



continuation of pay (COP) which she was paid starting July 25, 2011. Appellant stopped work on July 25, 2011. On August 25, 2011 OWCP accepted that she sustained a work-related sprain of her lumbar region.

In a July 27, 2011 form report, Dr. Harold Weems, an attending Board-certified orthopedic surgeon, provided various work restrictions. He advised that appellant could not lift more than 15 pounds and that she should not engage in bending, stooping or squatting.

On August 30, 2011 the employing establishment offered appellant an alternative-duty assignment. The description of the assignment stated that she would perform the full duties of her food inspector position, except that an inspector's helper would hang all carcasses presented for inspection. Appellant did not accept the position and she remained off work.

In an August 31, 2011 disability slip, Dr. Hasmukh Patel, an attending Board-certified internist, advised that appellant should be off work until she had a magnetic resonance imaging (MRI) scan.

On September 8, 2011 appellant filed a claim for compensation (Form CA-7) for disability compensation from July 25 to September 8, 2011. She later filed CA-7 forms claiming disability from September 9 through mid-December 2011.

In a September 13, 2011 letter, OWCP requested that appellant submit additional factual and medical evidence within 30 days in support of her September 8, 2011 disability claim. It noted that the employing establishment had offered her an alternative-duty assignment on August 30, 2011 and included language from section 8106(c)(2) of FECA regarding the termination of compensation for refusing suitable work.

Appellant submitted a September 5, 2011 report from Dr. James M. Arthur, an attending Board-certified neurosurgeon, who stated that she was under his care for a bulging disc at L5-S1 and that she was to remain off work until October 12, 2011. In a September 26, 2011 note, Dr. Patel indicated that appellant had low back pain caused by central disc protrusion and that she would be off work until she was seen by Dr. Arthur. A September 28, 2011 report from Dr. Arthur stated that appellant would be off work until October 5, 2011 and an October 18, 2011 note from Dr. Arthur indicated that she was able to perform limited-duty work beginning November 20, 2011.

In a December 29, 2011 decision, OWCP denied appellant's claim for wage-loss compensation beginning August 31, 2011. It noted that COP was authorized through August 30, 2011. In the basis for decision portion of an accompanying memorandum, it briefly discussed some of the medical evidence submitted by appellant and noted that it did not provide medical rationale regarding the relationship of the claimed disability to the July 25, 2011 work injury. The decision stated, "COP and wage[-]loss compensation benefits beginning August 31, 2011 and continuing are denied because you refused suitable work."

In brief notes dated in early December 2012, appellant's attending physicians, including Dr. Patel, noted that she complained of low back pain.

In a January 11, 2012 report, Dr. Arthur stated that, according to appellant's history and medical reports, she had no previous back-related problems or complaints prior to July 25, 2011. While under his care, appellant had several epidural injections and was prescribed medication. He reported that any "excess activities" aggravated her condition. Dr. Arthur noted that she remained under his care and was scheduled to have an epidural injection in March 2012.

In a September 7, 2012 decision,<sup>2</sup> the Board set aside OWCP's December 29, 2011 decision. The Board found that OWCP did not make adequate factual findings in its December 29, 2011 decision. In one portion of the decision, OWCP suggested that it denied her claim because she did not submit sufficient medical evidence to establish work-related disability after August 30, 2011, but in other portions of the decision it denied appellant's claim for disability compensation after August 30, 2011 because she had refused suitable work. The Board remanded the case to OWCP for further development, to include issuance of a merit decision containing adequate factual findings regarding appellant's claim on whether she was entitled to disability compensation after August 30, 2011 due to her July 25, 2011 work injury.

On remand, OWCP referred appellant to Dr. Robert Holladay, IV, a Board-certified orthopedic surgeon, for examination and further evaluation of her medical condition.<sup>3</sup>

In an October 11, 2012 report, Dr. Holladay reported his findings on examination and stated that, by clinical examination, there was no medical abnormal neurological finding as a result of the July 25, 2011 lumbar sprain. He noted that lumbar strains/sprains usually healed in a three-month time frame. Dr. Holladay stated, "There is no plausible, credible medical explain[ation] of low back pain." He advised that appellant "long ago has been physically capable" of returning to her regular work without restrictions and noted. "As I have stated above, the claimant has ongoing clinical complaints which cannot be explained on a medical basis considering the fact that there was no acute structural injury to the spine at the time of the event of [July 25, 2011]."

