

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**P.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Coppell, TX, Employer**

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**Docket No. 14-744  
Issued: August 6, 2014**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On February 19, 2014 appellant filed a timely appeal from a January 8, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established wage-loss compensation for the period August 21, 2012 through January 25, 2013 due to her accepted occupational disease injury.

**FACTUAL HISTORY**

On January 15, 2004 appellant, then a 54-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she developed a low back injury as a result of lifting parcels and packages. By decision dated March 11, 2004, OWCP accepted the claim

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

for lumbar strain. The claim was later expanded to include spinal stenosis and thoracic or lumbosacral neuritis.

On November 16, 2010 appellant underwent authorized L4-5 decompressive laminectomy, bilateral foraminotomy and posterior lateral fusion. She received continued physical therapy and epidural injections. Appellant returned to modified duty and claimed intermittent disability for wage-loss compensation thereafter.

Appellant sought treatment from her attending physician, Dr. Aaron Calodney, a Board-certified anesthesiologist with a subspecialty in pain medicine. In an August 27, 2012 medical report, Dr. Calodney reported that she suffered from significant back and bilateral lower extremity pain, as well as lumbar radiculopathy. He noted that, despite significant pain, appellant worked full time but occasionally left work early due to interventional pain techniques, such as lumbar epidural steroid injections. Dr. Calodney reported that her pain caused her to miss work from May 3 through August 20, 2012.

On September 21, 2012 appellant filed a claim for compensation (Form CA-7) for leave without pay for 48.75 hours for the period May 3 through August 20, 2012, which OWCP authorized for 48.75 hours.

In an October 31, 2012 Duty Status Report (Form CA-17), Dr. Calodney reported that appellant could return to work for five hours per day, six days per week with restrictions.

On October 23, 2013 appellant filed a second Form CA-7 for leave without pay for the period August 21, 2012 through January 25, 2013. On her time analysis Form CA-7a, she claimed intermittent disability from August 21, 2012 through January 25, 2013 for a total of 54.9 hours due to spinal and lumbar stenosis.<sup>2</sup>

In an October 21, 2013 medical report, Dr. Calodney reported that appellant suffered from significant back and bilateral lower extremity pain, as well as lumbar radiculopathy. He noted that she worked full time despite significant pain and had benefited from occasional lumbar epidural steroid injections and surgery. Dr. Calodney noted that at times leading up to the period in which appellant would have injections, her pain would be unbearable, limiting her ability to function and causing her to leave work early. He confirmed that she had those dates as a result of her condition.

In an October 21, 2013 attending physician's report (Form CA-20), Dr. Calodney reported that appellant visited his office for steroid injections every two to three months for treatment of her lumbar radiculopathy and lumbar disc displacement. He noted that her last visit was on March 29, 2013. Dr. Calodney stated that appellant had flare ups, which could require her to miss some work due to pain.

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<sup>2</sup> Appellant requested leave without pay for 2.93 hours on September 5, 2012; 8 hours on September 6, 2012, 8 hours on September 7, 2012, 2.07 hours on October 1, 2012, 2.03 hours on October 11, 2012, 8 hours on October 26, 2012, 1.59 hours on November 23, 2012, 2.64 hours on December 11, 2012, 3.16 hours on December 20, 2012, 8 hours on December 27, 2012, 4.37 hours on January 4, 2013, 3.05 hours on January 22, 2013 and 1.06 hours on January 23, 2013.

By letter dated October 30, 2013, the employing establishment controverted appellant's claim for compensation. It argued that the medical evidence failed to establish disability on the dates claimed and it did not appear that she sought medical attention on the dates that she alleged that she was unable to perform her work duties. The employing establishment further noted that Dr. Calodney's report was backdated for incidents that happened over 10 months ago and could not establish appellant's disability as he did not treat her on those dates.

By letter dated November 8, 2013, OWCP informed appellant that the medical evidence of record was insufficient to support her claim for compensation for the period August 27, 2012 through January 25, 2013, onward. Appellant was advised to submit medical evidence establishing disability for the periods claimed.

In support of her claim, appellant submitted another report from Dr. Calodney dated November 27, 2013. Dr. Calodney reported that she had significant back and bilateral discomfort with low back and bilateral posterior extremities. After undergoing L5 laminectomy, foraminotomy and posterolateral fusion surgery in 2010, appellant experienced some relief but continued to suffer severe discomfort during long periods of standing and bending. Dr. Calodney reported that there were times in which she was unable to function due to severe discomfort and grief, causing her much distress.

By decision dated January 8, 2014, OWCP denied appellant's claim for wage-loss compensation for the period August 21, 2012 through January 25, 2013 finding that the medical evidence failed to establish that she was disabled as a result of her accepted conditions for the specific periods claimed.

