



in his job. OWCP accepted that he aggravated/exacerbated his lumbar degenerative disc condition and developed lumbar radiculopathy. Appellant stopped work on September 3, 2009 and did not return.

In a September 25, 2009 report, Dr. Constantine Bouchlas, a Board-certified physiatrist, advised that appellant presented with low back pain that had worsened over the previous two years. Appellant noted previous treatment at the employing establishment, a prior history of back problems and surgery for a left knee meniscal tear. Dr. Bouchlas related that appellant had recently stopped work, listing September 1, 2009 as the date of injury, although there was “no particular injury” and no physician had taken him off of work. He stated that an August 28, 2009 magnetic resonance imaging scan report found that appellant had arthritic changes in his low back that had been present for many years. Dr. Bouchlas advised that appellant continue with treatment at the employing establishment.

On July 1, 2010 appellant filed a Form CA-7 claim for wage-loss compensation for the period December 18, 2009 to July 1, 2010. In a July 12, 2010 letter, OWCP requested that appellant submit additional medical evidence to establish his disability for work during the period claimed.

With a July 29, 2010 cover letter, appellant’s attorney submitted a May 4, 2010 report from Dr. Samuel Joseph, Jr., a Board-certified orthopedic surgeon, and a July 13, 2010 functional capacity evaluation. Dr. Joseph stated that he treated appellant since December 2009 for exacerbation of lumbar degenerative disease at L3-4 with bilateral lumbar radiculopathy. He opined that the conditions were causally related to appellant’s daily job duties of loading and unloading multiple boxes weighing up to 70 pounds, pulling up flooring and working on hands and knees. Dr. Joseph advised that appellant’s condition was permanent and that surgery and epidural injections had been recommended. He opined that appellant should have sedentary restrictions with the ability to change positions as needed. Dr. Joseph stated that appellant could not lift 50- to 70-pound boxes and that precise lifting restrictions would require a functional capacity evaluation. On July 13, 2010 appellant underwent a functional capacity evaluation, which found that he was capable of working in a light classification level but not capable of working as a floor covering specialist, which was at the heavy classification level.

By decision dated August 24, 2010, OWCP denied the claim for wage-loss benefits from December 18, 2009 through July 10, 2010.

On August 27, 2010 appellant requested a telephonic hearing before an OWCP hearing representative, which was held on May 9, 2011. Appellant’s attorney argued that Dr. Joseph’s May 4, 2010 report established that appellant was unable to perform his job duties and that the functional capacity evaluation demonstrated that he was unable to perform the floor finishing duties of his position. He stated that appellant did not want to undergo surgery and continued to be treated. Appellant described his job duties. He last worked on September 3, 2009 and used leave until he filed his claim for wage loss beginning December 18, 2009. Appellant opined that he was unable to return to his job due to the strenuous nature of his position and his back pain. He indicated that the employing establishment had not offered any vocational rehabilitation services.

Following the hearing, OWCP received a May 23, 2011 response from the employing establishment, progress notes from the Bay Pines VA Health Care System pertaining to appellant's back treatment and copies of diagnostic tests. Heather Nichol of the employing establishment advised that, after appellant filed his claim, he stopped reporting to work. Appellant did not submit any medical documentation to the employer which would allow it to provide him a limited-duty job offer.

In a May 27, 2011 report, Dr. Gregory J. Smith, a Board-certified internist, advised that he has been appellant's physician for the past several years. He stated that appellant had been unable to perform his duties as a floor installation specialist since a September 2009 injury. Appellant had advanced degenerative arthritis in both the cervical and lumbar areas, as well as arthritic knee pain. Dr. Smith opined that appellant should no longer be doing floor covering work or any other work that required heavy lifting, frequent bending, stooping or kneeling.

By decision dated July 22, 2011, an OWCP hearing representative affirmed the August 24, 2010 decision.

### **LEGAL PRECEDENT**

For each period of disability claimed, an employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>6</sup> An employee who has a physical impairment causally related to his 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.<sup>7</sup> When, however, the medical evidence establishes that the residuals or sequelae of an

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<sup>2</sup> See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *David H. Goss*, 32 ECAB 24 (1980).

<sup>3</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>4</sup> See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>5</sup> *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).

<sup>6</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>7</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wages.

### ANALYSIS

OWCP accepted appellant's claim for aggravation of lumbar degenerative disc disease and lumbar radiculopathy. Appellant stopped work on September 3, 2009 and filed a claim for wage-loss compensation from December 18, 2009 to July 1, 2010. It is his burden of proof to establish the claimed period of employment-related disability. On July 12, 2010 OWCP advised appellant of the evidence needed to establish his claim. The Board finds that he did not submit sufficient medical evidence to establish that his disability beginning December 18, 2009 was causally related to his accepted conditions. Appellant did not submit a narrative medical report from a treating physician to explain how his disability was related to the accepted employment-related conditions.

Dr. Joseph opined that appellant's exacerbation of lumbar degenerative disease at L3-4 with bilateral lumbar radiculopathy was causally related to his daily job duties of loading and unloading multiple boxes weighing up to 70 pounds, pulling up flooring and working on hands and knees. He stated that appellant's condition was permanent and recommended surgery and epidural injections. Dr. Joseph stated that appellant could not lift 50- to 70-pound boxes and opined that he should have sedentary restrictions with the ability to change position as needed. A July 13, 2010 functional capacity evaluation confirmed that appellant was capable of working in a light classification level but not capable of working in his current position as a floor covering specialist as it was at the heavy classification level. While Dr. Joseph was of the general opinion appellant could not perform his current position because of his work-related conditions, he did not address the specific dates of disability claimed, December 18, 2009 to July 1, 2010, or provide sufficient medical rationale in light of his conclusion to explain why appellant was disabled or partially disabled as a result of the accepted conditions.<sup>8</sup> Without reasoned medical evidence supporting that appellant had employment-related disability during the period in question, he has not met his burden of proof to establish his claim for wage-loss compensation beginning December 18, 2009.<sup>9</sup>

Dr. Smith opined that appellant was unable to perform the heavy lifting, frequent bending, stooping and kneeling requirements of his position. But he failed to provide a narrative opinion addressing the relationship of appellant's inability to work on the dates in question to the accepted conditions. Thus, Dr. Smith's report is insufficient to establish appellant's claim.

The medical report most contemporaneous with appellant's work stoppage, Dr. Bouchlas' September 25, 2009 report, noted that appellant stopped work without a physician's input. Dr. Bouchlas did not state whether appellant was totally disabled or if he had any particular work

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<sup>8</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>9</sup> There also is no evidence that appellant sought work within his restrictions after he stopped work. See 20 C.F.R. § 10.515(a) (if an employee cannot return to the job held at the time of injury from the effects of the work-related injury, he or she must seek work).

restrictions. The other medical evidence of record, including diagnostic studies and progress reports, are insufficient to establish appellant's wage-loss claim as no medical opinion is offered on disability due to the work injury or accepted conditions during the periods of wage loss claimed.

Appellant argues on appeal that since his physicians restricted his physical capacity in December 2009, the only logical inference was that he was totally disabled from his job duties in December 2009. As noted, the medical evidence does not sufficiently address the causal relationship of appellant's alleged disability during the claimed period to his accepted work-related injuries. Therefore, appellant failed to meet his burden of proof.

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 he was disabled for the period December 18, 2009 to July 1, 2010 due to his accepted work-related injuries.

**ORDER**

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

Issued: August 14, 2012  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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