

FACTUAL HISTORY

On April 26, 2011 appellant, then a 63-year-old rural mail carrier, filed an occupational disease claim alleging that he developed degenerative disc disease at L4-5 due to his job duties as a rural letter carrier. In a narrative statement dated March 6, 2011, he noted a prior accepted back injury on January 29, 2004 and that he returned to full-duty work after his injury. Appellant stated that on April 16, 2010 he began to experience pain in his right lower back which traveled down his right leg. He stopped work on April 22, 2010. Appellant began performing light-duty work on August 27, 2010.

Dr. Peter C. Boylan, a Board-certified orthopedic surgeon, examined appellant on April 26, 2010. He noted that appellant began developing right leg pain and that he had not worked for six days. Dr. Boylan found that appellant walked with a limp on his right leg and that x-rays of the lumbar spine revealed narrowing at the L4-5 level. He diagnosed degenerative lumbar disc disease. On May 3, 2010 Dr. Boylan noted that appellant attributed his condition to his work-related fall in 2004. He noted that appellant walked slowly with small steps and that lying down relieved his pain. Dr. Boylan stated, “[appellant] has apparently been using his own sick leave time and if he were working, I would recommend that he not be driving the mail truck and I would recommend that he have an office job where he would avoid lifting of over 20 pounds.”

On May 28, 2010 Dr. Daniel R. Kloster, a Board-certified anesthesiologist, examined appellant for a six-week history of low back pain and radicular symptoms. He diagnosed lumbar radiculopathy, lumbar degenerative disc disease at L4-5 and lumbar facet arthropathy at L4-5. Dr. Kloster reviewed appellant’s May 17, 2010 magnetic resonance imaging (MRI) scans and recommended lumbar epidural steroid injections.

Dr. Kirk Ridley, a Board-certified family practitioner, completed a report on July 16, 2010 and stated that appellant had a “flare-up” of his 2004 employment injury on April 16, 2010. He noted that appellant did not recall a specific event as causing his current back pain, but that this may be an accumulation of his age and mild degenerative disc disease as well as his work with lifting, bending, twisting and reaching. On June 25, 2010 appellant received a lumbar epidural injection. On October 14, 2010 Dr. Ridley stated that he had not released appellant to full duty.

In support of his claim, appellant submitted a report dated December 20, 2010 from Dr. Ridley noting his history of injury in 2004. Dr. Ridley stated that appellant developed more of a back problem in April 2010. He noted that appellant had a motorcycle accident, but that he worked for two weeks without too many problems. Dr. Ridley relayed appellant’s statement that on April 17, 2010 his back condition was aggravated by lifting, turning or twisting at work and he developed significant problems with his back. He opined that the motorcycle accident was not of sufficient severity to cause appellant’s back condition. Dr. Ridley stated, “We think that the back problem is probably originated back in 2004 when he slipped on the ice and that coupled with his increasing age and the work that he does is probably aggravated.”

The employing establishment controverted appellant’s claim noting that he had previously filed a notice of recurrence of disability due to his accepted back injury on April 16,

2010 which OWCP denied. It also noted that he was involved in a motorcycle accident on April 2, 2010.

By decision dated July 22, 2011, OWCP accepted appellant's claim for degenerative disc disease of lumbar disc L4-5 and aggravation of sciatica.

Appellant requested leave buyback from April 16 through August 25, 2010. He filed a claim for compensation for that period.

In a note dated August 26, 2011, Dr. Kloster diagnosed lumbar radiculopathy, lumbar degenerative disc disease and lumbar facet arthropathy and recommended lumbar epidural steroid injections. Appellant underwent a lumbar epidural steroid injection at L4-5 on August 26, 2011. On August 29, 2011 Dr. Ridley stated that on August 10, 2011 appellant became unable to work due to his accepted injury and was undergoing pain management treatment. In a report dated September 6, 2011, he stated that appellant sought treatment on August 10, 2011, but was not treated until August 12, 2011. At that time, Dr. Ridley found that appellant was disabled due to his accepted injuries. He recommended pain management treatment.

