

FACTUAL HISTORY

OWCP accepted that on November 2, 2011 appellant, then a 42-year-old unit team secretary, sustained a lumbar sprain while carrying inmate property to lockers. Her position was described as clerical, at the sedentary demand level. It involved “some walking, standing, light lifting, bending, and stooping.”

Appellant was first followed by Dr. Tibor Toplenszky, an attending internist, at an urgent care clinic. On November 7, 2011 Dr. Toplenszky diagnosed thoracic and lumbar back sprains due to lifting inmate property on November 2, 2011. In a November 21, 2011 report, Dr. Sangeeta S. Wagner, an attending osteopathic physician at the clinic, released appellant to restricted duty for six hours a day.

In a December 2, 2011 report, Dr. Richard R. Gasparre, an attending Board-certified family practitioner, diagnosed thoracic and lumbosacral strains due to the November 2, 2011 occupational incident. He released appellant to full-time light duty.

In reports from January 9 to March 27, 2012, Dr. Toplenszky related appellant’s continuing cervical and lumbar spine symptoms. He found appellant able to perform full-time restricted duty through April 3, 2012. Dr. Toplenszky ordered January 24, 2012 cervical and lumbar magnetic resonance imaging (MRI) scans, which demonstrated no significant central canal or neural foraminal narrowing from C7 through L1, mild facet degeneration from L3 to S1, a mild annular disc bulge at L4-5 and a right paracentral disc protrusion at L5-S1 with slight contact with the right S1 nerve root.

In an April 4, 2012 report, Dr. Jonathan Burns, an attending Board-certified physiatrist, provided a history of injury as the onset of symptoms on November 2, 2011 “after cumulative trauma to her back and right leg.” He related appellant’s symptoms of “axial neck and low back pain with radicular pain into the right shoulder and arm as well as the right lower limb in an L5 distribution.” Dr. Burns diagnosed thoracic and lumbar radiculitis, lower back pain, lumbar disc herniation without myelopathy, cervical radiculitis, neck pain, and rotator cuff syndrome. He released appellant to full-time restricted duty and prescribed medication.

In a May 17, 2012 report, Dr. Burns provided a history of injury as the onset of symptoms on November 2, 2011 “after cumulative trauma to her neck, arm, low back and right leg.” He obtained a May 14, 2012 cervical spine MRI scan showing degenerative disc disease with disc bulging at C4-5 with central canal stenosis. Dr. Burns released appellant to restricted duty.

Appellant stopped work on May 7, 2012. She filed claims for compensation for intermittent work absences from December 18, 2011 to May 6, 2012² and for total disability from May 7, 2012 onward. On June 18, 2012 OWCP issued compensation for work absences

² Appellant claimed 8 hours of wage-loss compensation for work absences on each of the following dates: December 28, 2011; March 1, 6, 7, 27, 28 and 29, and April 3, 4, 5, and 6, 2012. She claimed 6 hours wage-loss compensation for January 5 and February 29, 2012, 6.5 hours for January 23, 2012, and 2 hours on December 27 and 30, 2011 and March 2, 2012.

due to medical appointments on December 30, 2011, January 9, 12, 24 and 27, March 27, April 4, and May 17, 2012.

In a June 20, 2012 letter, OWCP noted authorizing compensation for medical appointments from December 30, 2011 to May 17, 2012. It also noted that Dr. Gasparre and Dr. Toplenszky both released appellant to full-time restricted duty for the remainder of the claimed period. OWCP advised her of the additional evidence needed to establish disability for the remaining period. It afforded appellant 30 days to submit such evidence.

In a June 24, 2012 report, Dr. Burns related appellant's complaints of "axial neck, low back, right shoulder and arm, and right leg pain due to cumulative trauma work injury." He diagnosed rotator cuff syndrome, cervical stenosis, cervical radiculitis, neck pain, low back pain and thoracic, and lumbar radiculitis. Dr. Burns explained that the "injuries all began at the same time and should be considered under the same work-related injury." He noted that appellant was asymptomatic "prior to the work injury [on] November 2, 2011." Dr. Burns prescribed narcotic pain medication.

