



July 16, 2009. OWCP accepted the claim for lumbar and thoracic sprains and assigned File No. xxxxxx874.

In a July 17, 2009 medical report, Dr. George D. Gluz, Board-certified in internal medicine, reported that appellant fell down the stairs of a house and landed on his right shoulder and upper back. Appellant also complained of right low back pain. Dr. Gluz noted that appellant had a history of back injury in 1997 from a similar fall and in 2006 from a motor vehicle accident. Appellant had been on modified duty for approximately eight years which included no lifting over five pounds. Dr. Gluz diagnosed lumbar strain, thoracic strain and scoliosis of the thoracic spine, noting that he was unsure if it was preexisting or due to muscle spasm. He recommended physical therapy for three to four weeks and that appellant remain off work from July 17 to 19, 2009. Appellant could return to work on July 20, 2009 with limitations on lifting, pushing and pulling to no more than 20 pounds.

In a July 17, 2009 x-ray report, Dr. Julia Millman Abbass, Board-certified in diagnostic radiology, reported a normal lumbar and thoracic spine.

In a July 17, 2009 report, Norman Sinreigh, a physical therapist (PT), stated that appellant should continue physical therapy and would be discharged in four to eight visits.

By letter dated January 28, 2010, OWCP noted that appellant returned to work on July 21, 2009 and that no claims for lost wages had been received.

By letter dated April 8, 2010, Denise Jackson, a human resource specialist, requested that appellant provide updated medical information and attach an attending physician's report Form CA-20.

Appellant submitted a claim for compensation, Form CA-7, documenting leave without pay for the period August 26, 2009 to April 9, 2010. He attached time analysis forms documenting leave without pay for the period October 10, 2009 to April 9, 2010.

By letter dated April 27, 2010, OWCP noted that appellant was requesting compensation for the period August 29, 2009 to April 9, 2010. It noted that he had not provided any medical evidence to establish that he was disabled for those dates and the record showed that he was released for duty in July 2009. OWCP requested additional factual and medical evidence and provided appellant 30 days to respond.

In a July 21, 2009 medical report, Dr. Stephen Blum, Board-certified in diagnostic radiology, reported that appellant had a history of low back and left leg pain. Upon review of a magnetic resonance imaging (MRI) scan of the lumbar spine, he reported that the sagittal diameter of the lumbar spinal canal was at the lower limits of normal, found no disc protrusion and stated that there was multilevel spondylosis with disc bulges segmentally.

In a September 1, 2009 Form CA-9, Dr. Thomas L. Craig, a treating physician, recommended aquatic and physical therapy for 12 weeks.

In an undated note, appellant stated that his physician could not fill out the Form CA-17 because he was not back at work yet. He provided an April 26, 2010 prescription note from

Dr. Craig, who reported that appellant remained temporarily, totally disabled and unable to return to gainful employment since July 20, 2009.

By decision dated August 12, 2010, OWCP denied appellant's claim for disability for the period August 29, 2009 to April 9, 2010. It found insufficient factual or medical evidence to support that he was disabled as a result of the accepted thoracic or lumbar sprains.

On August 17, 2010 appellant, through his attorney, requested an oral hearing before an OWCP hearing representative.

In a July 19, 2010 attending physician's report, Dr. Craig diagnosed thoracic back sprain from falling down the stairs. He first examined appellant on July 20, 2009 and examined him again on August 4, September 1 and October 12, 2009. Dr. Craig checked the box marked "yes" when asked if there were permanent effects expected as a result of this injury. He noted that appellant experienced persistent pain, spasm, radiculopathy, insomnia, anxiety and depression secondary to thoracic pain and was awaiting therapy.