On September 2, 2011 appellant filed a notice of recurrence of disability alleging that on August 10, 2011 he became totally disabled due to his April 16, 2010 employment injury. He stated that upon returning to work following his April 16, 2010 occupational disease claim, he was limited on time spent standing and the weight to be lifted. On the reverse of the form, the employing establishment stated that appellant was working a modified job assignment at the time of his recurrence of disability. It further stated, "[Appellant] was able to do the full duties of his job until he found out that his claim was accepted."

In an e-mail dated September 12, 2011, the employing establishment stated that appellant was able to perform the full duties of his bid route with minor modifications. It stated that he continued to work the job offer of August 27, 2010, even though his recurrence was denied until he took himself off work on April 10, 2011.

Appellant received an epidural steroid injection on September 15, 2011. He filed a claim for compensation requesting compensation for leave without pay from August 19 through 27, 2010 on September 21, 2011. In a letter dated September 22, 2011, OWCP requested additional information in support of appellant's claim for recurrence of disability.

In reports dated September 15 and 29, 2011, Dr. Kloster stated that he had performed the second and third lumbar epidural steroid injections, respectively.

Dr. Ridley completed a report on October 4, 2011 and noted that he released appellant to return to light-duty work in August 2010 with restrictions on lifting and hours per day of work. He stated that appellant had been instructed to work longer hours than he had intended for him to work and that this contributed to appellant's recurrence of back problems in June 2011 and his total disability for work in August 2011. Dr. Ridley stated that appellant could return to work on October 10, 2011 for up to 8½ hours per day with an ½-hour lunch break, limiting standing and sitting to 15 minutes per hour each alternating. He also indicated that appellant could drive up to three hours per day.

The employing establishment requested appellant's work restrictions on October 8, 2011 and Dr. Ridley indicated that appellant could stand and sit for four hours, walk and twist for one hour and drive for three hours. Appellant accepted a light-duty assignment effective October 11, 2011. He accepted a second light-duty assignment on November 8, 2011.

In a letter dated October 12, 2011, OWCP informed appellant that, although his occupational disease claim was accepted by decision dated July 22, 2011 "the factual and medical evidence in file has been reviewed and is found to be insufficient." It requested additional factual and medical evidence in support of his occupational disease claim.

In a narrative statement dated November 7, 2011, appellant stated in June 2011 that he developed jabs of pain in his lower back, right buttock area and down the entire length of his right leg to his ankle. He described his history of treatment including the motorcycle accident which occurred while traveling at 25 miles an hour on a dirt road and resulted in an abrasion on his upper lip and possible concussion. A friend had a more serious accident on the same date resulting in hospitalization. Appellant requested five days of sick leave to care for his friend, but the employing establishment instead charged his leave usage to annual. He developed the back and leg pain a few days later at work and stopped work in April 2010. Appellant returned to light-duty work in August 2010. He stopped work in August 2011 and sought treatment from Dr. Ridley. Appellant underwent a series of lumbar epidural steroid injections with improved symptoms.

In a report dated November 17, 2011, Dr. Ridley expressed his opinion that appellant's 2004 employment injury contributed to his current back condition. He further stated that appellant's back condition was aggravated by his work activities including bending, twisting and lifting heavy packages. Dr. Ridley also noted that appellant's back problems could be attributed in part to the normal progression and natural aging process.

By decision dated December 20, 2011, OWCP denied appellant's claim for a recurrence of disability beginning August 10, 2011. It noted that his April 16, 2010 claim was accepted for aggravation of degenerative of lumbar L5-S1 and sciatica but denied his current claim based on a lack of medical opinion evidence.