In a July 20, 2012 letter, Dr. Burns noted examining appellant on April 4, May 17, June 19, and 22, 2012 for a November 2, 2011 occupational injury. He diagnosed an L5-S1 disc herniation and C4-5 disc protrusion "abutting the spinal cord." Dr. Burns recommended that, due to appellant's neck and low back issues, she be placed "in an administrative position without exposure to inmates and possible altercations." He noted appellant's continuing symptoms on August 14, 2012.

Appellant claimed compensation for total wage loss from May 20 to August 10, 2012. The employing establishment noted that Dr. Burns had taken her off work.

On October 2, 2012 OWCP obtained a second opinion from Dr. Aubrey Swartz, a Board-certified orthopedic surgeon, who reviewed the medical record and a statement of accepted facts. On examination, Dr. Swartz found restricted right shoulder motion, give-way weakness of the right shoulder and full lumbar motion without spasm. He observed a normal gait and that appellant was able to squat. Dr. Swartz diagnosed "cervicothoracic and lumbar strains ... under reasonably good control," and possible chronic tendinitis and rotator cuff tear of the right shoulder. He noted that appellant's presentation was more consistent with cumulative trauma than a single event. Dr. Swartz opined that the cervical disc protrusion, annular tear, and lumbar facet degeneration were not occupationally related. He found appellant able to perform full-time modified duty. Dr. Swartz explained that she was not objectively disabled for work as of December 2, 2011, when she was released to full-time restricted duty. Regarding Dr. Burns' restriction against inmate contact, Dr. Swartz opined that appellant's orthopedic conditions were "a significant factor in having her avoid contact with inmates. [Appellant was] unable to defend herself or others, and physical altercations could aggravate her conditions."³

Dr. Swartz ordered an October 18, 2012 cervical MRI scan, which showed mild degenerative changes without significant stenosis. An MRI scan of the right shoulder showed

³ In an October 3, 2012 report, Dr. Burns recommended a lumbar epidural steroid injection. He held appellant off work through December 3, 2012 pending completion of the second opinion evaluation.

mild supraspinatus and infraspinatus tendinopathy. November 12, 2012 electromyography and nerve conduction velocity studies of the upper extremities were within normal limits.

In a November 20, 2012 report, Dr. Swartz opined that, based on imaging tests, appellant should consider cortisone injections to the right shoulder. He recommended conservative treatment for her neck pain as there was no electrodiagnostic basis for her radicular complaints. Dr. Swartz opined that any residuals of the accepted injury had ceased as of October 2, 2012. He found appellant able to perform full-time work with lifting and carrying up to 25 pounds.

By decision dated December 10, 2012, OWCP denied appellant's claims for periods of disability beginning December 18, 2011 as the medical evidence did not establish disability for work due to the accepted lumbar sprain. It accorded the weight of the medical evidence to Dr. Swartz. Appellant continued to claim compensation for total disability from December 10, 2012 onward.

In a December 29, 2012 letter, appellant requested a hearing, held telephonically on May 15, 2013. During the hearing, she asserted that she was totally disabled for work as all employing establishment jobs violated Dr. Burns' restriction against working near inmates. Counsel acknowledged that appellant's right shoulder condition was unrelated to the present claim. He also contended that Dr. Swartz' opinions were too inconsistent to represent the weight of the medical evidence.

Appellant provided reports from Dr. Burns dated December 3, 2012 to May 7, 2013, noting slow improvement in her cervical and lumbar spine symptoms. Dr. Burns held her off work through February 3, 2013 pending the results of Dr. Swartz' testing and afterward as she was interested in pursuing medical retirement. He reiterated that appellant's neck and back conditions were all caused by cumulative trauma.