### **LEGAL PRECEDENT**

Under FECA,<sup>3</sup> the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>4</sup> Disability is not synonymous with a physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.<sup>5</sup>

Whether a particular injury causes an employee to be disabled and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>6</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements consist only of a repetition of the employee's complaints that excessive pain caused an inability to work, without making an objective finding of disability, the physician has not presented a

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> See *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>5</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

<sup>6</sup> See *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

medical opinion on the issue of disability or a basis for payment of compensation.<sup>7</sup> The Board will not require OWCP to pay compensation for disability without any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>8</sup>

OWCP's procedure manual provides that wages lost for compensable medical examination or treatment may be reimbursed.<sup>9</sup> It notes that a claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.<sup>10</sup> As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.<sup>11</sup>

### ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish that she was entitled to disability compensation for the period August 21, 2012 through January 25, 2013.

OWCP accepted that appellant sustained a lumbar strain, spinal stenosis and thoracic or lumbosacral neuritis. It approved L5 laminectomy, foraminotomy and posterolateral fusion surgery, which she underwent on November 16, 2010. Appellant received appropriate continuation of pay and wage-loss compensation through August 20, 2012. On October 23, 2013 she claimed 54.9 hours for leave without pay for the period August 21, 2012 through January 25, 2013.<sup>12</sup>

The medical evidence relevant to the specific dates of claimed compensation includes reports from Dr. Calodney dated August 27 and October 31, 2012 and October 21 and November 27, 2013. Dr. Calodney's August 27, 2012 report addresses appellant's disability for the period May 3 through August 20, 2012 and is not relevant to her current claim for disability. His October 31, 2012 CA-17 form states that she can work for five hours per day, six days per week with restrictions, but does not explain these limitations with medical rationale, supporting a finding of disability.

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<sup>7</sup> *G.T.*, 59 ECAB 447 (2008); *see Huie Lee Goal*, 1 ECAB 180,182 (1948).

<sup>8</sup> *Id.*

<sup>9</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16 (December 1995).

<sup>10</sup> *See also Daniel Hollars*, 51 ECAB 355 (2000); *Jeffrey R. Davis*, 35 ECAB 950 (1984).

<sup>11</sup> *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

<sup>12</sup> *Supra* note 2.

In his October 21, 2013 medical report, Dr. Calodney reported that appellant suffered from significant back and bilateral lower extremity pain, as well as lumbar radiculopathy. He noted that she worked full time despite significant pain and had benefited from occasional lumbar epidural steroid injections and surgery. Dr. Calodney stated that, at times leading up to the period in which appellant would have injections, her pain would be unbearable, limiting her ability to function and causing her to leave work early. He noted the days she missed work were the same dates alleged by appellant.

In an October 21, 2013 Form CA-20, Dr. Calodney reported that appellant received steroid injections every two to three months for her diagnosed conditions of lumbar radiculopathy and lumbar disc displacement. He noted that her last visit was on March 29, 2013 and stated that she had flare ups which could require her to miss some work due to pain. In his November 27, 2013 report, Dr. Calodney indicated that appellant experienced some relief but continued to suffer severe discomfort during long periods of standing and bending post L5 laminectomy, foraminotomy and posterolateral fusion surgery in 2010. He reported that there were times in which she was unable to function due to severe discomfort and grief, causing her much distress.

The Board finds that the opinion of Dr. Calodney is not well rationalized.<sup>13</sup> While Dr. Calodney opined that appellant was off work during the specific dates claimed because of pain and limited functional ability, he failed to provide a fully rationalized explanation as to why she was disabled on those dates. Other than generally stating that appellant suffered severe discomfort from long periods of standing and bending, he did not profess any knowledge of her specific job duties or provide a rationalized explanation as to why she could not work for the claimed periods.<sup>14</sup> Moreover, it is unclear if the long periods of standing and bending Dr. Calodney refers to encompass occupational or nonoccupational exposure.

In this instance, Dr. Calodney merely repeated the dates and hours requested by appellant for disability compensation in his October 31, 2012 report. His reports do not indicate that he treated her on or near those dates, which would allow him to provide a detailed medical opinion establishing disability on the specific dates claimed. Moreover, Dr. Calodney's October 21, 2013 Form CA-20 indicated that appellant visited his office approximately two to three months for epidural steroid injections, her last visit having been on March 29, 2013. Thus, it remains unclear how he could reach his conclusion that she was disabled from August 21, 2012 through January 25, 2013 without having consistently evaluated her.

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<sup>15</sup> and the Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient

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<sup>13</sup> R.W., Docket No. 13-656 (issued July 16, 2013).

<sup>14</sup> A.J., Docket No. 13-614 (issued July 9, 2013).

<sup>15</sup> *Supra* note 7.

to establish causal relationship.<sup>16</sup> The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>17</sup> As there is no rationalized medical evidence contemporaneous with the periods of claimed disability, appellant failed to meet her burden of proof to establish entitlement to disability compensation for the period August 21, 2012 through January 25, 2013.<sup>18</sup>

The record does not indicate that appellant received treatment, testing or therapy on the dates of claimed compensation.<sup>19</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

### **CONCLUSION**

The Board finds that appellant failed to establish that she was entitled to disability compensation for the period August 21, 2012 through January 25, 2013.

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<sup>16</sup> See *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>17</sup> *William A. Archer*, 55 ECAB 674 (2004).

<sup>18</sup> *Tammy L. Medley*, 55 ECAB 182 (2003).

<sup>19</sup> *Supra* note 2 requesting dates for disability compensation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 8, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board