

while stepping off a step with her mailbag on her back. Appellant also had contemporaneous evidence of lumbar disc herniations. However, to date OWCP has not accepted this condition as employment related.

For several years following her injury appellant worked full-time, limited duty. In December 2009, the employing establishment modified her limited-duty assignment to two hours of work per day. In light of appellant's reduced work hours, OWCP accepted a recurrence of disability beginning December 5, 2009. Through March 3, 2010, it paid her for six hours of lost wages per day.³

When the case was previously on appeal, OWCP had terminated appellant's medical benefits effective April 21, 2010 based on the opinion of Dr. Robert F. Draper, Jr., a Board-certified orthopedic surgeon and OWCP referral physician. In his March 4, 2010 report, Dr. Draper diagnosed lumbosacral strain and lumbar degenerative disc disease with disc herniations at L1-2 and L5-S1. He indicated that appellant's work-related lumbar strain had since resolved.⁴ Dr. Draper also indicated that her lumbar degenerative disc disease was unrelated to her accepted employment injury.

As noted, OWCP paid wage-loss compensation through early March 2010 based on Dr. Draper's opinion. Appellant filed additional claims (Form CA-7) for lost wages (six hours/day) through May 21, 2010. She resumed full-time work as a letter carrier effective May 25, 2010.

By decision dated November 3, 2011, the Board reversed OWCP's termination of medical benefits. The Board found that there was an unresolved conflict in medical opinion between Dr. Draper and appellant's physicians.⁵ As such, OWCP failed to satisfy its burden of proof in terminating appellant's medical benefits effective April 21, 2010. It subsequently reinstated medical benefits for the accepted condition of sacroiliac sprain. The Board's November 3, 2011 decision is incorporated herein by reference.

While the issue of entitlement to ongoing medical benefits was pending before the Board, OWCP proceeded to address appellant's claim for wage-loss compensation for the period March 5 through May 21, 2010.

In a November 11, 2010 report, Dr. Howard Zeidman, a Board-certified orthopedic surgeon and impartial medical examiner,⁶ found that appellant had minimal objective signs of

³ Appellant also received eight hours of wage-loss compensation for attending an OWCP-directed medical examination on March 4, 2010.

⁴ Dr. Draper characterized appellant's clinical examination as "completely normal."

⁵ Appellant was under the care of Dr. Timothy L. Allen, a Board-certified family practitioner, and Dr. Laura E. Ross, a Board-certified orthopedic surgeon. As noted in the Board's November 3, 2011 decision, both Dr. Allen and Dr. Ross offered opinions that conflicted with Dr. Draper's March 4, 2010 report.

⁶ OWCP declared a conflict between Dr. Draper and Dr. Ross. In her June 8, 2010 report, Dr. Ross diagnosed herniated discs at L1-2 and L5-S1, with left sacroiliitis. She specifically noted her disagreement with Dr. Draper's March 4, 2010 finding of a normal physical examination. Dr. Ross also found that appellant's lumbar disc herniations were employment-related and not a preexisting injury as noted by Dr. Draper.

problems with regard to her low back.⁷ Additionally, there were no signs of neurologic damage. Dr. Zeidman also noted that appellant's x-rays and magnetic resonance imaging scans were consistent with a degenerative problem. He stated it was difficult to identify an impairment which was specifically related to appellant's 2002 injury. Dr. Zeidman further noted that appellant was currently working a "full[-]duty position," and he had no reason to believe that she was unable to continue to carry out those duties. He advised that no specific treatment was indicated apart from appellant's underlying degenerative problem. Dr. Zeidman also stated that there was no evidence of permanent disability and certainly it had not been present since appellant returned to work in June 2010. As to appellant's disability during the period prior to June 2010, he indicated that the reported findings in the record were inconsistent and it was difficult to arrive at a more definitive statement regarding that period.

By decision dated January 20, 2011, OWCP denied appellant's claim for wage-loss compensation based on Dr. Zeidman's November 11, 2010 report.

