

FACTUAL HISTORY

OWCP accepted that on July 1, 2010 appellant, then a 31-year-old clerk, sustained a lumbar sprain when he bent over to pick up his time card from the floor. He stopped work on July 2, 2010 and did not return.²

On July 8 and 16, 2010 Dr. Kevin C. Walters, an attending physician Board-certified in occupational and hyperbaric medicine, diagnosed a lumbar sprain with left-sided radiculopathy and a decreased left Achilles reflex. He provided work restrictions limiting lifting to 5 pounds, no pushing or pulling more than 25 pounds, no bending and no reaching above the shoulder.

In a July 23, 2010 report, Dr. Walters noted that a July 13, 2010 lumbar magnetic resonance imaging (MRI) scan revealed “very large disc herniations eccentric to the left at L4-5 and L5-S1” causing spinal cord and nerve root compression. He held appellant off work.

In an August 31, 2010 report, Dr. Thomas J. Rosenbaum, an attending Board-certified neurosurgeon, provided a history of injury and treatment, noting that appellant walked with a severe left-sided limp and depended on a cane for support. He opined that, based on the July 13, 2010 MRI scan study, appellant should undergo a bilateral L4-5 microdiscectomy and left L5-S1 discectomy.

Dr. Walters held appellant off work through September 24, 2010 pending lumbar surgery. In an October 18 and 25 and November 9, 2010 reports, he released appellant to work four hours a day with restrictions.

On October 18, 2010 appellant refused a seven-hour-a-day light-duty position with lifting limited to five pounds.

Appellant claimed wage-loss compensation for total disability from August 20 to September 10, 2010. By decision dated November 10, 2010, OWCP denied wage-loss compensation for total disability beginning August 20, 2010 on the grounds that the medical evidence was insufficient to establish causal relationship. In a December 6, 2010 letter, appellant’s representative requested a telephonic oral hearing, held February 16, 2011.

In a November 22, 2010 report, Dr. Walters prescribed narcotic medication as appellant’s condition had not improved. He noted increasing left-sided sciatica on December 9, 2010. On January 7, 2011 Dr. Walters found that appellant could perform light duty with lifting limited to five pounds.

² Appellant accepted a light-duty position on July 9, 2010 with lifting limited to 5 pounds and pushing and pulling limited to 20 pounds, but did not return to work.

In a January 21, 2011 letter, Dr. Walters opined that the July 1, 2010 work incident directly caused the L4-5 and L5-S1 disc herniations as there was no evidence of preexisting degenerative changes.³

In a January 28, 2011 report, Dr. Walters noted work restrictions limiting lifting to 10 pounds, with frequent changes of position.

During a February 16, 2011 telephonic hearing, appellant asserted that, in September 2010, he attempted to return to work but the employing establishment sent him home because it would not allow him to walk with a cane on the workroom floor.⁴

Appellant was separated from the employing establishment effective February 28, 2011 when his temporary appointment expired.

By decision dated and finalized March 29, 2011, an OWCP hearing representative affirmed the November 10, 2010 decision in part denying compensation from August 20 to 25, 2010, "as there was no indication [appellant] could not perform the limited duty available to him" and reversed in part regarding disability from August 26 to September 11, 2010. The hearing representative returned the case to OWCP for payment of compensation due and owing and adjudication of the pending surgical authorization request.

In an April 1, 2011 report, Dr. Ryan K. Stallings, an attending Board-certified family practitioner, released appellant to return to work with no lifting over 10 pounds. On April 22, 2011 he diagnosed left-sided sciatica and an apparent postsurgical herniated L5-S1 disc.⁵ Dr. Stallings released appellant to work with no lifting over 10 pounds, no bending and no driving.

By decision dated May 11, 2011, OWCP denied acceptance of herniated L4-5 and L5-S1 discs and denied surgical authorization on the grounds that the medical evidence was insufficient to establish causal relationship.

