

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

K.A., Appellant	)	
	)	
and	)	<b>Docket No. 13-1842</b>
	)	<b>Issued: January 14, 2014</b>
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Coppell, TX, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 5, 2013 appellant, through his attorney, filed a timely appeal from a March 1, 2013 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 established that he was disabled from December 19, 2010 to April 18, 2011 causally related to his accepted employment injury.

**FACTUAL HISTORY**

On November 24, 2010 appellant, then a 58-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) for herniated and bulging discs of the spine after lifting a

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

load of scrap conveyor parts on November 2, 2010. He stopped work on November 4, 2010 and notified his employing establishment on November 18, 2010.

In a statement dated November 24, 2010, appellant explained that he was using a forklift to dump a load of scrap from a conveyor tray line into a scrap metal trailer when it was caught by a gust of wind. The scrap partially slipped off the forks and he tried to readjust it using the forklift. When this did not solve the problem, appellant attempted to reposition a small portion of the load by hand when he felt a sharp pain in his lower back.

By letter dated December 17, 2010, OWCP requested additional medical evidence from appellant. It afforded him 30 days to submit the evidence.

In discharge instructions dated November 5, 2010, Dr. Ralph F. Baine, a Board-certified emergency physician, diagnosed a back strain. In a letter of the same date, he stated that appellant could return to work in three days.

In discharge instructions dated November 8, 2010, Dr. Mitchell D. Bowman, a Board-certified emergency physician, diagnosed back pain and sciatica.

By letter dated November 8, 2010, Dr. Lynne R. Tilkin, a Board-certified family physician, treated appellant for lumbar radiculopathy and an esophageal mass. She advised that he could return to work on November 23, 2010.

In a report dated November 10, 2010, Dr. Penny Labor, a radiologist, reviewed a magnetic resonance imaging (MRI) scan of appellant's lumbar spine. She diagnosed multilevel lumbar spondylosis and degenerative disc changes and right paramedian disc herniations at L1-2 and L2-3.

By letter dated November 24, 2010, Dr. Tilkin noted that appellant could return to work on December 6, 2010.

In a Form CA-17 duty status report dated December 9, 2010, Dr. Jaffer Ajani, a Board-certified internist and oncologist, listed a history that appellant hurt his back while lifting scrap metal. He noted compression deformities of T12 and L1-3, due to appellant's injury. Dr. Ajani reported that appellant was unable to perform any of his usual work requirements and was advised not to resume work. He reported that appellant also had esophageal cancer.

On December 16, 2010 appellant stated that he went to work in severe pain on November 3, 2010 and he called in sick the next day. He went to an emergency room on November 5, 2010 for tests and treatment. On November 8, 2010 appellant was diagnosed with esophageal cancer. He noted that, due to concern over the possible effects his back injury would have on his ability to receive cancer treatment, both conditions would be treated by physicians at a cancer center.

By decision dated December 29, 2010, OWCP accepted appellant's claim for thoracic or lumbosacral neuritis or radiculitis.

By letter dated January 4, 2011, Dr. Tilkin informed OWCP that appellant had transferred his medical care to Dr. Ajani. She was unable to release him to return to work for this reason, and asked OWCP to contact appellant or Dr. Ajani for an update on his status.

On January 28, 2011 OWCP assigned a registered nurse to assist appellant in his recovery. On February 11, 2011 the registered nurse noted that appellant had temporarily relocated to the Houston area for treatment of an unrelated esophageal mass, and that he wanted Dr. Ajani to treat his back condition in conjunction with cancer rather than going to another physician. Appellant submitted physical therapy notes dated from February 17 to April 15, 2011.

On February 10, 2011 Dr. Ajani noted that appellant could perform some of his regular work requirements, but that he was advised not to return to work at that time. He listed the same restrictions on March 10 and 28, 2011.

In a duty status report dated May 2, 2011, Dr. Ajani noted that appellant could perform most regular work requirements within toleration. Appellant could return to work on April 18, 2011. Dr. Ajani reported that appellant had a remaining work restriction of lifting up to 30 pounds for four hours a day.

