

training session. In a letter dated January 21, 2009, the employing establishment disputed the date of injury, because he had been issued a medical restriction of bed rest on January 15, 2009 and did not attend the January 16, 2009 training class. By statement received on February 17, 2009, appellant advised the date of injury was January 5, 2009. He stated that he had been advised by a nurse to use the date January 16, 2009 because he had sought medical attention that day. The record indicates that appellant's employment was terminated on February 4, 2009.

By decision dated March 4, 2009, OWCP denied the claim for compensation, finding the factual and medical evidence were insufficient to establish the claim.

Appellant requested a review of the written record on March 17, 2009. He submitted a March 12, 2009 report from Dr. Carl Flynn, Board-certified in occupational medicine, who provided a history of a January 5, 2009 injury when appellant fell off a rope and landed on his right hip and low back. Dr. Flynn opined that appellant had sustained a soft tissue injury to his lumbar and thoracic spine. Appellant experienced pain with sitting and any prolonged positioning, particularly standing more than 10 minutes. Dr. Flynn stated that appellant's current work restrictions were no prolonged positioning, no bending and a lifting restriction of 10 pounds.

By decision dated June 29, 2009, OWCP's hearing representative affirmed the March 4, 2009 decision denying the claim for compensation. Appellant requested reconsideration by letter dated March 25, 2010. In a decision dated July 1, 2010, OWCP denied merit review.

On March 25, 2011 appellant again requested reconsideration. A January 23, 2009 letter from the employing establishment stated that a nurse practitioner had determined that appellant was unable to participate in the "Physical Techniques" program. The employing establishment directed appellant to return to his official sector on January 26, 2009, and present an attached letter for his physician to address the criteria used to determine if he had recovered sufficiently to resume training.

In a February 2, 2010 letter to appellant's congressional representative, the employing establishment stated that appellant's employment had been terminated after a review of his performance and conduct. It noted that he had provided inconsistent information regarding his compensation claim and he did not possess the traits and characteristics necessary for continued employment as a border patrol agent. It was also noted that an investigation had confirmed that appellant fell from a rope while on a training course on January 5, 2009.

By decision dated May 23, 2011, OWCP accepted the claim for lumbar and thoracic back strains based on the March 12, 2009 report from Dr. Flynn. Appellant was advised he could claim compensation for wage loss by filing a Form CA-7 claim.

On July 6, 2011 appellant filed a Form CA-7 claiming compensation commencing February 4, 2009. He submitted a report dated June 17, 2011 from Dr. Flynn providing results on examination and indicating that appellant would continue physical therapy. In a form report, Dr. Flynn indicated that appellant could work regular duty.

In a decision dated March 9, 2012, OWCP denied the claim for wage-loss compensation. It found the medical evidence was insufficient to establish employment-related disability.

Appellant requested a hearing before an OWCP hearing representative by letter dated March 19, 2012. A hearing was held on July 17, 2012. Appellant submitted a May 4, 2012 report from Dr. David Phillips, Board-certified in occupational medicine, who reviewed a history of injury and results on examination, stating that appellant continued to have chronic low back pain. Dr. Phillips opined that appellant continued to have residuals of the January 5, 2009 injury, with chronic inflammation and weakened muscles and ligaments at L4-5. He stated that appellant had no work capacity for 12 weeks after the injury, and then had work restrictions of 35 pounds occasional lifting, with minimal bending and twisting at the waist.

By decision dated September 28, 2012, OWCP's hearing representative affirmed the March 9, 2012 OWCP decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁴

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁵ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁶

ANALYSIS

In the present case, OWCP has denied appellant's claim for compensation for wage loss commencing February 4, 2009, when his employment was terminated. With respect to the termination of employment, the record did not indicate that the termination was based on his physical inability to continue the border patrol training. The employing establishment indicated that the termination was based on appellant's performance and conduct. A work stoppage that is

² *Id.* at §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁵ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Id.*

unrelated to an employment-related physical condition does not itself give rise to compensable disability under FECA.⁷

There remains an issue as to whether appellant may establish an employment-related disability based on the medical evidence. OWCP did not make adequate findings with respect to the disability issues raised. There are no specific findings with respect to the medical evidence, such as Dr. Flynn's March 12, 2009 report or Dr. Phillips' May 4, 2012 report. Both of the reports discuss employment-related work restrictions and disability. In addition to a lack of findings with respect to the medical evidence, OWCP did not make findings with respect to appellant's training program, such as its duration and its specific physical requirements.

The case will be remanded to OWCP for proper findings on the issues presented.⁸ OWCP should further develop the factual evidence as necessary and properly address the medical evidence of record with respect to an employment-related disability. After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case must be remanded to OWCP for further development of the evidence and appropriate findings.

⁷ See *Major W. Jefferson, III*, 47 ECAB 295 (1996).

⁸ 20 C.F.R. § 10.126.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 28, 2012 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 22, 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