



## **FACTUAL HISTORY**

This case was previously before the Board.<sup>2</sup> Appellant's April 23, 2004 claim for compensation was accepted by OWCP on August 10, 2006 for displacement of a lumbar intervertebral disc with myelopathy and degeneration at L5-S1 with disc bulging and narrowing at L4-5. In an April 16, 2009 decision, the Board found that he did not meet his burden of proof to establish that he was totally disabled as of July 21, 2005.<sup>3</sup> The Board determined that the opinion of the attending physician, Dr. Christopher B. Ryan, Board-certified in physical medicine and rehabilitation, was not sufficiently rationalized on how appellant's accepted condition rendered him totally disabled from performing the light-duty position of equipment operator.<sup>4</sup> The facts of the claim, as set forth in the Board's prior decision, are incorporated by reference.

The record reflects that appellant also filed a claim, File No. xxxxxx905, which was accepted on March 27, 2007 for an aggravation of post-traumatic stress disorder. Under that claim, the record contains a FECA supplemental rolls payment sheet that notes a retroactive payment of wage-loss compensation to appellant covering the period July 23, 2005 to May 12, 2007. Effective June 7, 2008, OWCP suspended wage-loss benefits under that claim because it suspected that appellant might be receiving a dual benefit from the Department of Veterans Affairs due to a service-connected psychiatric disorder (schizophrenia). On June 24, 2008 it granted a schedule award for 14 percent impairment of the left lower extremity. The period of the award covered 40.32 weeks from March 18 to December 25, 2008.

On December 31, 2009 appellant's counsel requested reconsideration. Appellant submitted a December 29, 2009 report from Dr. Ryan, who stated that appellant should not have been performing his job duties prior to his retirement and should never perform those duties again. Dr. Ryan found appellant to be disabled as of July 22, 2005 and stated that he would be disabled from performing work the rest of his life. It was his understanding that appellant's modified equipment operator job accommodated psychiatric factors and did not result in any changes in the physical demands of the position.

In a February 5, 2010 decision, OWCP denied reconsideration on the basis that the December 31, 2009 request was untimely and failed to establish clear evidence of error. It subsequently vacated the February 5, 2010 decision as appellant's request had been made within one year of the Board's April 16, 2009 decision.<sup>5</sup>

By decision dated May 11, 2010, OWCP noted the accepted lumbar and emotional condition claims and found that the modified duty effective February 10, 2004 was designed for

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<sup>2</sup> Docket No. 08-1927 (issued April 16, 2009).

<sup>3</sup> Appellant retired on disability as of July 22, 2005. Following acceptance of his lumbar condition, he filed a claim for wage loss commencing July 21, 2005.

<sup>4</sup> On September 17, 2009 the Board issued an order denying appellant's petition for reconsideration.

<sup>5</sup> Because appellant filed his December 31, 2009 request for reconsideration within one year of the Board's decision, the request was timely under 20 C.F.R. § 10.607(a).

his emotional condition with no indication that the employing establishment considered his physical limitations. The decision states: “[OWCP] approved total disability compensation under File No. xxxxxx905 for the psychiatric condition and FECA benefits were paid from July 22, 2005 to June 7, 2008 when benefits were suspended. Entitlement to disability benefits are [sic] being restored retroactively to June 8, 2008 under File No. xxxxxx905.” The claim remained denied for compensation on the basis that appellant was not disabled from all work but only from the date-of-injury job and that FECA compensation was not payable concurrently with benefits under the civil service or federal employees retirement systems.

Appellant requested reconsideration, contending that he need only demonstrate that he was disabled from performing his date-of-injury position, which OWCP already found to have been established.

By decision dated November 15, 2010, OWCP denied modification of the May 11, 2010 decision. It found that appellant was capable of performing full-time light-duty work, prior to his July 21, 2005 disability retirement and that his employer was willing and able to accommodate his partially disabled status with full-time light-duty work.

On January 11, 2011 counsel again requested reconsideration

In an April 7, 2011 decision, OWCP denied reconsideration without further merit review.

### **LEGAL PRECEDENT**

A claimant has the burden of establishing the essential elements of his claim, including that the medical condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> For wage-loss benefits, the claimant must submit medical evidence showing that the condition claimed is disabling.<sup>7</sup> The evidence submitted must be reliable, probative and substantial.<sup>8</sup> Benefits are available only while the effects of a work-related condition continue.<sup>9</sup> Compensation for wage loss due to disability is available for periods during which an employee’s work-related medical condition prevents him from earning the wages

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<sup>6</sup> 20 C.F.R. § 10.115(e) (2010); see *Tammy L. Medley*, 55 ECAB 182, 184 (2003). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician’s opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician’s opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant’s specific employment factors. *Id.*

<sup>7</sup> 20 C.F.R. § 10.115(f).

<sup>8</sup> *Id.* at § 10.115.

<sup>9</sup> *Id.* at § 10.500(a).

earned before the work-related injury.<sup>10</sup> The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.<sup>11</sup>

### ANALYSIS

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

Since the prior appeal, OWCP combined the case records of appellant's lumbar condition claim and his emotional condition claim under File No. xxxxxx043. The record pertaining to appellant's emotional condition claim contains evidence that on or about August 15, 2007 OWCP authorized wage-loss compensation from July 23, 2005 to May 12, 2007 in a retroactive payment. The Board is unable to confirm actual payment from the fiscal records in this case. If appellant received wage-loss compensation commencing July 23, 2005 under the emotional condition claim, he would not be entitled to such compensation under the present file concerning his accepted lumbar condition.

If appellant did not receive compensation for the period July 23, 2005 to June 30, 2007, the Board notes that OWCP's May 11, 2010 decision accepted that he was disabled from performing his regular mail handler duties and the modified equipment operator position he held as of the date of his disability retirement. OWCP noted that the medical evidence supported an inability to perform his duties as of April 2, 2004. Appellant continued to work until he retired effective July 22, 2005.

In a December 29, 2009 report, Dr. Ryan explained that, based on appellant's lumbar disc pathology, he should not have continued to work as a mail handler equipment operator for as long as he did. He explained that appellant opted for disability retirement in July 2005 because he could no longer stand the pain associated with his employment-related lumbar condition. According to Dr. Ryan, appellant's underlying lumbar disc pathology and associated pain prevented further activity. He concluded that appellant was disabled from performing his date-of-injury position as of July 22, 2005. Dr. Ryan provided a rationalized opinion regarding the causal relationship between appellant's lumbar condition and his employment and also explained how his condition precluded him from performing his assigned job duties on or after July 21, 2005. The Board finds it sufficiently rationalized to support appellant's claim of disability due to his accepted lumbar condition commencing July 22, 2005.

The Board will remand the case to OWCP for a merit decision that sets forth findings of fact and a statement of reasons as to appellant's entitlement to compensation as of July 21, 2005. OWCP should verify whether payment of wage loss was made to appellant under the emotional condition claim. After such further development of the record as necessary, it shall issue a *de novo* decision in order to protect appellant's right of appeal to the Board.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at § 10.501(a).

**CONCLUSION**

The Board finds that the case is not in posture for decision as to appellant's entitlement to wage-loss compensation commencing July 22, 2005 due to his accepted employment injuries.<sup>12</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 15, 2010 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded to OWCP for further action in conformance with this decision.

Issued: August 15, 2012  
Washington, DC

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

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

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

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<sup>12</sup> In light of the Board's disposition of the case on the merits, the April 7, 2011 decision denying reconsideration is rendered moot.