

was due to her federal employment. OWCP accepted the claim for lumbar sprain and chronic pain syndrome.

On July 6, 2011 appellant filed a claim for wage-loss compensation for the period June 27 to 30, 2011.

A June 27, 2011 emergency report from Dr. Jonathan R. Virkler, an examining physician, and Dr. Vincent James Lloyd, a supervising Board-certified emergency room physician, provided physical findings and a diagnosis of acute exacerbation of chronic low back pain. Appellant's chief complaint on arrival at the emergency room was back pain. She related that she was due for an epidural injection as it had been a while since her last injection. The report stated that appellant requested an epidural injection and an excuse for work. Drs. Virkler and Lloyd stated that she had no symptoms concerning for cauda equina syndrome. Appellant was informed that an epidural injection would not be performed.

The record also contains a June 27, 2011 physician's discharge summary from Palmetto Health providing instructions for dealing with back pain and a June 27, 2011 disability note signed by C. Bryant, RN. The disability note stated that appellant was disabled from work for the period June 27 to 29, 2011.

In correspondence dated July 18, 2011, OWCP informed appellant that the evidence of record was insufficient to support her claim for wage-loss compensation for the period June 27 to 29, 2011. Appellant was advised as to the medical and factual evidence required to support her claim and given 30 days to provide the requested information.

Appellant responded in a July 21, 2011 letter that she was not submitting any further information as the evidence she submitted was sufficient to establish her claim for wage-loss compensation.

By decision dated August 22, 2011, OWCP denied appellant's claim for wage loss for the period June 27 to 30, 2011 on the grounds that the medical evidence failed to support employment-related disability for the claimed period.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his claim by the weight of the evidence.³ 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.⁴ Whether a particular injury causes an employee to become

² *Id.* at §§ 8101-8193.

³ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁴ See *Amelia S. Jefferson*, *supra* note 3; see also *David H. Goss*, 32 ECAB 24 (1980).

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.⁵

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.⁶ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁷ 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.⁸ 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).⁹ 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.¹⁰

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.¹¹

ANALYSIS

OWCP accepted appellant’s claim for lumbar sprain and chronic pain syndrome. Appellant claimed wage-loss compensation for the period June 27 to 30, 2011. OWCP advised her by letter dated July 18, 2011 as to the type of medical evidence to submit to support her claim for disability on the days in question. Appellant responded by letter dated July 21, 2011

⁵ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁶ *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).

⁷ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁸ *Merle J. Marceau*, 53 ECAB 197 (2001).

⁹ *A.D.*, 58 ECAB 149 (2006).

¹⁰ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

¹¹ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

stating that she did not intend to submit any further evidence as the evidence she had submitted was sufficient to establish her claim.

OWCP is not required to pay wage-loss compensation in the absence of medical evidence documenting disability for the dates claimed.¹² In support of her claim for disability, appellant submitted a June 27, 2011 emergency report signed by Dr. Virkler, an examining physician, and Dr. Lloyd, a supervising Board-certified emergency room physician, a June 27, 2011 physician's discharge summary from Palmetto Health and a June 27, 2011 disability note signed by C. Bryant, RN. The June 27, 2011 discharge summary from Palmetto Health and emergency room report by Drs. Virkler and Lloyd contain no finding as to why she was disabled. As such, these reports are of no probative medical value in establishing that appellant was disabled from June 27 to 30, 2011 due to the accepted employment injury. The disability noted from Mr. Bryant is also insufficient to support her claim. Nurses' reports are of no probative medical value as nurses are not physicians under FECA.¹³

Appellant has not met her burden of proof as she failed to submit probative medical evidence establishing that her claimed disability for the period June 27 to 30, 2011 was causally related to her accepted employment injuries of lumbar sprain and chronic pain syndrome.

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 has not established that she is entitled to wage-loss compensation for the period June 27 to 30, 2011.

¹² *Amelia S. Jefferson*, *supra* note 3; *Fereidoon Kharabi*, *supra* note 11.

¹³ A nurse is not considered a physician, as that term is defined under 5 U.S.C. § 8101(2). *See B.B.*, Docket No. 09-1858 (issued April 16, 2010); *G.G.*, 58 ECAB 389 (2007); *Roy L. Humphrey*, 57 ECAB 238 (2005). *See also Paul Foster*, 56 ECAB 208 (2004) (a nurse practitioner is not a "physician" pursuant to FECA).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 22, 2011 is affirmed.

Issued: April 11, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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