In a July 29, 2011 decision, the Branch of Hearings & Review affirmed OWCP's denial of wage-loss compensation for the claimed period. The hearing representative similarly relied on Dr. Zeidman's November 11, 2010 report and found that appellant was not entitled to "compensation or medical benefits" for the period March 3 through May 20, 2010 or thereafter.⁸

LEGAL PRECEDENT

A claimant has the burden of establishing the essential elements of her claim, including that the medical condition for which compensation is claimed is causally related to the employment injury.⁹ For wage-loss benefits the claimant must submit medical evidence showing that the condition claimed is disabling.¹⁰ The evidence submitted must be reliable, probative and substantial.¹¹ Benefits are available only while the effects of a work-related condition

⁷Dr. Zeidman examined appellant on September 15, 2010, but did not dictate his report until November 11, 2010.

⁸ The issue of entitlement to "medical benefits" was not properly before the hearing representative. As noted, OWCP had already terminated medical benefits effective April 21, 2010 and that particular issue was still pending Board review when the hearing representative issued his July 29, 2011 decision. While a case is on appeal to the Board, OWCP has no jurisdiction over the claim with respect to issues which directly relate to the issue or issues on appeal. 20 C.F.R. § 10.626 (2011); *see, e.g., Lawrence Sherman*, 55 ECAB 359, 360 n.4 (2004). It is also noteworthy that OWCP has since reinstated appellant's medical benefits based on the Board's November 3, 2011 decision in Docket No. 11-789.

⁹ 20 C.F.R. § 10.115 (e); *see Tammy L. Medley*, 55 ECAB 182, 184 (2003). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

¹⁰ 20 C.F.R. § 10.115 (f).

¹¹ *Id.* at § 10.115.

continue.¹² Compensation for wage loss due to disability is available for periods during which an employee's work-related medical condition prevents her from earning the wages earned before the work-related injury.¹³ The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.¹⁴

FECA provides that if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.¹⁵ For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."¹⁶ Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁷

ANALYSIS

The Board finds that the case is not in posture for decision. OWCP denied wage-loss compensation for the period March 5 through May 21, 2010 based on Dr. Zeidman's November 11, 2010 report. However, Dr. Zeidman did not specifically conclude that appellant was capable of performing her full-time letter carrier duties during the above-noted period. What he found instead was that appellant was presently engaged in a "full[-]duty position" and there was no reason to believe she could not continue to carry out those duties.¹⁸ Dr. Zeidman further indicated there was no evidence of permanent disability and "certainly it [had] not been present since the time of her return to work in ... June of 2010." With respect to the period prior to June 2010, he stated that findings reported in the record were "inconsistent" and it was "difficult to arrive with (sic) a more definitive statement during that period." As such, Dr. Zeidman did not definitively state whether appellant was capable of performing her full-time letter carrier duties during the period March 5 through May 21, 2010. Nonetheless, OWCP relied upon his November 11, 2010 report as a basis for denying wage-loss compensation for the claimed period.

Dr. Zeidman's report must actually fulfill the purpose for which it was intended, it must resolve the conflict in medical opinion.¹⁹ OWCP should ensure that his report is comprehensive,

¹² *Id.* at § 10.500(a).

¹³ *Id.*

¹⁴ *Id.* at § 10.501(a).

¹⁵ 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹⁶ *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

¹⁷ *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

¹⁸ When Dr. Zeidman examined appellant on September 15, 2010, she had already been working full time for 16 weeks.

¹⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing & Evaluating Medical Evidence*, Chapter 2.810.11d(2) (September 2010).

clear and definite and that it is based on current information and supported by substantial medical reasoning, as well as a review of the case file.²⁰ If the report is vague, speculative, incomplete or not rationalized, it is OWCP's responsibility to secure a supplemental report from Dr. Zeidman to correct any defects.²¹ Because of the above-noted defect in Dr. Zeidman's November 11, 2010 report, the Board finds the case is not in posture for decision regarding appellant's entitlement to wage-loss compensation for the period March 5 through May 21, 2010. Accordingly, the hearing representative's July 29, 2011 decision shall be set aside and the case remanded for further development. After OWCP has developed the case record consistent with the Board's directive, a *de novo* decision shall be issued.

CONCLUSION

The case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2011 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: January 3, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

²⁰ *Id.*

²¹ *Id.*