OWCP asked Dr. Holladay for a supplemental report advising when appellant was able to return to regular duty as indicated in his October 11, 2012 report.

In a February 25, 2013 report, Dr. Holladay stated that he had reviewed his prior report and noted:

"It is my opinion, [appellant] was not able physically to return to alternative work until December 1, 2011.... The clinical records note her complaints, exam[ination] findings and she was undergoing testing during the time frame from August 31, 2011 until December 1, 2011. It is my opinion she was not able to return to modified work or full work on December 1, 2011."

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<sup>2</sup> Docket No. 12-940 (issued September 7, 2012).

<sup>3</sup> OWCP asked Dr. Holladay to indicate whether appellant was able to perform the duties of the light-duty position she was offered on August 31, 2011. Appellant continued to file CA-7 forms claiming that she was entitled to disability compensation for the periods in 2012.

In a March 8, 2013 decision, OWCP determined that appellant did not establish that she sustained disability on or after December 1, 2011 due to her July 25, 2011 work injury. It found that Dr. Holladay's opinion constituted the weight of the medical evidence and stated:

“The claim for lost wages beginning December 1, 2011 is denied. The second opinion physician opined that you were no longer disabled as of that date. Accordingly, only the compensation claim for leave without pay prior to December 1, 2011 will be processed. Note that although you claimed the use of leave without pay beginning July 25, 2011, your [COP] period did not end until September 8, 2011. Your agency is responsible for any compensation during that period.”

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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.<sup>5</sup>

Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues, which must be proved by a preponderance of reliable, probative and substantial medical evidence.<sup>6</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained a work-related lumbar strain on July 25, 2011. She received COP for the period July 25 to September 8, 2011 and filed claims for disability commencing September 9, 2011. In a March 8, 2013 decision, OWCP found that appellant was entitled to disability compensation for the period September 9 to November 30, 2011 but that she

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<sup>4</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>5</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>6</sup> *W.D.*, Docket No. 09-658 (issued October 22, 2009).

had not met her burden of proof to establish that she sustained disability on or after December 1, 2011 due to her July 25, 2011 work injury.<sup>7</sup>

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained disability on or after December 1, 2011 due to her July 25, 2011 work injury.

Appellant submitted a limited number of brief medical reports in support of her claim. In notes dated in early December 2012, appellant's attending physicians, including Dr. Patel, indicated that she continued to complain of low back pain. However, the physicians did not address whether she sustained work-related disability on or after December 1, 2011. In a January 11, 2012 report, Dr. Arthur, an attending Board-certified neurosurgeon, stated that, according to the medical history, appellant had no previous back-related problems or complaints prior to July 25, 2011, the date of her work injury. He noted that appellant reported that any "excess activities" aggravated her condition. The submission of this report does not establish appellant's claim. Dr. Arthur did not provide a clear opinion on whether appellant had disability on or after December 1, 2011 due to her July 25, 2011 injury.

The record contains medical evidence showing that appellant did not have work-related disability on or after December 1, 2011. In reports dated October 11, 2012 and February 25, 2013, Dr. Holladay, a Board-certified orthopedic surgeon serving as an OWCP referral physician, determined that on December 1, 2011 appellant could return to her regular work on a full-time basis without restrictions. He noted appellant's July 25, 2011 lumbar sprain had resolved and indicated that she had ongoing clinical complaints which could not be explained on a medical basis considering the fact that there was no acute structural injury to the spine due to July 25, 2011 work incident.

For these reasons, appellant has not established work-related disability on or after December 1, 2011.

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 did not meet her burden of proof to establish that she sustained disability on or after December 1, 2011 due to her July 25, 2011 work injury.

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<sup>7</sup> The Board notes that it was appellant's burden of proof to establish entitlement to disability compensation on or after December 1, 2011 as she filed CA-7 forms and had not received OWCP compensation prior to the time that OWCP accepted her claim for the short period September 9 to November 30, 2011. *See generally* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.4 (August 1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 8, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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