

heavy boxes containing documents.² She filed claims for wage loss for intermittent periods beginning November 29, 2005.³ On March 25, 2009 OWCP advised appellant's to submit additional factual and medical evidence to support her disability claim.

On January 20, 2006 appellant underwent computerized tomography testing of her right ribs which revealed nondisplaced fractures of the 10th and 11th ribs. A magnetic resonance imaging (MRI) scan study performed on February 2, 2006 showed findings of right-sided small extruded T6-7 disc herniation, small central T7-8 disc herniation as well as left-sided T8-9 disc herniation. An MRI scan study of the lumbosacral spine from this period revealed L3-4 and L4-5 disc bulges.

On February 21, 2007 appellant was examined by Dr. Nancy E. Epstein, an attending Board-certified neurosurgeon. She noted that appellant developed intermittent exacerbations and remissions of appellant's symptoms due to lifting boxes.

The record contains medical reports dated March 23 and June 12, 2007 from Dr. Philippe Vaillancourt, an attending Board-certified pain management physician, who described the pain management treatment he provided and stated that prolonged periods of sitting might aggravate appellant's mid back pain. He further noted that she required a modified work schedule for approximately six weeks.

OWCP referred appellant for additional evaluation by Dr. Edward M. Weiland, a Board-certified neurologist. On March 28, 2008 Dr. Weiland noted that, although she experienced mid-thoracic and upper lumbar paravertebral muscle pain and spasm while performing her work duties in November 2005, she did not seek medical treatment until one month after the reported symptoms. He stated that the causal relationship between appellant's rib fractures and employment factors could not be clearly identified. Dr. Weiland concluded that she was not disabled from a neurological standpoint and stated that there was no reason she could not return to her regular job for the employing establishment without restrictions.

In order to resolve the conflict in medical opinion regarding the extent of her disability, appellant was referred to Dr. William Healy, a Board-certified orthopedic surgeon, for an impartial medical examination. In an August 14, 2008 report, Dr. Healy opined that her mid and low back pain and degenerative disc disease might have been aggravated by lifting at work. He stated that he could not relate appellant's rib fractures to her employment factors as the forces required to cause a rib fracture would have been much more significant than those she experienced at work. Dr. Healy opined that he could not presently find any evidence of thoracic or lumbosacral neuritis or radiculitis. He felt that there were findings of degenerative disc disease and herniation in the thoracic and lumbar spine that were aggravated by lifting at work. Dr. Healy indicated that appellant could return to some kind of light-duty work.

² Appellant indicated that she first became aware of her claimed condition and its relation to work factors in November 2005.

³ Appellant intermittently used sick and annual leave during this period.

In medical reports dated September 12 and November 4, 2008, Dr. Jeffrey Schwartz, an attending Board-certified neurosurgeon, noted that appellant was unable to work due to degenerative disc disease of her thoracic and lumbar spine.

In a June 25, 2009 decision, OWCP denied appellant's claim that she had disability on or after November 29, 2005 due to her accepted work injuries. It indicated that the weight of the medical evidence with respect to this matter rested with the well rationalized August 14, 2008 report of Dr. Healy, the impartial medical specialist. As a result of Dr. Healy's report, OWCP accepted appellant's claim for work-related aggravation of her thoracic and lumbar disc degeneration and displacement without myelopathy.

Appellant requested reconsideration of her claim and submitted additional medical reports describing the treatment of the degenerative disc disease of her thoracic and lumbar spine.

In an August 27, 2010 decision, OWCP affirmed its June 25, 2009 decision, finding that the weight of the medical evidence regarding work-related disability continued to rest with the opinion of Dr. Healy.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable 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.⁶

Section 8123(a) of FECA provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁷ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial

⁴ *Supra* note 1.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁷ 5 U.S.C. § 8123(a).

medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.⁸ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁹

In a situation where OWCP secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, OWCP has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.¹⁰

ANALYSIS

OWCP accepted that appellant, then a 49-year-old securities compliance examiner, sustained thoracic or lumbosacral neuritis or radiculitis due to lifting heavy boxes containing documents. Appellant filed claims for wage loss for intermittent periods beginning November 29, 2005. OWCP denied her claim for work-related disability for periods on and after November 29, 2005 based on the August 14, 2008 opinion of Dr. Healy, a Board-certified orthopedic surgeon, who served as an impartial medical specialist. It found that Dr. Healy supported a work-related aggravation of her thoracic and lumbar disc degeneration and displacement without myelopathy, but did not support the claim of disability for work.

OWCP properly determined that there was a conflict in the medical opinion between appellant's attending physicians and Dr. Weiland, a Board-certified neurologist acting as OWCP's referral physician, regarding the extent of her work-related disability on or after November 29, 2005. In order to resolve the conflict, it properly referred appellant to Dr. Healy, pursuant to section 8123(a) of FECA, for an impartial medical examination and an opinion on the matter.

In an August 14, 2008 report, Dr. Healy stated that he could not relate appellant's rib fractures to employment factors as the forces required to cause a rib fracture would have been much more significant than those appellant experienced at work. Although he opined that he could not presently find any evidence of thoracic or lumbosacral neuritis or radiculitis, he determined that the degenerative disc disease and herniation in the thoracic and lumbar spine were aggravated by lifting at work.¹¹ As noted OWCP relied on Dr. Healy's report to accept these conditions as work related.

OWCP relied on Dr. Healy's August 14, 2008 report to find that appellant did not establish disability for intermittent periods on or after November 29, 2005 due to her accepted work injuries. The Board notes that Dr. Healy did not provide a clear opinion regarding whether

⁸ *William C. Bush*, 40 ECAB 1064, 1975 (1989).

⁹ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

¹⁰ *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232, 238 (1988).

¹¹ Dr. Healy indicated that appellant could return to some kind of light-duty work.

she had work-related disability for any claimed intermittent periods from work. Further, clarification of his opinion is necessary given that OWCP accepted the aggravation of thoracic and lumbar disc degeneration and displacement. Dr. Healy did not describe in detail the effects of the work-related conditions over time since November 29, 2005. In addition, he did not clearly address whether appellant's work-related thoracic or lumbosacral neuritis or radiculitis caused disability for any period on or after November 29, 2005.

For these reasons, the opinion of Dr. Healy requires clarification regarding appellant's work-related disability on or after November 29, 2005. The case will be remanded to OWCP for referral of the case record, an updated statement of accepted facts and, if necessary, appellant, to Dr. Healy for a supplemental report regarding the extent of work-related disability. After such further development as OWCP deems necessary, an appropriate decision should be issued regarding the extent of appellant's work-related disability on or after November 29, 2005.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant had disability for intermittent periods on or after November 29, 2005 due to her accepted work injuries.

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2010 decision of the Office of Workers' Compensation Programs is affirmed, in part. The case is set aside on the issue of disability and remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 8, 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