In a report dated December 6, 2010, Dr. Kumar Rajendra, a Board-certified radiologist, described the results of an x-ray of appellant's lumbosacral spine. He noted osteoarthritis in the apophyseal joints of the lower lumbar spine, stable old mild compression deformities of T12 and L1 and spondylosis at L4-S1 with disc space narrowing, eburnation and marginal osteophytes.

In an attending physician's report dated May 2, 2011, Dr. Ajani diagnosed thoracic or lumbosacral neuritis or radiculitis. He checked a box indicating that appellant's condition was caused or aggravated by employment activity. Dr. Ajani noted that appellant had a period of total disability from November 2, 2010 to April 18, 2011.

On October 31, 2011 appellant claimed leave buyback for the period December 19, 2010 to April 18, 2011, with loss of Sunday premium pay. He used sick leave from December 26, 2010 through March 3, 2011 and annual leave from March 6 to April 18, 2011.

By letter dated December 12, 2011, OWCP requested that appellant provide rationalized medical evidence to establish his disability for the period December 19, 2010 to April 18, 2011. It afforded him 30 days to submit additional evidence.

By decision dated January 20, 2012, OWCP denied appellant wage-loss compensation from December 19, 2010 to April 18, 2011. It found that the medical evidence of record was insufficient to establish employment-related disability.

Appellant requested a hearing before an OWCP hearing representative on February 2, 2012. The hearing was held on May 9, 2012. At the hearing, appellant's wife asserted that his supervisor refused to put him in a leave-without-pay status. Appellant noted that he did not go back to work full time until July or August. He was off work for his back injury until May 2011, after which time he was off work due to his cancer treatment. Appellant

noted that he was diagnosed with esophageal cancer four days after he hurt his back. He submitted a physical therapy note dated January 20, 2011.

By letter dated June 11, 2012, Dr. Ajani noted that, from an oncologic perspective, appellant could have returned to work following the completion of his cancer treatment. He noted that the diagnosis of lower back pain and all medical opinions pertaining to it, should come from the physicians who made the original diagnosis and had expertise in orthopedics. Dr. Ajani attached a consultation report from a nurse dated January 7, 2011.

By decision dated July 11, 2012, OWCP's hearing representative affirmed the January 20, 2012 decision. He found that the medical evidence consisted primarily of form medical reports that were insufficient to establish appellant's disability for the period in question.

Counsel filed a request for reconsideration on July 23, 2012.

In a treatment report dated June 23, 2010, Dr. Tilkin diagnosed appellant with hypertension and sleep apnea. On October 5, 2010 she diagnosed gastroenteritis or colitis. Appellant also enclosed the results of diagnostic tests from June 23 and October 5, 2010.

By decision dated March 1, 2013, OWCP affirmed the July 11, 2012 decision. It found that the medical evidence submitted was not sufficient to establish appellant's claim.

### **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 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 evidence from a physician, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.<sup>5</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

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<sup>2</sup> See *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

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

<sup>4</sup> See *Jacqueline M. Nixon-Steward*, 52 ECAB 140, 142 n.6 (2000).

<sup>5</sup> See *C.S.*, Docket No. 08-2218 (issued August 7, 2009); *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>6</sup>

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.<sup>7</sup> To establish a causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>8</sup> The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship.<sup>9</sup>

### ANALYSIS

Appellant's claim was accepted for thoracic and lumbar neuritis and radiculitis. He claimed compensation for disability from December 19, 2010 to April 18, 2011. The Board finds that he did not submit sufficient medical evidence to establish work-related disability for the period claimed.

By letter dated November 8, 2010, Dr. Tilkin noted that she was treating appellant's lumbar radiculopathy and an esophageal mass. She stated that he could return to work on November 23, 2010. By letter dated November 24, 2010, Dr. Tilkin noted that she was treating appellant's lumbar radiculopathy and that he could return to work on December 6, 2010. These reports are not relevant to the period of disability claimed by appellant. On January 4, 2011 Dr. Tilkin informed OWCP that appellant had transferred his medical care to Dr. Ajani.

