

**United States Department of Labor
Employees' Compensation Appeals Board**

M.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Antonio, TX, Employer**

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**Docket No. 12-317
Issued: July 6, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 28, 2011 appellant filed a timely appeal from a July 26, 2011 decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for wage-loss compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established intermittent disability for wage-loss compensation from February 21 to March 18, 2011.

On appeal appellant contends that his supervisor required him to work outside his work restrictions for the period February 21 to March 18, 2011.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 6, 2011 appellant, then a 29-year-old city carrier, injured his back while pulling a flat of trays. OWCP accepted the claim for a lumbar sprain. Appellant stopped work on January 7, 2011 and accepted a modified job on February 1, 2011.

The record contains duty status reports (Form CA-17) dated February 14, March 4 and 15, 2011 noting a January 6, 2011 employment injury and finding appellant was capable of working eight hours per day with restrictions.² Diagnoses included lumbar and thoracic herniated nucleus pulposus.

On March 23, 2011 appellant filed claims for intermittent wage-loss compensation (Form CA-7) for the period February 21 to March 18, 2011 (44 hours 54 minutes).³ In time analysis forms for the claimed period, appellant attributed his disability to the employing establishment not having any available work within his restrictions. The employing establishment noted that appellant averaged 34 hours of work prior to his injury and submitted no medical documentation supporting the time off.

By letter dated March 30, 2011, OWCP informed appellant that the evidence of record was insufficient to support his claim for wage loss. It informed him of the medical and factual evidence required to support his claim and provided 30 days to submit the requested evidence. OWCP informed appellant that the employing establishment stated that work was available for him within his restrictions under a February 1, 2011 job offer.

In a March 30, 2011 memorandum of telephone call, the employing establishment informed OWCP that appellant was under the National Reassessment Process (NRP) and that work was available within his restrictions. It related appellant's duties included bringing mail back to the office and that he was not working a full day.

Appellant submitted medical evidence including diagnostic testing, CA-17's and reports for the period January 6 to July 7, 2011. A March 2, 2011 CA-17 work capacity evaluation form from Dr. R. David Bauer, an examining Board-certified orthopedic surgeon,⁴ checked "yes" to the question of whether the employee was advised to resume work. In a March 3, 2011 report, Dr. Bauer noted appellant was seen at the request of the employing establishment. He provided physical findings, a history of the employment injury and reviewed medical evidence. Diagnoses included lumbar strain and symptom magnification. Dr. Bauer opined that appellant was capable of working his date-of-injury job with no restrictions.

² The doctor's signature on the form is illegible.

³ A March 29, 2011 time analysis sheet reveals that appellant was not claiming wage-loss compensation for the period March 7 to 12, 2011 when he used 48 hours of annual leave. He also used sick leave for a portion of the time he was claiming compensation for wage-loss compensation. Appellant noted he attended physical therapy or had a doctor's appointment on March 2 and 18, 2011.

⁴ Appellant was referred by the employing establishment to Dr. Bauer for a determination on his condition and medical restrictions.

On March 7, 2011 Dr. Paul Vaughan, a treating orthopedic surgeon, diagnosed thoracic and lumbar herniated nucleus pulposus. He noted appellant was seen that day for complaints of low back pain which radiated into his lower extremities. A physical examination revealed 50 percent flexion, zero percent extension and positive straight right leg raising of 70 degrees.

By decision dated July 26, 2011, OWCP denied appellant's claim for intermittent wage loss from February 21 to March 18, 2011.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his claim by the weight of the evidence.⁶ 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.⁷ 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.⁸

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.⁹ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.¹⁰ 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.¹¹ 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.

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).¹² The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁷ *Id.*

⁸ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁹ *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).

¹⁰ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹¹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹² *A.D.*, 58 ECAB 149 (2006).

be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³

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.¹⁴

ANALYSIS

OWCP accepted that on January 6, 2011 appellant sustained a sprain in his lumbar region during the course of his federal employment. Appellant filed claims for compensation for intermittent periods. OWCP advised appellant in a March 30, 2011 memorandum that the evidence was insufficient to support his claim for intermittent wage-loss compensation. By decision dated July 26, 2011, it denied his claim for compensation for intermittent periods from February 21 to March 18, 2011.

The Board finds that appellant failed to meet his burden of proof to establish entitlement to compensation for the intermittent periods. The record is devoid of any medical evidence supporting appellant's contention that he was disabled from working for the period in question. OWCP advised appellant regarding the need to submit medical evidence supporting his disability. The relevant evidence submitted by appellant was CA-17 forms dated February 14, March 4 and 15, 2011 and a March 7, 2011 report from Dr. Vaughan. The CA-17 forms indicated that appellant was capable of working an eight-hour day with restrictions. Dr. Vaughan diagnosed thoracic and lumbar herniated nucleus pulposus and noted that appellant was seen for complaints of low back pain radiating into his lower extremities. He did not address appellant's work restrictions or any disability. Neither the CA-17 forms nor the March 7, 2011 report from Dr. Vaughan addressed the relevant issue of whether appellant was disabled from work for any period from February 21 to March 18, 2011 due to his accepted January 6, 2011 employment injury. Thus, the CA-17 forms dated February 14, March 4 and 15, 2011 and Dr. Vaughan's March 7, 2011 report are of little probative value.¹⁵

The record also contains a March 2, 2011 OWCP-5c form and March 3, 2011 report from Dr. Bauer who opined that appellant was capable of working with no restrictions. Thus, this report is insufficient to support his contention that he had intermittent periods for disability during the claimed period.

The Board finds that appellant has not submitted medical evidence sufficient to establish that he was disabled from work for intermittent periods from February 21 to March 18, 2011. OWCP properly denied his claim for compensation.

¹³ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

¹⁴ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁵ *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *Carol A. Lyles*, 57 ECAB 265 (2005) (whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence).

On appeal appellant contends that his supervisor ignored his work restrictions and harassed him. He noted that he followed the restrictions on his CA-17 form for the period February 21 to March 18, 2011, but that his supervisor disregarded the restrictions set by his physician on walking when she required him to go out and deliver more mail. The evidence of record does not support appellant's contention that his supervisor required him to exceed his work restrictions.

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 is entitled to intermittent wage-loss compensation for the period February 21 to March 18, 2011.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 26, 2011 is affirmed.

Issued: July 6, 2012
Washington, DC

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

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

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