



## **FACTUAL HISTORY**

This case was previously before the Board.<sup>3</sup> Appellant, a 57-year-old letter carrier, injured her lower back in the performance of duty on September 6, 2002.<sup>4</sup> OWCP accepted her claim for sacroiliac sprain. Appellant also claimed multilevel lumbar disc disease; a condition that OWCP has not accepted as employment related. For several years she worked full-time, limited duty. Beginning in December 2009, the employing establishment provided only two hours of limited-duty work per day.<sup>5</sup> Because of the reduction in appellant's work hours, OWCP accepted a recurrence of disability effective December 5, 2009. Appellant received compensation for six hours per day through March 3, 2010.<sup>6</sup> However, she has claimed additional wage-loss compensation through May 21, 2010.<sup>7</sup> Appellant resumed full-time work as a letter carrier on May 25, 2010.

The Board has previously considered the issue of appellant's entitlement to wage-loss compensation for the period March 5 through May 21, 2010.

By decision dated July 29, 2011, OWCP denied compensation for the claimed period based on the November 11, 2010 report of Dr. Howard Zeidman, a Board-certified orthopedic surgeon and impartial medical examiner (IME).<sup>8</sup> When Dr. Zeidman examined appellant on September 15, 2010, he found minimal objective signs of problems with regard to her low back. There were no signs of neurologic damage. Appellant's imaging studies were consistent with residuals of her degenerative problems. Dr. Zeidman stated that it was difficult to identify an impairment specifically related to her 2002 injury. At the time, appellant was working a full-duty position, and Dr. Zeidman indicated that there was no reason to believe she was unable to continue to carry out those duties. Dr. Zeidman also noted there was no evidence of permanent

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<sup>3</sup> Docket No. 11-789 (issued November 3, 2011) and Docket No. 12-312 (issued January 3, 2013).

<sup>4</sup> Appellant was injured while stepping off a step with her mailbag on her back.

<sup>5</sup> Appellant was restricted to only three hours of mail delivery during an eight-hour shift.

<sup>6</sup> Appellant also received eight hours of wage-loss compensation for attending a March 4, 2010 OWCP-directed medical examination. That day she saw Dr. Robert F. Draper, Jr., a Board-certified orthopedic surgeon, whose report OWCP relied upon as a basis for terminating medical benefits effective April 21, 2010. By decision dated November 3, 2011, the Board reversed OWCP's termination of medical benefits. Docket No. 11-789 (issued November 3, 2011).

<sup>7</sup> Appellant continued to work two hours per day from March 5 through May 21, 2010.

<sup>8</sup> OWCP had found a conflict between Dr. Draper and appellant's physician, Dr. Laura E. Ross, a Board-certified orthopedic surgeon. In his March 4, 2010 report, Dr. Draper diagnosed lumbosacral strain and lumbar degenerative disc disease with disc herniations at L1-2 and L5-S1. He indicated that appellant's work-related lumbar strain had since resolved. Dr. Draper characterized her clinical examination as "completely normal." He also indicated that appellant's lumbar degenerative disc disease was unrelated to her accepted employment injury. In a June 8, 2010 report, Dr. Ross diagnosed herniated discs at L1-2 and L5-S1, with left sacroiliitis. She specifically noted her disagreement with Dr. Draper's March 4, 2010 finding of a normal physical examination. Dr. Ross also found that appellant's lumbar disc herniations were employment related and not a preexisting injury as noted by Dr. Draper.

disability and certainly no evidence of disability since appellant returned to work in June 2010.<sup>9</sup> With respect to her disability prior to June 2010, he indicated that the various reported findings were inconsistent and it was difficult to arrive at a more definitive statement regarding the period.

In its January 3, 2013 decision, the Board found that Dr. Zeidman had not adequately addressed the issue of whether appellant was disabled during the claimed period. The Board specifically noted that “Dr. Zeidman did not definitively state whether appellant was capable of performing her full-time letter carrier duties during the period March 5 through May 21, 2010.” Accordingly, the Board set aside the hearing representative’s July 29, 2011 decision, and remanded the case to OWCP to obtain clarification from the IME.<sup>10</sup>

In a March 13, 2013 supplemental report, Dr. Zeidman reiterated that appellant was capable of performing full-time duty activities following her return to work. With respect to her prior status, he stated:

Although as I indicated the record is somewhat conflicting, one would have to conclude that the patient was capable of working during that time. That at any given date, she may have had increasing difficulties, but gradually these subsided and in the totality return to work would have been possible during the dates in question.

In an April 3, 2013 decision, OWCP again denied wage-loss compensation for the claimed period based on Dr. Zeidman’s opinion.

By decision dated June 24, 2013, the Branch of Hearings & Review set aside OWCP’s April 3, 2013 decision. The hearing representative remanded the case for OWCP to obtain further clarification from Dr. Zeidman.

