 2008 appellant filed a claim for wage-loss compensation (Form CA-7) for the period June 2 to November 22, 2008 claiming 379 hours.

On December 12, 2008 OWCP received medical evidence from Dr. Hyder and Dr. Salvant, a treating Board-certified neurological surgeon. In an October 21, 2008 report, Dr. Salvant provided physical findings and diagnosed lumbar/thoracic radiculitis. In a November 25, 2008 disability slip, Dr. Hyder, requested that appellant be excused from work beginning November 20, 2008 due to chronic health issues. In a December 1, 2008 progress note, Dr. Salvant diagnosed an L4-5 disc herniated and that appellant was seen to review her upcoming surgery.

In a December 4, 2008 report, Dr. Salvant noted appellant’s history and that she has been under both his care and that of Dr. Hyder since March 2008. He related that she underwent anterior cervical discectomy surgery on April 8, 2008 and that she has been disabled from work since that time. Dr. Salvant opined that appellant’s work duties of carrying heavy charts, bending, twisting, pushing and pulling significantly aggravated and caused progressive deterioration of her lumbar and cervical spine. In a December 4, 2008 disability certificate, he indicated that she was totally disabled beginning December 9, 2008. Dr. Salvant related that appellant was scheduled for back surgery on December 9, 2008 and was expected to be off work for four to six weeks.

By letter dated January 30, 2009, OWCP noted that appellant underwent two surgical procedures and that neither had been approved. It requested her to submit medical evidence showing how these surgeries were causally related to her accepted conditions.

² By letter dated July 2, 2009, appellant was approved by the Office of Personnel Management for disability retirement benefits.

In a February 24, 2009 letter, appellant noted that she has had a lot of back pain since March 6, 2008 and requested that her claim be expanded to include the additional conditions noted by Drs. Hyder and Salvant.

In a February 25, 2009 report, Dr. Salvant noted appellant's date of injury as March 6, 2008 and that her claim has been accepted for conditions including brachial neuritis. He noted that she underwent cervical surgery on April 8, 2008 and lumbar surgery on December 9, 2008. Dr. Salvant related that the December 9, 2008 surgery was necessitated by appellant's severe leg and back pain which had been caused by "her work activities and certainly could have been aggravated by them." It was appellant's belief that both her cervical and lumbar conditions were related to her March 2008 employment injury. Dr. Salvant stated that "[w]e have clearly diagnosed both cervical and lumbar disc conditions producing radiculitis," and subsequent surgery.

OWCP received additional claims for wage-loss compensation and time analysis forms from appellant for the period November 24, 2008 through April 10, 2009. It also received a January 15, 2009 progress note from Dr. Salvant diagnosing back pain and status post lumbar surgery.

In a May 15, 2009 report, Dr. Lawrence A. Manning, an OWCP medical adviser, reviewed the statement of accepted facts and opined that the April 8, 2008 surgery was directly related to the accepted conditions. He concluded that appellant's disability from the surgery should have resolved within three months when she could return to sedentary/light-duty work.

OWCP received appellant's claim for wage-loss compensation and time analysis form for the period April 13 to May 22, 2009 and an April 23, 2009 disability note from Dr. Salvant indicating that she was totally disabled for the period April 1 through July 1, 2009.

Subsequently OWCP authorized the cervical surgery which occurred on the April 8, 2008 and paid wage-loss compensation for the period June 2 through October 8, 2008.

In a June 15, 2009 report, Dr. Steven C. Blasdel, a second opinion Board-certified orthopedic surgeon, performed a physical examination and reviewed a statement of accepted facts and medical evidence. Diagnoses included status post C5-7 anterior cervical discectomy and fusion; status post L4-6 endoscopic discectomy; cervical and lumbar osteoarthritis; and chronic back and neck pain behavior. A physical examination revealed 50 percent restricted cervical extension and flexion; 2+ upper extremity reflexes, no upper extremity atrophy; no lumbar spasm or tenderness, negative bilateral straight-leg raising and five degrees back extension. In response to the questions posed by OWCP, Dr. Blasdel indicated that appellant should have recovered from her April 8, 2008 surgery within six months. He opined that her lumbar condition was preexisting and unrelated to the original accepted conditions. Thus, it was Dr. Blasdel's finding that the December 9, 2008 lumbar surgery was unrelated to appellant's accepted conditions. In concluding, he stated that she was capable of returning to work with permanent restrictions.