By decision dated and finalized July 30, 2013, an OWCP hearing representative affirmed OWCP's December 10, 2012 decision, finding that Dr. Burns' opinion did not contain sufficient objective findings or medical reasoning to support that the accepted lumbar sprain disabled appellant for work on and after December 18, 2011.

In a December 30, 2013 letter, counsel requested reconsideration. He submitted reports from Dr. Burns dated from May 17 to November 11, 2013, attributing appellant's conditions to cumulative workplace trauma. Dr. Burns noted that he needed to provide "an off[-]work note for 100 days after [appellant's] hearing May 15, 2013."

In a November 11, 2013 letter, Dr. Burns explained that appellant's "complaint for disability [was] for low back pain sustained after cumulative trauma November 2, 2011 at [appellant's] workplace. In her clerical work position, she performed repetitive lifting, twisting and bending which caused her pain." He asserted that there was "no evidence [appellant] had these complaints prior to her reported date of injury." Dr. Burns opined that lumbar degenerative disc disease and an L5-S1 annular tear with disc protrusion correlated with appellant's symptoms "and certainly could be caused by repetitive lifting and bending such as the injuries sustained by [appellant]." He noted that she was "taking narcotic pain medications for her pain, which can cause drowsiness and impair her function. In her work, appellant interacts with inmates and a

sudden urgent situation would pose a health risk to herself and the other staff due to her use of medications for her pain and with her weakness from the disc bulging.”⁴

By decision dated March 21, 2014, OWCP denied modification as the evidence submitted on reconsideration was insufficient to establish disability for work for the claimed periods or to create a conflict with Dr. Swartz’ opinion. It found that Dr. Burns attributed appellant’s condition to repetitive lifting over time, and not the traumatic incident described on the claim form. Also, OWCP found that he had not explained how the accepted injury would have caused the diagnosed disc herniations, degenerative disc disease and L5-S1 annular tear.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.⁵

To establish a causal relationship between a claimed period of disability and the accepted employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.⁶ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is evidence which includes a physician’s rationalized medical opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. 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.⁸

ANALYSIS

OWCP accepted that appellant sustained a lumbar sprain on November 2, 2011. Appellant had intermittent work absences through May 6, 2012, then stopped work and did not return. She claimed wage-loss compensation for intermittent absences from December 18, 2011 to May 6, 2012 and total disability from May 7, 2012 onward. OWCP paid compensation for attendance at medical appointments on December 30, 2011, January 9, 12, 24, 27, March 27, April 4, and May 17, 2012. However, it denied the remainder of the claimed period by decision dated December 10, 2012, finding that the medical evidence submitted was insufficient to

⁴ Appellant also submitted medication compliance laboratory reports dated from January 31, 2013 to January 8, 2014, a July 5, 2013 physical therapy evaluation, and a March 3, 2014 report from a physician’s assistant.

⁵ *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

⁶ *Manuel Gill*, 52 ECAB 282 (2001).

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000).

establish total disability. Following a hearing, OWCP again denied the claim for disability compensation by decision dated July 30, 2013. Pursuant to a request for reconsideration, it again denied appellant's claims for disability compensation by decision dated March 21, 2014.

On November 21, 2011 Dr. Wagner, an attending osteopath, released appellant to restricted duty for six hours a day. Dr. Gasparre, an attending Board-certified family practitioner, diagnosed thoracic and lumbosacral strains, and released her to full-time light duty as of December 2, 2011. Dr. Toplenzsky, an attending internist, diagnosed cervical and thoracic strains but found appellant able to perform full-time work with restrictions from January 9 to April 3, 2012. None of these physicians found her totally disabled for work for any period beginning December 18, 2011.

