



## **FACTUAL HISTORY**

On January 21, 2010 appellant, then a 37-year-old mail handler, filed a traumatic injury claim alleging that on that date he strained his left upper leg and thigh when the anti-fatigue mat he was standing on slipped out from under him. OWCP accepted the claim for left hip and groin strains.

On April 12, 2010 appellant filed a claim for wage-loss compensation (Form CA-7) for the period March 27 to April 12, 2010.

On April 15 and 19, 2010 OWCP received medical evidence from Dr. Richard E. Gibbons, a treating physician,<sup>2</sup> and Dr. Paul B. Oppenheimer, a treating physician Board-certified in anesthesiology. Both physicians are associates of Franklin Park Physical Medicine, Whitehall, OH.

In a March 22, 2010 disability certification, Dr. Gibbons advised that appellant was totally disabled beginning March 18, 2010. He estimated that appellant would return to work on April 1, 2010.

In a March 29, 2010 attending physician's report (Form CA-20), Dr. Oppenheimer listed that appellant sustained a work injury on January 21, 2010 when he slipped on a mat and twisted while falling. He diagnosed groin and left hip strains and checked "yes" to the question of whether the condition was employment related. Dr. Oppenheimer noted March 22, 2010 as the first date of treatment with total disability began January 21, 2010. He wrote "unknown" to the question of when appellant would be able to return to work.

In disability certificates dated April 2 and 9, 2010, Dr. Oppenheimer indicated that appellant was unable to work for the period April 2 through 24, 2010.

In an April 12, 2010 report, Dr. Gibbons related that appellant sustained an injury at work on January 21, 2010 and has been treated at Franklin Park Physical Medicine since March 22, 2010. Appellant related significant lumbar spine range of motion including groin area and low back pain. Diagnoses included lumbosacral strain/sprain, left hip strain "has not clinically reached the level of function to return to work."

By letter dated April 26, 2010, OWCP informed appellant that the evidence of record was insufficient to establish total disability due to the accepted employment injury beginning March 27, 2010. It advised him as to the medical information required to support his claim. Appellant was given 30 days to provide the requested information.

Following the April 26, 2010 letter from OWCP, appellant submitted additional wage-loss compensation claims for April 10 to 23, April 24 to May 7 and May 8 to June 4, 2010 and medical evidence.

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<sup>2</sup> Dr. Gibbons' credentials are not in the record and cannot be verified.

In an April 19, 2010 attending physician's form, Dr. Gibbons noted the injury history and reported brief physical findings. Diagnoses included groin and left hip strain and lumbosacral strain/sprain. Dr. Gibbons checked "yes" that the diagnosed conditions were employment related. He noted the period of total disability as beginning January 21, 2010 and that it was undetermined as to when appellant would be able to return to work.

In disability certificates dated April 23, May 5 and 14, 2010, Dr. Oppenheimer listed that appellant was disabled from working for the period April 24 to May 24, 2010.

On May 4, 2010 Dr. Vincent K. Cho, a treating Board-certified family practitioner, indicated that appellant had been disabled from work as a result of his employment injury from January 29 to February 8, 2010. He indicated that appellant "may return to work on [February] 9, [20]10, after that until [February] 14, [20]10 he is to do sit down work only" due to the lack of information about his preinjury work duties.

In a May 19, 2010 report, Dr. Oppenheimer noted appellant's January 21, 2010 employment injury and that his primary complaints had been left hip and groin pain. He opined that appellant's physical capacity was limited as a result of the employment injury.

On June 8, 2010 OWCP received disability certificates from Drs. Gibbons and Oppenheimer indicating that appellant was totally disabled from working for the period May 14 to June 14, 2010.

In an attending physician's reports dated May 19 and 26, 2010, Dr. Oppenheimer, checked "yes" to the question of whether the diagnosed conditions were employment related, but provided no diagnosis on the form. He indicated that appellant was currently totally disabled and it was unknown as to a return to work date.

In a June 7, 2010 attending physician's report, Dr. Gibbons checked "yes" to the question of whether the diagnosed conditions were employment related, with no diagnoses noted on the form. He noted that appellant continued to be totally disabled with an undetermined return to work date.

By decision dated June 14, 2010, OWCP denied appellant's claim for wage-loss compensation beginning March 27, 2010.