By decision dated August 13, 2009, OWCP denied appellant's claim for wage-loss compensation on and after October 9, 2008. It found that the December 9, 2008 back surgery

was not causally related to her accepted conditions based on the reports from Drs. Manning and Blasdell.

On June 28, 2010 appellant requested reconsideration and submitted evidence in support of her request.

In a March 31, 2009 report, Dr. Hyder noted treatment by both himself and Dr. Salvant. An MRI scan revealed disc protrusions at C4-5 and C6-7 with spinal cord impingement at C5-6. Appellant underwent anterior cervical discectomy and fusion surgery on April 8, 2008 and lumbar surgery on December 9, 2008. Dr. Hyder attributed her condition to the duties of her position which included filing and carrying heavy charts, pulling, twisting and bending. He related that the stress from appellant's employment duties put great stress on her cervical region.

In a February 22, 2010 report, Dr. Salvant noted that appellant underwent both cervical and lumbar disc surgery and that she has been disabled from working since then. He stated that her chronic residual problems including chronic back and neck problems, cervical fusion, cervical myelopathy, lumbar disc surgery and lumbar radiculopathy have caused her to be totally disabled from working.

In a March 18, 2010 progress note, Dr. Hyder provided physical findings with decreased lumbar range of motion. Diagnoses included: disc disorder, back pain and hypertension.

In a March 31, 2010 report, Dr. J. Michael Simpson, an examining physician, diagnosed degenerative lumbar disc disease with likely developing L4-5 instability and mechanical back pain issues.

In an unsigned March 31, 2009 report, diagnoses included: herniated cervical disc, L4-5 herniated lumbar disc, cervical spinal stenosis and depression. It was concluded that appellant had permanent work restrictions and that it was difficult to assess a recovery date due to her erratic medical condition.

By decision dated September 1, 2010, OWCP denied modification. It found that the medical evidence was insufficient to establish that any disability on and after October 9, 2008 was causally related to appellant's accepted conditions. OWCP also found the evidence insufficient to establish that her lumbar condition and surgery on December 9, 2008 had been caused or aggravated by her employment.

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

³ 5 U.S.C. §§ 8101-8193.

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

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.

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factor(s).¹⁰ The opinion of the physician must be based on a complete factual and medical background, 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.¹¹

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.¹²

ANALYSIS

On November 18, 2008 OWCP accepted the conditions of neck sprain, right brachial neuritis or radiculitis and aggravation of closed dislocation of fourth through seventh cervical discs and subsequently authorized cervical surgery, which occurred on April 8, 2008. Appellant

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 *A.D.*, 58 ECAB 149 (2006).

¹¹ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

¹² See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

received wage-loss compensation for the period June 2 through October 8, 2008. She claimed compensation for October 9, 2008 to May 22, 2009 and it is her burden of proof to establish the claimed period of employment-related disability. When determining whether appellant's burden of proof has been met, the Board considers factors such as whether there are objective findings, a thorough understanding of the job duties by the physician, a firm diagnosis and a rationalized, unequivocal opinion that she was disabled due to the employment injury for the period claimed.¹³ Appellant has not met her burden of proof in this case.

As previously stated, for each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.¹⁴ In this case, appellant did not meet her burden of proof because she submitted insufficient medical evidence explaining why she was disabled during the relevant time periods and why the claimed disability was causally related to her accepted conditions of neck sprain, right brachial neuritis or radiculitis and aggravation of closed dislocation of fourth through seventh cervical discs.

Appellant provided medical reports from Drs. Hyder and Salvant in support of her claim. In a November 25, 2008 report, Dr. Hyder diagnosed chronic pain and opined that her L4-5 herniated disc may have been caused by her job duties. He, in a November 25, 2008 disability slip, requested that appellant be excused from work due to chronic health issues beginning November 20, 2008. In a March 31, 2009 report, Dr. Hyder related that appellant underwent cervical surgery on April 8, 2008 and lumbar surgery on December 9, 2008. He opined that her conditions were due to the stress her work duties put on her spinal cord. In a March 18, 2010 progress note, Dr. Hyder diagnosed disc disorder, back pain and hypertension and reported decreased lumbar range of motion. While he has provided an opinion supporting appellant's claim for disability, he failed to provide any supporting rationale. In addition, OWCP has not accepted any lumbar condition as work related. Moreover, Dr. Hyder failed to sufficiently address why appellant was unable to work on and after October 9, 2008 or how her diagnosed lumbar condition had been caused or aggravated by her accepted condition. The only explanation provided by him is that her work duties put stress on her spinal cord. This explanation is conclusory and contains no medical reasoning explaining any causal relationship between appellant's lumbar condition, her disability and her accepted cervical conditions. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.¹⁵ Thus, Dr. Hyder's reports are insufficient to support appellant's claim her disability on and after October 9, 2008 was employment related.