In discharge instructions dated November 5, 2010, Dr. Baine diagnosed a back strain. He advised that appellant could return to work in three days. Drs. Baine and Tilkin noted that appellant's back condition would keep him from returning to work until November 8 and December 6, 2010, respectively. The physicians did not provide medical rationale explaining the relationship between appellant's diagnosed condition and period of disability. These reports do not support appellant's claim for total disability from December 19, 2010 to April 18, 2011.

On November 8, 2010 Dr. Bowman diagnosed back pain and sciatica. On November 10, 2010 Dr. Labor reported her impression of an MRI scan of appellant's lumbar spine. She diagnosed multilevel lumbar spondylosis and degenerative disc changes and right paramedian disc herniations at L1-2 and L2-3. On December 6, 2010 Dr. Rajendra stated that an x-ray of appellant's lumbosacral spine revealed osteoarthritis in the apophyseal joints of the lower lumbar spine, stable old mild compression deformities of T12 and L1 and spondylosis at L4-S1 with disc space narrowing, eburnation and marginal osteophytes.

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<sup>6</sup> *Sandra D. Pruitt*, 57 ECAB 126, 128-9 (2005).

<sup>7</sup> *See supra* note 2.

<sup>8</sup> *See Kathryn E. DeMarsh*, 56 ECAB 677, 686 (2005).

<sup>9</sup> *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

The reports of Drs. Bowman, Labor and Rajendra lack references to any specific dates of disability. Therefore, they are not sufficient to establish appellant's claim.

In a duty status report dated December 9, 2010, Dr. Ajani stated that appellant hurt his back while lifting scrap metal. He noted compression deformities of T12 and L1-3, stating that this diagnosis was due to appellant's injury. Dr. Ajani reported that appellant was unable to perform any of his usual work requirements and that he was not advised to resume work. He reported that appellant also had esophageal cancer. In a duty status report dated February 10, 2011, Dr. Ajani noted that appellant could perform some of his regular work requirements, but that he was not advised to return to work at that time. He reported the same restrictions in duty status reports dated March 10 and 28, 2011, continuing to advise that appellant not return to work. In a duty status report dated May 2, 2011, Dr. Ajani noted that appellant could perform most regular work requirements within toleration, advising that he could return to work on April 18, 2011. He reported that appellant had a remaining work restriction of lifting up to 30 pounds for four hours a day. In an attending physician's report dated May 2, 2011, Dr. Ajani diagnosed appellant with thoracic or lumbosacral neuritis or radiculitis. He checked a box indicating that appellant's condition was caused or aggravated by employment activity. Dr. Ajani noted that appellant had a period of total disability from November 2, 2010 to April 18, 2011.

The opinion of a physician supporting causal relationship between a period of disability and an employment injury must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship.<sup>10</sup> Dr. Ajani listed dates of disability from December 19, 2010 to April 18, 2011, but did not provide any narrative opinion explaining the basis for his opinion. As noted by OWCP's hearing representative, his submissions to the record consist of form medical reports, which the Board has held are insufficient to establish causal relation.<sup>11</sup>

By letter dated June 11, 2012, Dr. Ajani noted that, from an oncologic perspective, appellant could have returned to work following the completion of his cancer treatment. He noted that the diagnosis of lower back pain and all medical opinions pertaining to it should come from the physicians who made the original diagnosis and had expertise in orthopedics. In this regard, Dr. Ajani did not provide an opinion based on reasonable medical certainty or medical rationale supporting the relationship between the period of disability claimed and an employment injury.

Appellant also submitted physical therapy notes and a consultation report from a nurse. These reports do not constitute probative medical evidence countersigned by a physician.<sup>12</sup>

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<sup>10</sup> *See id.*

<sup>11</sup> *See, e.g., Lyle E. Dayberry*, 49 ECAB 369 (1998).

<sup>12</sup> *See* 5 U.S.C. § 8101(2); *M.B.*, Docket No. 12-1695 (issued January 29, 2013) (regarding nurse practitioners); *Vickey C. Randall*, 51 ECAB 357, 360 n.4 (2000) (regarding physical therapists).

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.

**CONCLUSION**

The Board finds that appellant did not establish that he was totally disabled from December 19, 2010 and April 18, 2011 causally related to his accepted back injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 1, 2013 is affirmed.

Issued: January 14, 2014  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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