In a July 5, 2010 attending physician's form, Dr. Gibbons noted that appellant slipped and fell on January 21, 2010 and diagnosed left superolateral acetabular degeneration with suspected paralabral cyst formation and capsulitis. He checked "yes" to the question of whether the diagnosed conditions were employment related. Dr. Gibbons noted July 7, 2010 as the date appellant was anticipated to return to work. In an attached disability certificate, he noted the period of total disability as March 26 to July 6, 2010 with a return to limited duty on July 7, 2010.

In a July 11, 2010 letter, appellant's counsel requested a telephonic hearing, which was held on November 5, 2010.

Therefore, OWCP received a June 21 and 28, 2010 attending physician's reports, a June 14, 2010 disability certificate, a June 14 to 28, 2010 and June 29, 2010 report from Dr. Gibbons and a June 30, 2010 report and July 9, 2010 disability certificate releasing appellant to four hours of work on July 13, 2010 from Dr. Oppenheimer. Dr. Gibbons diagnosed left superolateral acetabular degeneration with suspected paralabral cyst formation and capsulitis and checked "yes" to the question of whether the diagnosed conditions were employment related. No date for a return to work was listed.

On June 29, 2010 Dr. Gibbons diagnosed labral degeneration with small cyst adjacent to the superolateral acetabular, a chronic tear and mild capsulitis based on a review of a June 8, 2010 magnetic resonance imaging (MRI) scan. He opined that a definite return to work dated could not be established, but that a return on July 21, 2010 might be reasonable.

On June 30, 2010 Dr. Oppenheimer noted that appellant's groin, left hip and low back pain has persisted despite treatment and recommended referral for pain management. He noted that a June 8, 2010 MRI scan revealed labral degeneration with small cyst adjacent to the superolateral acetabular, a chronic tear and mild capsulitis. Dr. Oppenheimer related that appellant's physical capacity would be limited based on the MRI scan findings.

In attending physician's reports dated July 20 to August 2, 2010, Dr. Gibbons indicated that appellant could return to light-duty work on July 7, 2010.

In an August 2, 2010 disability certificate, Dr. Gibbons noted total disability from July 16, 2010 with a release to return to work of August 3, 2010. On an August 4, 2010 disability certificate, he noted August 4, 2010 as the date appellant could return to work.

In an August 21, 2010 attending physician's report, Dr. Gibbons noted the period of total disability as January 21 to July 6, 2010 and partial disability as July 7 to August 2, 2010.

Dr. Gibbons, in disability certificates dated August 16 and 30, 2010, noted that appellant was totally disabled on August 11, 13, 16 and 20, 2010 and could return to work on August 12, 14, 17, 19 and 21, 2010.

In a September 8, 2010 disability certificate, Dr. Oppenheimer indicated that appellant was totally disabled due to pain on September 1, 3 and 4, 2010 and could return to work on September 7, 2010.

On November 5 and 8, 2010 OWCP received July 19, 2010 report from Dr. Chu and an August 24, 2010 report from Dr. Gibbons.

On July 19, 2010 Dr. Chu related that appellant had been disabled from working during the period January 29 to February 8, 2010 as a result of the accepted hip and groin strains sustained on January 21, 2010. He indicated that appellant returned briefly to work and then stopped because of the pain. Dr. Chu stated that appellant's last visit was on March 2, 2010 and that he had placed appellant off work until March 17, 2010.

On August 24, 2010 Dr. Gibbons opined that appellant's disability was directly related to the accepted January 21, 2010 employment injury. He related that appellant's progression of

symptoms was the reason for his disability from work. Dr. Gibbons noted that a June 8, 2010 MRI scan clarified appellant's symptoms based on the findings of a superolateral acetabulum cyst paralabral, capsulitis and chronic tear with scarring. In concluding, he opined that these "degenerative processes contributed to progressively more severe pain and disability" resulting in appellant's inability to work.

By decision dated January 12, 2011, an OWCP hearing representative affirmed the denial of appellant's claim for wage-loss compensation beginning March 27, 2010.<sup>3</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his claim by the weight of the evidence.<sup>5</sup> For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.<sup>6</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>7</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>8</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>9</sup> An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.<sup>10</sup> 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 his employment, he is entitled to compensation for any loss of wages.