Dr. Ridley completed a report on January 31, 2012 and stated that appellant reinjured his back on August 4, 2011 and that he reported his condition was almost an exact duplication of his condition in April 2010. On physical examination, appellant was unable to bend and reported pain along his right sciatic nerve. Dr. Ridley opined that appellant's job duties of twisting and bending had a direct impact on his current condition. He stated, "I felt like [appellant] had sciatica and degenerative disc disease. This was in keeping with my diagnosis of 2010. I feel [appellant's] age and the on-the-job accident of 2004 and the type of work he is performing all are resulting in the aggravation of his sciatica and degenerative disc disease."

On March 15, 2012 appellant stated following the denial of his recurrence claim, the employing establishment no longer had any light-duty positions available for him.

In note dated November 1, 2011, Dr. Ridley opined that the injuries that appellant sustained on the job were the main cause of his back problems.

Appellant requested reconsideration in a letter dated May 14, 2012. In support of his request, he submitted a report from Dr. Ridley dated November 1, 2011. Dr. Ridley noted that appellant experienced a motorcycle accident in April 2010 which was very mild. He stated, "In my opinion the injuries that [appellant] sustained on the job are the biggest cause or main cause of his back problems and not the minor injuries he sustained to his face from his motorcycle accident."

By decision dated August 8, 2012, OWCP denied modification of its December 20, 2011 decision finding that the medical evidence was not sufficient to meet appellant's burden of proof.

On August 3, 2012 appellant resubmitted a claim for compensation requesting leave buyback from April 23 to August 25, 2010. In a letter dated November 1, 2012, OWCP noted that he requested leave buyback compensation for the period April 23 to August 25, 2010 and requested additional medical evidence in support of his claim.

Appellant responded on November 29, 2012 and stated that the employing establishment would not provide him with light or limited duty until his claim was accepted. He stated that he returned to work in August 2010 with a weight restriction and worked until August 2011.

By decision dated January 29, 2013, OWCP denied appellant's claim for leave buyback benefits for the period April 23 to August 25, 2010. It found that he had not submitted sufficient medical evidence to establish that he was totally disabled from April 23 to August 25, 2010.

Appellant requested reconsideration of the recurrence decision on March 11, 2013. He alleged that on August 10, 2011 Dr. Ridley found that appellant was totally disabled and that appellant returned to work on October 11, 2011. Appellant alleged that the employing establishment improperly withdrew his light-duty assignment. In support of these allegations, he submitted a statement dated November 8, 2012 from Ester Jones, a supervisor, at the employing establishment.

In a statement dated November 8, 2012, Ms. Jones stated that on December 23, 2011 she attended a meeting with appellant and Bruce Logan, the postmaster, during which Mr. Logan informed appellant that his limited-duty status was being withdrawn as his recurrence claim was denied. Mr. Logan stated that no more light duty was available.

By decision dated May 23, 2013, OWCP denied modification of its prior decisions finding that appellant had failed to submit the necessary medical opinion evidence. It noted that he began performing light-duty work on November 8, 2011 after filing his recurrence claim. The employing establishment withdrew appellant's light-duty work after his recurrence claim was denied. OWCP stated that the inability to work due to nonwork-related conditions was not within its purview.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which

² *Id.* at §§ 8101-8193.

compensation is claimed is causally related to the employment injury.³ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁴

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁵ 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 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.⁶ 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.⁷

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁸ Rationalized medical evidence is medical evidence which includes a physician's detailed 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.⁹ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

³ *G.T.*, 59 Docket No. 07-1345 (issued April 11, 2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁵ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Id.*

⁷ *Id.*

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS -- ISSUE 1

Appellant has filed a claim for compensation requesting wage-loss compensation from April 17 to August 25, 2010. He used his leave for this period and requested leave buyback. In support of his claim, appellant submitted limited medical evidence addressing the specific period of disability. Dr. Boylan completed a report on May 3, 2010 and noted that appellant walked slowly with small steps and that lying down relieved his pain. He stated that appellant was using sick leave and provided work restrictions of no driving, no lifting over 20 pounds and an office job. This report does not support that appellant was totally disabled and suggests that he was capable of light-duty work. Dr. Boylan did not provide medical evidence that appellant was incapable of performing work. Therefore, this report is not sufficient to meet appellant's burden of proof in establishing that he was entitled to compensation benefits for the period April 17 to August 25, 2010.

