



## **FACTUAL HISTORY**

On May 3, 2010 appellant, a 46-year-old enumerator, sustained a traumatic injury in the performance of duty when she was involved in a motor vehicle accident. She was taken to the emergency room for evaluation. Appellant was prescribed medication and discharged in no acute distress to her home with instructions not to drive while taking the narcotic. She was released to return to work in three days. Appellant returned to the emergency room 10 days later with complaints of back pain. She was out of medication. Appellant received continuation of pay.

Dr. Richard L. Wheeler, a Board-certified family practitioner, saw appellant on June 22, 2010. Appellant's back was still hurting, and she was again out of medication. Dr. Wheeler observed that she did not appear to be in any distress. Appellant was diffusely tender on the left and right side of her entire lumbar spine. There was no focal tenderness. Straight leg raises were negative bilaterally. Motor and sensory responses were intact and appellant's reflexes were symmetric.

Dr. Wheeler diagnosed a lumbar strain secondary to a motor vehicle accident. He prescribed heat and muscle stretching twice a day. Dr. Wheeler reviewed proper sitting, standing and lifting. He instructed her to keep an appointment on July 8, 2010 with a specialist. Dr. Wheeler found appellant to be in stable condition.

Appellant received disability/restrictions information from the urgent care clinic: "Patient may return to work on June 23, 2010 with the following limitations: No lifting, pushing or pulling. No twisting or bending over. Alternate sitting and walking as needed for comfort."

OWCP initially denied appellant's injury claim on July 1, 2010. On January 4, 2011 it accepted the claim for lumbar strain on the basis of Dr. Wheeler's June 22, 2010 report. OWCP advised that, if her injury resulted in lost time from work, she might be eligible to receive continuation of pay for up to 45 days, following which she could claim compensation using a Form CA-7: "Medical documentation substantiating that the lost time is due to the accepted work-related condition(s) is required prior to payment."

Appellant filed a Form CA-7 claiming compensation for total disability from May 3, 2010 to May 19, 2011. She indicated that she had worked outside her federal job in the field of home health care around the month of September 2010. Appellant subsequently claimed compensation for total disability from May 3, 2010 to January 18, 2012.

In a decision dated March 6, 2012, OWCP denied appellant's claim for wage loss. It found that the medical evidence failed to provide a diagnosis of the accepted lumbar strain or any work restrictions related to the accepted condition.<sup>3</sup>

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<sup>3</sup> An OWCP hearing representative had just determined that the medical evidence was insufficient to establish that the May 3, 2010 work incident caused or aggravated multilevel degenerative disc disease in the thoracolumbar spine or L4-5 spondylolisthesis or lumbar fusion surgery.

Appellant requested reconsideration and pointed to Dr. Wheeler's June 22, 2010 report, which provided physical restrictions. She noted that her job as census taker required walking long distances. "As Dr. Wheeler's report was sufficient to have the claim accepted, it is also sufficient to provide appropriate restrictions."

In a decision dated October 10, 2012, OWCP reviewed the merits of appellant's claim. It noted that none of the medical evidence specifically addressed total disability for work due to the accepted lumbar strain. OWCP further noted that appellant's Form CA-7 indicated that she did work for a period of time in the home health care industry following her work injury, and that she underwent lumbar surgery on June 13, 2011. "It appears that your disability was related to the nonjob-related lumbar surgery." As appellant failed to provide clarifying evidence in support of her wage-loss claim, OWCP denied modification of the March 6, 2012 decision.

On July 24, 2013 appellant, through counsel, requested reconsideration contending that Dr. Wheeler's June 22, 2010 report provided work restrictions and was sufficient for OWCP to have accepted the claim.

In an August 23, 2013 decision, OWCP denied modification of the October 10, 2012 decision.

Appellant argues, as she did on reconsideration, that Dr. Wheeler's June 22, 2010 report, which was sufficiently probative for OWCP to accept her claim, should also be sufficiently probative to establish disability for work.

### **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>4</sup> A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the evidence,<sup>5</sup> including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.<sup>6</sup>

When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the claimant from continuing in her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>7</sup>

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<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

## ANALYSIS

OWCP accepted that the May 3, 2010 work incident caused a lumbar strain. Appellant claims that this lumbar strain caused total disability for work from May 3, 2010 to January 18, 2012. She has the burden of proof to establish the claimed disability.

The Board can find no probative medical evidence of record to establish appellant's disability claim. Dr. Wheeler did not directly address the issue. His reports neither demonstrate an understanding of the physical demands of appellant's date-of-injury job nor explain how the accepted lumbar strain prevented her from performing her duties for the better part of two years.

Appellant indicated on her claim form that she was physically able to work during this period in the field of home health care. The record also indicates that she suffered from medical conditions other than the accepted lumbar strain and underwent a lumbar fusion surgery during this period. OWCP has not accepted that the May 3, 2010 work incident caused or aggravated appellant's degenerative disc disease in the thoracolumbar spine or L4-5 spondylolisthesis or necessitated the lumbar fusion surgery. There is insufficient evidence that her accepted medical condition caused disability for work. Appellant may not receive compensation for wage loss through her accepted injury claim.

Appellant argues that Dr. Wheeler's June 22, 2010 report should be sufficiently probative to establish her disability for work. That OWCP found this report sufficient to establish a diagnosis causally related to the May 3, 2010 work injury does not mean, however, that the report is sufficient to establish her claimed disability for work. These are separate issues.

Dr. Wheeler, the family physician, did not directly address appellant's disability claim. He saw appellant on June 22, 2010, about a month and a half after the motor vehicle accident, and he diagnosed a lumbar strain secondary to the accident. Dr. Wheeler did not find that the muscle strain disabled her for work, and he did not note any specific dates of disability. 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 employees to self-certify their disability and entitlement to compensation.<sup>8</sup>

Appellant points to an informational document she received from the urgent care clinic following her June 22, 2010 examination. This literature, unsigned by a physician, provided physical limitations, but it indicated that she could return to work the next day.

Rather than submit medical opinion evidence addressing her disability for work causally related to the accepted lumbar strain, appellant's claim rests on the interpretation that she gives this informational document. She argues that the limitations establish disability for work because her job as census taker required walking long distances and, presumably, this was inconsistent with the limitation of alternating her walking and sitting as needed for comfort. The record provides no foundation to support such a conclusion. Dr. Wheeler did not review the physical demands of the date-of-injury position or explain how the lumbar strain prevented her

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<sup>8</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

from performing her job. As noted, the discharge instructions released appellant to return to work. Appellant's interpretation of the physical limitations appears to be at odds with her medical provider. The limitations given on June 22, 2010, accompanied by a release to return to work the next day, does not establish total disability for work from May 3, 2010 to January 18, 2012.

Accordingly, the Board finds that appellant has not met her burden of proof. The Board will affirm OWCP's August 23, 2013 decision denying her disability claim. 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 has not met her burden to establish that her May 3, 2010 lumbar strain injury caused disability for work.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 23, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 2014  
Washington, DC

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

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

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