

FACTUAL HISTORY

OWCP accepted that on April 24, 2012 appellant, then a 39-year-old city letter carrier in a one-year transitional employee status, sustained cervical, thoracic and lumbar spine sprains when his postal vehicle was rear-ended by a car traveling at approximately 20 mph. The employing establishment authorized emergency medical treatment. Dr. Edward R. Eastman, an attending physician Board-certified in emergency medicine, provided April 24, 2012 hospital reports diagnosing cervical, thoracic and lumbar sprains resulting from the motor vehicle accident. X-rays taken that day showed no acute osseous abnormality of the cervical, thoracic or lumbar spine. Dr. Eastman held appellant off work through April 28, 2012.

Dr. Frederick B. Lutz, III, an attending Board-certified family practitioner, submitted reports from April 30 to June 20, 2012. He diagnosed cervical radiculopathy related to the April 24, 2012 motor vehicle accident. Dr. Lutz found that appellant was able to perform light-duty work as of April 30, 2012.

On May 31, 2012 appellant accepted a part-time light-duty job at another postal station. He performed this job until June 20, 2012.

In an August 3, 2012 report, Dr. Lutz noted paresthesias and diminished reflexes in the left arm correlating to the thecal sac encroachment observed on a June 6, 2012 cervical magnetic resonance imaging (MRI) scan.² He found appellant able to perform light duty with restrictions.

On August 28, 2012 appellant filed a claim for compensation (Form CA-7) for wage loss beginning on June 20, 2012. In an August 30, 2012 letter, OWCP advised him of the evidence needed to establish his claim, including a report from his attending physician explaining how and why the accepted cervical, thoracic and lumbar spine sprains would totally disable him for work as of June 20, 2012. Appellant was afforded 30 days to submit additional evidence.

In an August 27, 2012 report, Dr. Albert S. Lee, an attending Board-certified neurosurgeon, related appellant's complaints of mild paresthesias in the left arm. On examination, he found normal strength and reflexes throughout the left arm, without evidence of acute nerve root compression. Dr. Lee diagnosed cervical myofascitis. He found that appellant was at maximum medical improvement and had no pathology warranting surgical care. In a September 18, 2012 report, Dr. Lee released appellant to full duty with no restrictions.

Appellant was then followed by Dr. Nicodemo Macri, an attending physician specializing in pain management. In a September 14, 2012 report, Dr. Macri noted a dropped left shoulder with limited range of motion, trigger points in the left suprascapular and trapezius muscles and an impaired left arm swing with ambulation. He diagnosed chronic myofascial pain syndrome and a cervical strain, which he characterized as soft tissue injuries. Dr. Macri found appellant able to perform light-duty work.

² A June 6, 2012 MRI scan of the cervical spine showed mild disc degeneration at C3-4 with a small left-sided posterolateral disc protrusion mildly deforming the spinal cord, a small right posterior herniation at C5-6 with significant deformity of the thecal sac. A June 6, 2012 lumbar MRI scan showed mild degeneration at T11-12 and L2-3, without significant herniations.

In a September 26, 2012 letter, appellant asserted that the employing establishment had not provided work within his physical restrictions since June 20, 2012. The employing establishment responded by October 15, 2012 letter, asserting that on June 20, 2012 he was sent home as OWCP had initially denied his claim. As appellant was a transitional employee, there was no work available to him because his claim was denied. The employing establishment asserted that he did not notify his supervisors that he had been cleared for full duty by Dr. Lee on August 27, 2012. It noted that appellant's one-year transitional employment would end on October 17, 2012 and that he was not scheduled to work before that date.

By decision dated October 23, 2012, OWCP denied appellant's claim for wage-loss compensation. It found that the medical evidence did not establish total disability for work. OWCP found that Dr. Lee released appellant to full duty as of September 18, 2012.

In a November 3, 2012 letter, counsel requested a telephonic hearing, held on February 14, 2013. At the hearing, he asserted that appellant sustained a whiplash injury in the April 24, 2012 motor vehicle accident that totally disabled him from work beginning on June 20, 2012.

In reports dated October 8, 2012 to January 31, 2013, Dr. Macri noted that appellant's left shoulder improved with a prescribed home exercise program. In a February 22, 2013 report, he opined that the April 24, 2012 whiplash injury aggravated preexisting degenerative cervical disc disease and bulging C3-4 discs. Dr. Macri diagnosed cervical myositis, arthralgia and resolved thoracic and lumbar sprains. He noted work restrictions against overhead reaching, repetitive motion or lifting more than 20 pounds with the left arm.

By decision dated May 1, 2013, OWCP's hearing representative affirmed the October 23, 2012 decision denying wage loss commencing June 20, 2012. The hearing representative found that Dr. Macri did not provide sufficient rationale to establish that the accepted injuries caused disability for work.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.³ Under FECA, the term "disability" is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.⁴ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁵ 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.⁶ The fact that a condition manifests itself during a period of

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁵ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001).

employment does not raise an inference that there is a causal relationship between the two.⁷ 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 his or her disability and entitlement to compensation.⁸

ANALYSIS

Appellant claimed that he was totally disabled for work from June 20, 2012 onward due to accepted cervical, thoracic and lumbar spine sprains. He has the burden of establishing by the weight of the substantial, reliable and probative evidence that he was totally disabled for work for the claimed period due to the accepted injuries.⁹ However, the medical evidence appellant provided demonstrates that his physicians did not find him totally disabled for work for any period after April 30, 2012.

Dr. Eastman, a physician Board-certified in emergency medicine, who treated appellant immediately after the April 24, 2012 accident, held appellant off work through April 28, 2012 due to the accepted injuries. Dr. Lutz, an attending Board-certified family practitioner, submitted reports from April 30 to August 3, 2012 finding appellant able to perform restricted light duty. He also diagnosed cervical radiculopathy, a condition not accepted by OWCP. Dr. Lee, an attending Board-certified neurosurgeon, provided an August 27, 2012 report diagnosing cervical myofascitis, a condition not accepted by OWCP. He found appellant able to perform full duty with no restrictions. Dr. Macri, an attending physician specializing in pain management, submitted reports from September 14, 2012 to January 31, 2013 diagnosing cervical myofascitis and an aggravation of preexisting cervical spine conditions. He found appellant able to perform light-duty work throughout this period.

The Board notes that OWCP advised appellant by August 30, 2012 letter of the evidence needed to establish his claim, including a physician's opinion as to why the accepted injuries would disable him from work on and after June 20, 2012. Appellant did not submit such evidence. His physicians did not find him totally disabled for work for the claimed period. Therefore, OWCP's May 1, 2013 decision denying appellant's claim for total disability compensation commencing June 20, 2012 will be affirmed.

On appeal, counsel asserts that Dr. Macri's opinion is sufficiently descriptive and well rationalized to meet appellant's burden of proof. As noted, Dr. Macri did not find appellant totally disabled for work for the claimed period.

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.

⁷ *Manuel Garcia*, 37 ECAB 767 (1986).

⁸ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

CONCLUSION

The Board finds that appellant has not established that he was disabled for work on and after June 20, 2012 causally related to accepted cervical, thoracic and lumbar sprains.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 1, 2013 is affirmed.

Issued: November 26, 2013
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