At a December 13, 2010 hearing, appellant testified that he was not working because of his July 2009 injury when he was delivering mail and fell down the stairs of a residential home. He stated that he did not return to work on July 20, 2009 and that OWCP mistakenly reported that he returned to work on that date. Appellant reported that Dr. Craig told him he could not return to work and that he had sought treatment from Dr. Craig approximately once a month since July 2009. Dr. Craig had also been treating appellant prior to July 2009 for a previous employment back injury in 1997<sup>2</sup> and for a back injury from a 2006 motor vehicle accident. Appellant noted that his earlier back condition became much more painful after his July 2009 fall. He further testified that, when his accident occurred on July 15, 2009, he was on light duty from a 1997 work injury and was working six hours a day. The hearing examiner informed appellant that she would need Dr. Craig's medical records from 2008 to the present. The record was held open for 30 days. No further evidence was submitted.

By decision dated February 22, 2011, OWCP's hearing representative affirmed OWCP's August 12, 2010 decision.

### **LEGAL PRECEDENT**

Under FECA,<sup>3</sup> the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>4</sup> Disability is not synonymous with a physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment

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<sup>2</sup> Appellant sustained a traumatic injury to his back on January 11, 1997 in claim File No. xxxxxx682. OWCP accepted the claim for lumbosacral strain.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> See *Prince E. Wallace*, 52 ECAB 357 (2001).

injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.<sup>5</sup>

Whether a particular injury causes an employee to be disabled and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>6</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements consist only of a repetition of the employee's complaints that excessive pain caused an inability to work, without making an objective finding of disability, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>7</sup> The Board will not require OWCP to pay compensation for disability without any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>8</sup>

In a typical leave buyback case, an injured employee uses sick or annual leave to prevent wage loss after an employment injury. If a claim is accepted and the work absences would otherwise be compensable under FECA, the employee may wish to buyback this leave from the employing establishment. If the employing establishment agrees to allow the leave buyback, the absences previously covered by sick or annual leave are recorded as leave without pay, creating a wage loss for which the employee may claim compensation.<sup>9</sup> In situations where compensation is claimed for periods when leave was used, OWCP has the authority and responsibility to determine whether the employee was disabled during the period for which compensation is claimed.<sup>10</sup> OWCP regulations at 20 C.F.R. § 10.425 state that the employee may claim compensation for periods of annual and sick leave, which are restorable in accordance with the rules of the employing establishment. Form CA-7 and Form CA-7b are used for this purpose.<sup>11</sup>

### ANALYSIS

OWCP accepted appellant's claim for lumbar and thoracic sprains. Appellant has the burden of proving by the weight of the substantial, reliable and probative evidence a causal relationship between his claimed disability from August 29, 2009 to April 9, 2010 and the accepted back condition.<sup>12</sup> The reports of his physicians do not provide a rationalized medical opinion addressing why he was disabled for work for the claimed period due to his accepted

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<sup>5</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

<sup>6</sup> *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

<sup>7</sup> *G.T.*, 59 ECAB 447 (2008); *see Huie Lee Goal*, 1 ECAB 180,182 (1948).

<sup>8</sup> *G.T.*, *supra* note 7; *Fereidoon Kharabi*, *supra* note 6.

<sup>9</sup> *Lloyd E. Griffin, Jr.*, 46 ECAB 979 (1995).

<sup>10</sup> *Glen M. Lusco*, 55 ECAB 148 (2003).

<sup>11</sup> 20 C.F.R. § 10.425; *see Laurie S. Swanson*, 53 ECAB 517 (2002).

<sup>12</sup> *See Amelia S. Jefferson*, 57 ECAB 183 (2005).

condition. Therefore, the medical evidence submitted is insufficient to establish appellant's claim.<sup>13</sup>

In a July 17, 2009 medical report, Dr. Gluz reported that appellant fell down the stairs while delivering mail and complained of right lower back pain. He noted that appellant had a history of a work-related back injury from 1997, as well as a nonwork back injury in 2006 from a motor vehicle accident. Appellant had been on modified duty for approximately eight years which included no lifting over five pounds. Dr. Gluz diagnosed lumbar strain, thoracic strain and scoliosis of the thoracic spine, noting that he was unsure if the condition was preexisting or due to muscle spasm. He recommended physical therapy for three to four weeks and reported that appellant could return to work on July 20, 2009 with limitations on lifting, pushing and pulling no more than 20 pounds.