In a July 17, 2013 report, Dr. Zeidman stated that, based on his prior report and notes, he felt that appellant was able to continue working in a regular duty status. He also understood that the current question pertained to her ability to work from early March through the end of May 2010. Dr. Zeidman noted that, when he saw appellant in September 2010, she indicated that she had not received medical care in the recent past and that her situation remained unchanged. He explained that, based upon this information, as well as the examination results and a review of the record, there was no identifiable reason that appellant would not have been able to carry out “the duties of a full-time position” during the interval in question.

In an August 8, 2013 decision, OWCP denied wage-loss compensation for the claimed period. On March 11, 2014 the Branch of Hearings & Review affirmed the denial.

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<sup>9</sup> Dr. Zeidman indicated that appellant’s employment injury may have aggravated her chronic degenerative low back problems, but there was no current evidence of any continued difficulty directly related to the 2002 employment injury.

<sup>10</sup> The Board’s January 3, 2013 decision is incorporated herein by reference. Docket No. 12-312.

## LEGAL PRECEDENT

A claimant has the burden of establishing the essential elements of his or her claim, including that the medical condition for which compensation is claimed is causally related to the employment injury.<sup>11</sup> Compensation for wage loss due to disability is available for periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.<sup>12</sup> The claimant must submit medical evidence showing that the condition claimed is disabling.<sup>13</sup> The evidence submitted must be reliable, probative and substantial.<sup>14</sup>

The physician's opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty, and must include objective findings in support of its conclusions.<sup>15</sup> Subjective complaints of pain are not sufficient, in and of themselves, to support payment of continuing compensation.<sup>16</sup> Likewise, medical limitations based solely on the fear of a possible future injury are also insufficient to support payment of continuing compensation.<sup>17</sup>

FECA provides that, if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.<sup>18</sup> For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."<sup>19</sup> Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>20</sup>

## ANALYSIS

From December 5, 2009 until March 3, 2010, OWCP regularly compensated appellant for six hours of lost wages per day. During that time frame, the employing establishment

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<sup>11</sup> 20 C.F.R. § 10.115(e); see *Tammy L. Medley*, 55 ECAB 182, 184 (2003). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>12</sup> 20 C.F.R. § 10.500(a).

<sup>13</sup> *Id.* at § 10.115(f).

<sup>14</sup> *Id.* at § 10.115.

<sup>15</sup> *Id.* at § 10.501(a)(2).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 5 U.S.C. § 8123(a); see 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

<sup>19</sup> *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

<sup>20</sup> *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

provided only two hours of limited-duty work per day. From March 5 through May 21, 2010, appellant continued to work only two hours per day. The balance of her workday -- six hours -- she charged to leave without pay. Appellant resumed full-time work as a letter carrier effective May 25, 2010. When the case was last before the Board, OWCP had denied wage-loss compensation for the claimed period based on the impartial medical examiner's November 11, 2010 report. The Board found that the case was not in posture for decision because "Dr. Zeidman did not definitively state whether appellant was capable of performing her full-time letter carrier duties during the period March 5 through May 21, 2010."

Since then OWCP has twice sought clarification from Dr. Zeidman. Despite these efforts, Dr. Zeidman's various reports still fail to adequately address the dispositive issue on appeal. The question is not whether appellant was capable of working full time, but whether she could perform her full-time letter carrier duties during the claimed period. In his March 13, 2013 supplemental report, Dr. Zeidman noted that, although the record was somewhat conflicting, one would have to conclude that appellant was capable of working during the claimed period. As noted, appellant did in fact work during this period, albeit only two hours per day. The hearing representative found Dr. Zeidman's March 13, 2013 supplemental report deficient, and she properly remanded the case to OWCP for further development. In his July 17, 2013 report, Dr. Zeidman stated "there was no identifiable reason that the patient would have not been able to carry out the duties of a full-time position" during the interval in question. Again, the issue is not simply whether appellant could work full time, but whether she was capable of performing her full-time letter carrier duties during the claimed period. It is not entirely clear what Dr. Zeidman meant when he stated that appellant could carry out the duties of a full-time position. Full time and full duty are not synonymous. Accordingly, the Board finds that the case is not in posture for decision.

The IME has yet to definitively state whether appellant could perform her full-time letter carrier duties during the period March 5 through May 21, 2010. The IME's report must actually fulfill the purpose for which it was intended; it must resolve the conflict in medical opinion.<sup>21</sup> OWCP should ensure that the IME's report is comprehensive, clear and definite and that it is based on current information and supported by substantial medical reasoning, as well as a review of the case file.<sup>22</sup> If the report is vague, speculative, incomplete or not rationalized, it is OWCP's responsibility to secure a supplemental report from the IME to correct any defects.<sup>23</sup> If Dr. Zeidman is either unwilling or unable to provide the necessary clarification, then OWCP should refer appellant to another IME.<sup>24</sup> After OWCP has developed the case record consistent with the Board's directive, a *de novo* decision shall be issued.

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<sup>21</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing & Evaluating Medical Evidence*, Chapter 2.810.11d(2) (September 2010).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at Chapter 2.810.11e.

**CONCLUSION**

The case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 11, 2014 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action in accordance with this decision.

Issued: December 8, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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