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<sup>3</sup> The Board notes that, following the January 12, 2011 hearing representative's decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. § 501.2(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003); *M.B.*, Docket No. 09-176 (issued September 23, 2009).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

<sup>6</sup> See *Amelia S. Jefferson*, *supra* note *id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

<sup>7</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>8</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>9</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>10</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

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).<sup>11</sup> 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.<sup>12</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>13</sup>

### ANALYSIS

OWCP accepted appellant's claim for left hip and groin strains as a result of the January 21, 2010 employment injury. Appellant filed claims for wage-loss compensation for the period March 27 through June 4, 2010. It is his burden of proof to establish the claimed period of employment-related disability. On April 26, 2010 OWCP advised appellant of the evidence needed to establish his claim. However, he did not submit sufficient reasoned medical evidence to establish that his disability beginning March 27, 2010 was causally related to his accepted left hip and groin strains. Appellant did not submit a narrative medical report in which treating physician explained how his disability was related to the accepted January 21, 2010 employment injury.

Appellant submitted form reports from both Drs. Gibbons and Oppenheimer advising that he was totally disabled as of January 21, 2010 with an unknown or undetermined return to work date. Dr. Gibbons released appellant to light-duty work on July 7, 2010. The record also contains reports referencing the accepted January 21, 2010 employment injury and diagnosing conditions including lumbosacral sprain/strain, left hip strain, labral degeneration with small cyst adjacent to the superolateral acetabular, a chronic tear and mild capsulitis. None of the reports are sufficient to support appellant's claim as neither physician provided a narrative opinion exploring the relationship of his inability to work on the dates in question to the accepted conditions. The reports do not constitute rationalized medical opinion as the physicians did not address how disability was due to the accepted employment injury nor were there any detailed physical findings. The Board notes that OWCP has not accepted the conditions of lumbosacral sprain/strain, labral degeneration with small cyst adjacent to the superolateral acetabular, a chronic tear and mild capsulitis as caused or aggravated by the January 21, 2010 employment injury. No explanation was given by either physician as to how these additional diagnosed conditions were caused or aggravated by the January 21, 2010 employment injury other than

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<sup>11</sup> *A.D.*, 58 ECAB 149 (2006).

<sup>12</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

<sup>13</sup> *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

noting they were found on an June 8, 2010 MRI scan and supported appellant's symptoms. The Board has held that medical conclusions unsupported by rationale are of little probative value.<sup>14</sup> As neither physician provided any supporting rationale for their opinions that the disability was employment related, these reports are insufficient to establish appellant's claim for disability.

Appellant also submitted disability certificates from Drs. Gibbons and Oppenheimer placing him off work beginning March 18, 2010 with a return to light-duty work on July 7, 2010. Following his return to work, both physicians reported intermittent periods of disability from August 11 through September 4, 2010. However, neither Dr. Gibbons nor Dr. Oppenheimer addressed the cause of appellant's disability and therefore these disability notes/forms are insufficient to support appellant's claim for disability. Medical evidence which offers no opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>15</sup> Furthermore, neither physician provided findings on examination in the disability certificates. Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled from work.<sup>16</sup> As these certificates contain no findings on examination or opinion regarding the cause of disability, they are insufficient to support appellant's claim that his disability was employment related.

The reports from Dr. Chu's reports predate appellant's claimed period of disability. 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 March 27, 2010.

An award of compensation may not be based on surmise, conjecture or speculation.<sup>17</sup> Neither the fact that appellant's condition became apparent during a period of employment nor his belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>18</sup> Causal relationship must be established by rationalized medical opinion evidence.<sup>19</sup> As appellant failed to submit such evidence, OWCP properly denied his claim for compensation for beginning March 27, 2010.

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.

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<sup>14</sup> *Willa M. Frazier*, 55 ECAB 379 (2004).

<sup>15</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>16</sup> *Laurie S. Swanson*, 53 ECAB 517 (2002).

<sup>17</sup> *D.I.*, 59 ECAB 158 (2007); *D.E.*, 58 ECAB 448 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>18</sup> *G.T.*, 59 ECAB 447 (2008); *V.W.*, 58 ECAB 425 (2007); *Ronald K. Jablanski*, 56 ECAB 616 (2005).

<sup>19</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

**CONCLUSION**

The Board finds that appellant has not established entitlement to wage-loss compensation beginning March 27, 2010 causally related to his accepted left hip and groin strains.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 12, 2011 is affirmed.

Issued: January 13, 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