In an October 21, 2008 report, Dr. Salvant diagnosed lumbar thoracic radiculitis. He reported seeing appellant on December 1, 2008 to review her upcoming surgery for her L4-5 herniated disc. On December 4, 2008 Dr. Salvant opined that her work duties aggravated her preexisting cervical and lumbar condition and indicated that she was totally disabled from

¹³ *V.M.*, Docket No. 10-1056 (issued December 16, 2010); *see L.D.*, Docket No. 09-1503 (issued April 15, 2010); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁴ *See Pruitt id.*

¹⁵ *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

working beginning December 9, 2008. He, in a February 25, 2009 report, related that appellant's December 9, 2008 surgery was due to her severe leg and pack pain which were a result of her work activities. Dr. Salvant also noted that it was certainly probable that her work activities aggravated her condition. In concluding, he diagnosed cervical and lumbar condition, which required subsequent surgery. On February 22, 2010 Dr. Salvant opined that appellant has been disabled from working since her cervical and lumbar surgeries. Diagnoses included: chronic residual problems including chronic back and neck problems, cervical fusion, cervical myelopathy, lumbar disc surgery and lumbar radiculopathy have caused her to be totally disabled from working. As noted above, OWCP has not accepted any lumbar condition as work related. None of the reports provided by Dr. Salvant to sufficiently address why appellant was unable to work on and after October 9, 2008 or how her diagnosed lumbar condition had been caused or aggravated by her accepted condition. The only explanation provided by him is that her lumbar condition was a result of her work duties. This explanation is conclusory and contains no medical reasoning explaining any causal relationship between appellant's lumbar condition, her disability and her accepted cervical conditions. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.¹⁶ Thus, Dr. Salvant's reports are insufficient to support appellant's claim that her disability on and after October 9, 2008 was employment related.

Drs. Hyder and Salvant failed to provide any medical basis for appellant's claimed disability for work after October 8, 2008. It appears that appellant's disability after October 8, 2008 was due to her lumbar condition and surgery on December 9, 2008. Neither physician has provided a rationalized opinion explaining how her lumbar condition was caused or aggravated by her work duties. They both opine that her lumbar condition was caused by her work duties without provide any rationale or explanation.

On March 31, 2010 Dr. Simpson diagnosed degenerative lumbar disc disease. He did not address whether the cause of appellant's condition or her ability to work. The Board finds that Dr. Simpson's report is insufficient to support appellant's claim as he offered no opinion regarding the cause of her condition or whether she was able to work.¹⁷

The record also contains reports from Dr. Manning, an OWCP medical adviser, and Dr. Blasdell, who both concluded that appellant's lumbar condition and resulting surgery on December 9, 2008 were unrelated to her accepted conditions of neck sprain, right brachial neuritis or radiculitis and aggravation of closed dislocation of fourth through seventh cervical discs and cervical fusion surgery. They also concluded that her disability from her cervical surgery would have resolved within three to six months. Dr. Blasdell related that appellant's lumbar condition was preexisting and unrelated to the accepted conditions.

For the reasons set forth above, the Board finds that appellant has failed to meet her burden of proof in establishing that her disability on and after October 9, 2008 was causally

¹⁶ *Id.*

¹⁷ *See A.D.*, 58 ECAB 149 (2006) (the Board has long held that has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

related to her accepted employment conditions of neck sprain, right brachial neuritis or radiculitis and aggravation of closed dislocation of fourth through seventh cervical discs and cervical fusion surgery.

On appeal, appellant's representative contends that appellant's condition is more extensive than that accepted by OWCP and that the medical reports from her physicians establish her disability due to work conditions. As noted above, none of the medical reports from appellant's physicians are sufficient to support her contention that her employment related condition should be expanded to include a lumbar condition and lumbar surgery on December 9, 2008. None of her physicians provided a rationalized opinion explaining how appellant's lumbar condition and resultant disability were employment related. In addition, both Drs. Manning and Blasdell provided opinions negating any causal relationship between appellant's lumbar condition and her employment.

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 meet her burden of proof to establish an employment-related disability from October 9 to May 22, 2009.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 1, 2010 is affirmed.

Issued: September 28, 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