The Board finds that Dr. Gluz's medical report is insufficient to establish a disability for the period August 29, 2009 to April 9, 2010. While Dr. Gluz provided a diagnosis for appellant's injury, he stated that appellant could return to work on July 20, 2009 with restrictions. Therefore, the medical evidence of record does not establish that appellant's claimed disability during a period after July 20, 2009 was related to his July 15, 2009 employment injury.

In a September 7, 2009 Form CA-9, Dr. Craig recommended aquatic and physical therapy for 12 weeks. In a July 19, 2010 attending physician's report, he diagnosed appellant with thoracic back sprain from falling down the stairs. Dr. Craig stated that he first examined appellant on July 20, 2009 and checked the box marked "yes" when asked if there were permanent effects expected as a result of this injury. He also provided an April 26, 2010 prescription note which stated that, since July 20, 2009, appellant remained temporarily, totally disabled and unable to return to gainful employment.

Dr. Craig's medical notes are insufficient to establish that appellant was disabled from August 29, 2009 to April 9, 2010 due to his July 15, 2009 employment incident. He failed to discuss appellant's medical history and how his preexisting back condition related to his disability. Dr. Craig did not describe or explain appellant's medical condition. He did not specifically address appellant's capacity for work or the reasons why he was unable to continue his duties. The Board has held that a physician's opinion on causal relationship that consists of checking a box marked on a form report is of diminished probative value.<sup>14</sup> Though Dr. Craig concluded that appellant was totally disabled as of July 20, 2009, his prescription note provided no support for that conclusion and failed to provide an opinion on causal connection to the July 15, 2009 employment incident. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>15</sup> Dr. Craig did not explain how residuals of the accepted injury caused appellant's disability for

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<sup>13</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>14</sup> *See Celia M. Corley*, 56 ECAB 662 (2005).

<sup>15</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

work from August 29, 2009 to April 9, 2010.<sup>16</sup> Without any explanation or rationale for the conclusion reached, his reports are insufficient to establish causal relationship.<sup>17</sup>

The remaining medical evidence of record is also insufficient to establish appellant's claim. In a July 17, 2009 x-ray report, Dr. Abbass reported a normal examination of the lumbar and thoracic spine. In a July 21, 2009 medical report, Dr. Blum reported that appellant had a history of low back and left leg pain. Upon review of an MRI scan of the lumbar spine, he stated that the sagittal diameter of the lumbar spinal canal was at the lower limits of normal, found no disc protrusion and stated that there was multilevel spondylosis with disc bulges segmentally. These opinions do not support a finding that appellant was disabled from his back injury for the period August 29, 2009 to April 9, 2010, nor do they explain how the injury prevented him from performing the duties associated with his job. Further, both medical reports indicate that appellant's back injury was resolved. Thus, the medical reports are irrelevant to his claim as presented on appeal.<sup>18</sup>

Because appellant has not submitted any reasoned medical opinion evidence to show that he was disabled for the period August 29, 2009 to April 9, 2010 as a result of his accepted thoracic and lumbar sprain, the Board finds that OWCP properly denied his claim for disability compensation.

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 failed to establish that he was disabled due to his July 15, 2009 injury for the period August 29, 2009 to April 9, 2010.

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<sup>16</sup> *S.P.*, Docket No. 09-1010 (issued March 2, 2010).

<sup>17</sup> *Deborah L. Beatty*, 54 ECAB 334 (2003).

<sup>18</sup> *See Willa M. Frazier*, 55 ECAB 379 (2004); *David L. Scott*, 55 ECAB 330 (2004); *see also Brenda L. DuBuque*, 55 ECAB 212 (2004).

**ORDER**

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

Issued: January 25, 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