



## **FACTUAL HISTORY**

On June 18, 2009 appellant, then a 52-year-old clerk, sustained injury to his right shoulder, arm, hand, ribs, and low back when he tripped on a plastic strap in the performance of duty. OWCP accepted his claim for lumbar sprain, sprain of the right shoulder, and upper arm, temporary aggravation of lumbar degenerative disc disease, right shoulder impingement, and myofascial pain. Appellant received continuation of pay for the period June 19 through August 2, 2009. On January 14, 2011 he filed a claim for compensation for the period August 3, 2009 through January 7, 2011.

In an August 18, 2009 report, Dr. Ashraf F. Hanna, a treating physician with Board certifications in anesthesiology and pain medicine, diagnosed cervicalgia, muscle spasm, pain in the right shoulder joint, rotator cuff syndrome, lumbar myofascial pain, cervical myofascial pain, cervical neuritis or radiculitis, and thoracic or lumbosacral neuritis or radiculitis. In a November 2, 2009 report, he noted treating appellant with Botox injection therapy. Dr. Hanna opined that appellant's near fall injury with a sudden twisting motion caused his lumbar facet joint disease condition. In a January 29, 2010 note, he listed the diagnosis of thoracolumbar radiculitis and gait disturbance and noted that appellant was homebound and needed social services. In a July 20, 2010 report, Dr. Hanna opined that based on appellant's eyewitness account along with his physical examination and review of x-rays and imaging, appellant's diagnosis was lumbar myofascial pain, thoracolumbar radiculitis, facet syndrome, thoracic myofascial pain, cervical myofascial pain, gait disturbance, and cervical radiculitis. He further opined that it was medically reasonable that appellant's work injury had caused these diagnoses, and that his work status was temporary totally disabled until further notice. In a January 13, 2011 report, Dr. Hanna noted that the Botox injections only provided temporary relief. He continued to list appellant's work status as temporarily totally disabled.

In a February 3, 2011 report, Dr. Hanna stated that appellant's subjective/objective symptoms were an aggravation of his preexisting medical condition that occurred *via* his employment-related injury dated June 18, 2009. He reiterated the diagnoses and noted physical findings of antalgic, slow/cautious gait; decreased range of motion in the right shoulder with tenderness, total spine tenderness; and limited range of motion with decreased sensation, and generalized weakness. Dr. Hanna noted that a magnetic resonance imaging (MRI) scan did not reveal a definite pathology, but appellant's soft tissue injury areas accounted for his objective findings. He noted that appellant's chronic pain syndrome was aggravated by his work injury and caused total disability.

By decision dated March 21, 2011, OWCP denied appellant's claim for compensation for the period August 3, 2009 to January 7, 2011.

In a July 19, 2011 deposition, Dr. Hanna testified that he first treated appellant on July 31, 2009 and last saw him on June 27, 2011. When first treated, appellant complained of severe pain in the low back, as well as limited neck pain and right shoulder pain. His initial assessment was cervical pain, low back, and shoulder pain as well as rotator cuff syndrome with lumbar radiculitis. Dr. Hanna noted that the conditions were caused or exacerbated by the injury due to the hyperextension movement in trying to protect himself from falling. He initially treated appellant with trigger point injections and recommended anti-inflammatory medication;

however, the injections only provided temporary relief. Dr. Hanna opined that appellant still had cervical, thoracic, and lumbar myofascial pain as well as facet joint disease and right shoulder rotator cuff syndrome. Each condition was causally related to the employment injury. Dr. Hanna noted that appellant's lumbar spinal stenosis and lumbar degenerative disc disease was not related to the injury. He put appellant on temporary total disability as he was in significant pain.

OWCP referred appellant to Dr. Jonathan Black, a Board-certified orthopedic surgeon, for a second opinion. In an April 6, 2011 report, Dr. Black reviewed appellant's history of injury and medical treatment. Following examination, he concluded that there were no objective neurologic findings. Appellant had a markedly exaggerated pain response to any attempts at examination, unsupported by any anatomic findings on MRI scan or nerve conduction study. Dr. Black found no objective findings to support a current diagnosis of lumbar sprain and stated that he would consider that condition resolved. There were no objective findings to support a current diagnosis of right shoulder sprain, noting that appellant had right shoulder myofascial pain and impingement symptoms for 10 years predating the injury. Dr. Black did not doubt that appellant had an aggravation of his shoulder symptoms at the time of injury, but did not find any convincing evidence of a continued aggravation of his shoulder symptoms.

With regard to his lumbar symptoms, Dr. Black concluded that appellant clearly had an aggravation of his preexisting degenerative back condition but that the MRI scans did not reveal any evidence of an acute injury that could account for any continued symptoms as claimed. He opined that appellant's complaints far outweighed the objective findings. Dr. Black did not have any objective findings of neurologic deficit and exhibited marked nonanatomic pain responses to nonnoxious stimuli. He found appellant capable of performing the regular duties of a mail processing clerk. Dr. Black noted that, because appellant had been out of work for 22 months, it was likely he would have to be gradually returned to his work activities but there were no physical contraindications to him doing so.

In a September 8, 2011 decision, an OWCP hearing representative found that the case record was unclear as to whether appellant was disabled commencing August 3, 2009 due to the June 18, 2009 employment injury. The hearing representative remanded the case to have Dr. Black clarify: (1) the duration of aggravation of preexisting lumbar spine and right shoulder conditions causally related to the June 18, 2009 employment injury; (2) whether as of August 3, 2009 appellant was disabled due to any injury-related condition; and (3) the nature and extent of such disability.