In a June 17, 2011 report, Dr. Stallings found appellant able to perform limited duty, with lifting up to 10 pounds, no bending and no driving.

In a July 22, 2011 report, Dr. David Peto, an attending family practitioner, released appellant to return to regular duty. He found appellant's condition much improved, with resolution of left-sided sciatica. Appellant was able to workout at a gym. Imaging still revealed chronic degenerative lumbar changes with mild central canal stenosis.

³ In a February 2, 2011 letter, Dr. Walters opined that prior to bending to pick up the time card on July 1, 2011 appellant "had been lifting heavy bags at work that predisposed him to injury but the actual event that caused the lumbar disc herniation was bending over to pick up a card from the floor."

⁴ In a March 15, 2011 letter, the employing establishment contended that appellant chose not to work and that he had not been sent home because he walked with a cane.

⁵ There is no operative report of record.

Appellant claimed wage-loss compensation for the period September 11, 2010 onward. OWCP paid his wage-loss compensation from September 12 to November 21, 2010. In an August 16, 2011 letter, it afforded appellant 30 days to submit rationalized medical evidence supporting his claim for continuing total disability after November 21, 2010. In response, appellant submitted an August 26, 2011 report from Dr. Peto finding appellant much improved, with no pain and a normal lumbar lordosis. He had resumed running and working out at the gym. Dr. Peto released him from care.

By decision dated September 22, 2011, OWCP denied appellant's claim for wage-loss compensation from November 22, 2010 onward on the grounds that the medical evidence did not establish total disability for work for that period. It noted that Dr. Peto's August 26, 2011 report did not address any period of disability.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.⁶

To establish a causal relationship between a claimed period of disability and the accepted employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ Rationalized medical evidence includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁹

ANALYSIS

OWCP accepted that appellant sustained a lumbar sprain on July 1, 2010. Appellant stopped work on July 2, 2010 and did not return. He received wage-loss compensation for work absences from July 2 to November 21, 2010. Appellant claimed wage-loss compensation for total disability from November 22, 2010 onward. By decision dated September 22, 2011, OWCP denied his claim for monetary compensation on the grounds that the medical evidence did not establish that the accepted injuries rendered appellant totally disable for work.

⁶ *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

⁷ *Manuel Gill*, 52 ECAB 282 (2001).

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000).

The Board finds that the medical evidence does not support that the accepted lumbar injury totally disabled appellant for work beginning November 22, 2010. Dr. Walters, an attending physician Board-certified in occupational and hyperbaric medicine, submitted reports from November 22, 2010 to January 28, 2011 stating that appellant could work with lifting restriction of 5 to 10 pounds and frequent changes of position. Dr. Stallings, an attending Board-certified family practitioner, stated in reports from April 1 to June 17, 2011 that appellant could perform limited duty with lifting limited to 10 pounds, no bending and no driving. Dr. Peto, an attending family practitioner, submitted July 22 and August 26, 2011 reports finding appellant's lumbar condition and left-sided sciatica had resolved, noting that he was able to go running and work out at a gym. He released appellant from care as of August 26, 2011. Thus, three attending physicians did not support any period of disability beginning November 22, 2010. Their opinions therefore fail to meet appellant's burden of proof.¹⁰

The Board notes that OWCP advised appellant by letter dated August 16, 2011 of the additional evidence needed to establish his claim, including rationalized medical evidence supporting that the accepted injuries totally disabled him for the claimed period. Appellant failed to provide such evidence and thus he 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.

On appeal, counsel asserts that an offered light-duty position was not suitable work as appellant was not allowed to bring his cane onto the work floor. However, this assertion is not relevant to the issue of whether appellant submitted sufficient medical evidence to establish the claimed period of disability.

CONCLUSION

The Board finds that appellant has not established that his claimed disability for work on and after November 22, 2010 is causally related to an accepted lumbar injury.

¹⁰ *Manuel Gill, supra* note 7.

ORDER

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

Issued: July 25, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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