Dr. Ridley completed a report on October 14, 2010 and noted that he had not released appellant to full duty. This report is not sufficient to establish that appellant was totally disabled due to his accepted employment injuries. Dr. Ridley did not explain that appellant was totally disabled and did not provide work restriction indicating what position appellant was capable of performing. Without medical evidence establishing that appellant was totally disabled, he has not met his burden of proof entitling him to compensation benefits for the period April 17 to August 25, 2010.

Appellant alleged on November 29, 2012 that the employing establishment would not provide him with light or limited duty until his claim was accepted. He has not submitted any evidence substantiating his allegation that light-duty work was not available for him. Appellant's unsubstantiated allegation is not sufficient to establish his claim that he was totally disabled as light duty was not offered or available for him.

The Board finds that appellant has not submitted the necessary medical or factual evidence to establish that he was totally disabled from April 17 to August 25, 2010 and that he is therefore entitled to compensation benefits in the form of leave buyback for this period.

LEGAL PRECEDENT -- ISSUE 2

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹¹ Furthermore, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing August 10, 2011 and his April 16, 2010 occupational disease.¹² This burden includes the necessity of furnishing medical evidence

¹¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

¹² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.¹³

ANALYSIS -- ISSUE 2

Appellant returned to light-duty work on August 27, 2010 following his work stoppage due to his accepted occupational disease claim of April 16, 2010. The employing establishment stated that he was working a modified job assignment at the time of his recurrence of disability on August 10, 2011.

In support of his claim for recurrence of total disability on August 10, 2011, appellant submitted a series of reports from Dr. Ridley beginning on August 12, 2010. Dr. Ridley stated that on August 10, 2011 appellant became unable to work due to his accepted injury and was undergoing pain management treatment. On September 6, 2011 he found appellant disabled due to his accepted injuries. In a report dated October 4, 2011, Dr. Ridley noted that he released appellant to return to light-duty work in August 2010 with restrictions on lifting and hours per day to work. He opined that appellant had been instructed to work longer hours than he had intended him to work and that this contributed to appellant's recurrence of back problems in June 2011 and his total disability for work in August 2011. On November 1, 2011 Dr. Ridley opined that appellant's work was the main cause of his back problems and not his motorcycle accident. In a report dated November 17, 2011, Dr. Ridley stated that appellant's back condition was aggravated by his work activities including bending, twisting and lifting heavy packages. On January 31, 2012 he stated that appellant reinjured his back on August 4, 2011 and that he reported his condition was almost an exact duplication of his condition in April 2010. Dr. Ridley opined that appellant's job duties of twisting and bending had a direct impact on his current condition. He stated that the type of work appellant performed resulted in the aggravation of his sciatica and degenerative disc disease.

The Board finds that appellant has not submitted sufficiently detailed medical opinion evidence to establish a change in the nature and extent of his injury-related condition. The medical evidence consists of a series of reports from Dr. Ridley which do not provide a new diagnosed condition and do not describe a change in appellant's condition. Dr. Ridley diagnosed an aggravation of appellant's sciatica and degenerative disc disease, but did not explain whether appellant had sustained a change in his accepted underlying condition rendering him totally disabled. He attributed appellant's current condition to his accepted employment injuries, but did not explain how or why these work duties resulted in appellant's total disability for work. Without a detailed medical opinion which explains the change in the nature and extent of appellant's injury-related condition and how and why appellant is now totally disabled, appellant has failed to meet his burden of proof.

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.

¹³ See *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

CONCLUSION

The Board finds that appellant has failed to submit the necessary medical opinion evidence to establish total disability for work from April 23 to August 25, 2010 and that he failed to establish a change in the nature and extent of his injury-related condition on August 10, 2011 as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 23 and January 29, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 28, 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