In a September 26, 2011 note, Dr. Black responded that he could not give an opinion as to the duration of the aggravation of appellant's preexisting injuries but at the present time he did not consider that appellant had aggravation of the conditions due to the work-related injury. He did not believe that appellant was disabled due to injury with related conditions as of August 3, 2009.

By decision dated October 31, 2011, OWCP denied appellant's claim for compensation.

Appellant requested a hearing held on February 8, 2012. He described his examination by Dr. Black and complained that he was condescending and rude. Appellant noted that he had

constant spasms after the examination and went to the hospital two times following the examination.

In a March 5, 2012 note, Dr. Hanna disagreed with Dr. Black's evaluation. It was his medical opinion that appellant had a permanent aggravation of his spine condition as a result of the June 18, 2009 employment injury that included: chronic pain; decreased/hypersensitivity nerve sensation; lack of coordination; decreased range of motion of the total spine; and shoulders with a peripheral nerve injury. Dr. Hanna reiterated that appellant's work status was temporarily totally disabled and that it was unlikely to change. He also noted that appellant went to the hospital twice for treatment of his pain following Dr. Black's examination.

In a decision dated April 23, 2012, the hearing representative affirmed the October 31, 2011 decision denying appellant's claim for compensation for the period August 3, 2009 through January 7, 2011.

By letter dated April 17, 2013, appellant, through counsel, requested reconsideration of the April 23, 2012 decision. Counsel contended that the prior decision failed to discuss the sworn statement of Dr. Hanna, which was previously submitted. She further contended that he supported a causal relationship between the employment injury and the objective medical evidence.

Counsel submitted additional evidence in support of the reconsideration request. In a December 4, 2012 report, Dr. Hanna stated that appellant's claim should be expanded to include: (1) disc bulges at L3-4, L4-5; (2) facet joint disease; (3) thoracolumbar radiculitis; (4) cervical radiculitis; and (5) aggravation of lumbar stenosis. He explained that appellant's various diagnoses were supported by physical findings and related to the accepted employment injury. Due to the injuries he sustained on June 18, 2009, appellant was rendered totally disabled from his job and continued to be disabled. Dr. Hanna noted that appellant was unable to sit, stand or walk for any amount of time and was unable to perform any lifting, pushing or pulling activities as required by his job. He opined that appellant was unable to perform even light-duty work. Dr. Hanna did not find appellant's pain responses to be exaggerated. He submitted treatment notes indicating that he gave appellant various injections on October 23, 2012 and February 25, 2013 and treatment notes from appellant's psychologist.

By decision dated July 22, 2013, OWCP denied modification of the April 23, 2012 decision.

### **LEGAL PRECEDENT**

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.<sup>2</sup> Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.<sup>3</sup> The issue of

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<sup>2</sup> See *Feridoon Kharabi*, 52 ECAB 291 (2001).

<sup>3</sup> *Id.*

whether a particular injury causes disability for work must be resolved by competent medical evidence.<sup>4</sup> To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.<sup>5</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 regarding an employee's ability to work consist only of repetition of the employee's complaints that he 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>6</sup> 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. 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.<sup>7</sup>

### ANALYSIS

OWCP accepted appellant's claim for lumbar sprain, sprain of the right shoulder, and upper arm, temporary aggravation of lumbar degenerative disc disease, right shoulder impingement, and myofascial pain due to the employment injury of June 18, 2009. However, it denied his claim for wage-loss compensation for the period August 3, 2009 through January 7, 2011.

In making its determination to deny appellant's claim for compensation, OWCP gave the weight of medical opinion to Dr. Black, the second opinion physician. The Board finds that Dr. Black did not provide a well-rationalized medical opinion. Dr. Black's initial report discussed appellant's medical condition at the time of his April 6, 2011 examination, but did not address whether he was disabled from August 3, 2009 through January 7, 2011. In a September 26, 2011 note, he stated that he did not believe that appellant was disabled due to the employment injury, but he provided insufficient explanation for his conclusion. Dr. Black's brief remarks, unsupported by medical findings or rationale, are insufficient to resolve whether appellant was disabled due to accepted conditions commencing August 3, 2009. Medical conclusions unsupported by rationale are of diminished probative value.<sup>8</sup>

OWCP attempted to develop the medical evidence with regard to whether appellant was totally disabled from August 3, 2009 through January 7, 2011 due to his June 18, 2009 employment injury by referring him to Dr. Black. Once OWCP undertakes development of the

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<sup>4</sup> See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>5</sup> *C.S.*, Docket No. 08-2218 (issued August 7, 2008).

<sup>6</sup> *Supra* note 2.

<sup>7</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>8</sup> *J.K.*, Docket No. 14-512 (issued July 9, 2014).

record, it has the responsibility to do so in a proper manner.<sup>9</sup> The Board finds that this case is not in posture for decision and will remand the case to refer appellant for a new second opinion examination. After such further development as OWCP deems necessary, it should issue a *de novo* decision.

**CONCLUSION**

The Board finds that this case is not in posture for decision, as it requires further development of the medical evidence.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 22, 2013 is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: December 17, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>9</sup> *D.W.*, Docket No. 10-598 (issued October 6, 2010).