Appellant also provided reports from Dr. Burns, an attending Board-certified physiatrist. In April 4, May 17, June 24, 2012, and November 11, 2013 reports, Dr. Burns attributed her cervical, thoracic and lumbar spine conditions, including bulging lumbar discs and an L5-S1 annular tear, to "cumulative trauma" at work with an onset of symptoms on November 2, 2011. This history of injury conflicts with appellant's description of a traumatic lifting incident on November 2, 2011. The inaccuracy regarding the mechanism of injury diminishes the probative value of Dr. Burns' opinion.⁹

Additionally, Dr. Burns did not find that the accepted lumbar strain disabled appellant for work on and after December 18, 2011. He found her able to perform full-time restricted duty from April 4, 2012 through February 2, 2013. On July 20, 2012 Dr. Burns recommended that appellant not be exposed to inmates and possible altercations due to her "neck and low back issues." He held her off work from December 3, 2012 to February 3, 2013 pending tests ordered by a second opinion physician, then found her totally disabled from February 4, 2013 onward as she wished to elect medical retirement benefits. Dr. Burns did not opine, however, that the accepted lumbar strain totally disabled appellant for work.

Dr. Burns addressed causal relationship in a November 11, 2013 letter, explaining that appellant was asymptomatic prior to November 2, 2011. However, the Board has held that a temporal relationship alone is insufficient to establish causal relationship.¹⁰ Dr. Burns also opined that lumbar degenerative disc disease and an L5-S1 annular tear with disc protrusion "could be caused by repetitive lifting and bending such as the injuries sustained by [appellant]." As noted above, appellant did not allege a repetitive mechanism of injury. Dr. Burns also noted that prescription narcotic medication might impair her functioning at work. However, he did not explain why these medications were necessary to treat the accepted condition. Dr. Burns also posited that weakness from bulging discs created a workplace safety issue. He did not provide his medical reasoning for attributing the bulging discs to the accepted injury. In the absence of such explanation, Dr. Burns' opinion is of insufficient probative value to establish total disability for work for any period after December 18, 2011.¹¹

⁹ *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹⁰ *Louis R. Blair, Jr.*, 54 ECAB 348 (2003).

¹¹ *Deborah L. Beatty*, 54 ECAB 340 (2003).

Appellant also submitted medication compliance laboratory reports dated from January 31, 2013 to January 8, 2014, a July 5, 2013 physical therapy evaluation, and a March 3, 2014 report from a physician's assistant. As these documents were not signed or reviewed by a physician, they do not constitute medical evidence. Appellant also submitted copies of reports previously of record and correspondence from counsel to Dr. Burns.¹²

OWCP accorded the weight of the medical evidence to Dr. Swartz, a Board-certified orthopedic surgeon and second opinion specialist. Dr. Swartz submitted October 2 and November 20, 2012 reports based on examination, a statement of accepted facts, and review of the medical record. He also obtained electrodiagnostic test results and imaging studies showing no neurologic abnormalities of the cervical spine or upper extremities. Dr. Swartz found no objective signs of the accepted lumbar strain. He found that appellant was able to perform full-time light duty from December 2, 2011 onward, with lifting limited to 25 pounds. Regarding Dr. Burns' concern that prescription narcotics could impair her functioning in a prison environment, Dr. Swartz noted that these medications were no longer objectively necessary to treat the accepted lumbar sprain, which had resolved without residuals. The Board finds that Dr. Swartz' opinion is based on a complete, accurate history and is sufficiently rationalized to represent the weight of the medical evidence in this case.

OWCP advised appellant by June 20, 2012 letter of the additional evidence needed to establish her claim, including a medical report from her attending physician addressing the claimed period of disability. As appellant did not submit such evidence, OWCP's March 21, 2014 decision denying the claim was proper. The medical evidence did not establish a work-related disability for the claimed period.¹³

On appeal, counsel contends that OWCP's March 21, 2014 decision is "contrary to law and fact." As stated above, appellant did not submit sufficient medical evidence to establish disability for work for the claimed period. She 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 establish that she was disabled for work for intermittent periods from December 18, 2011 to May 6, 2012 and from May 7, 2012 and continuing due to an accepted lumbar sprain.

¹² *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹³ *J.F.*, 58 ECAB 124 (2006); *Carl C. Graci*, 50 ECAB 557 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 21, 2014 is affirmed.

Issued: December 8, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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