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

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| **L.C., Appellant** | ) | |
| **and** | ) | **Docket No. 14-402** |
| | ) | **Issued: July 8, 2014** |
| **U.S. POSTAL SERVICE, POST OFFICE, LaPlace, LA, Employer** | ) | |

*Appearances:*
*Martin Kaplan, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On December 13, 2013 appellant, through his attorney, filed a timely appeal from an October 1, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 was disabled, for purposes of leave buyback and wage loss, commencing December 21, 2010 due to his December 16, 2010 employment injury.

On appeal, counsel contends that a December 26, 2012 medical report from Dr. Michael P. Zeringue, an attending Board-certified family practitioner and physiatrist, establishes that appellant sustained a recurrence of disability due to his employment-related injury.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

OWCP accepted that on December 16, 2010, appellant, then a 53-year-old letter carrier, sustained thoracic or lumbosacral neuritis or radiculitis not otherwise specified when he picked up mail that he had dropped on the ground.

On October 17, 2011 appellant filed claims (Form CA-7) requesting leave buyback commencing December 21, 2010 and leave without pay (LWOP) commencing February 24, 2011. He stopped work on January 12, 2011.

A December 20, 2010 prescription with an illegible signature recommended that appellant rest through December 30, 2010 and requested that he be excused.

In a January 5, 2011 prescription, Dr. Kiran G. Zaveri, a Board-certified internist, advised that appellant had low back pain and sciatica. He recommended a desk job for three weeks and advised that appellant could resume full-duty work on February 1, 2011. In a January 12, 2011 prescription, Dr. Zaveri noted that appellant had low back pain and recommended rest through January 19, 2011. He advised that he could resume full-duty work on January 20, 2011.

In a January 24, 2011 note, a physician whose signature is illegible stated that appellant could return to work on January 29, 2011.

A January 31, 2011 report cosigned by Dr. Zeringue and Dr. Charles G. Haddad, Jr., a Board-certified orthopedic surgeon, stated that appellant could not return to work until after he underwent a magnetic resonance imaging (MRI) scan. In a February 8, 2011 report, Dr. Zeringue advised that appellant was unable to work until further notice. In reports dated January 31 through July 21, 2011, he listed findings on physical and psychiatric examination. Dr. Zeringue assessed spinal stenosis, chronic pain syndrome, long-term pain medicine, lumbar radiculitis and disc degeneration. On June 13, 2011 he reported that appellant could immediately resume light-duty work.

A May 5, 2011 report from a physician whose signature is illegible stated that appellant could resume light duties.

By letter dated October 24, 2011, OWCP informed appellant that the medical evidence submitted was insufficient to support partial disability during the claimed period. It requested additional factual and medical evidence. OWCP also requested that the employing establishment submit factual evidence regarding appellant's claim for leave buyback.

A January 24, 2011 hospital record contained the printed name of Dr. Cynthia L. Swart, a Board-certified family practitioner, which stated that appellant's symptoms may be due to low back pain. Appellant was given instructions which included quiet rest at home for the next two to three days.

An October 17, 2011 report which contained an illegible signature stated that appellant was absent from work on that date due to diagnostic testing.

In an October 21, 2011 report, Dr. Everett G. Robert, Jr., a neurosurgeon, listed a history of the December 16, 2010 employment injury and appellant's medical treatment, social and family background. He provided findings on physical examination and reviewed x-ray results. Dr. Robert stated that his clinical suspicion was that appellant suffered from spinal stenosis and needed a decompression, but he would wait until he reviewed flexion and extension views of the lumbar spine and a copy of appellant's MRI scan before making a determination. In another report dated October 21, 2011, he advised that a February 2, 2011 lumbar MRI scan showed a disc bulge with mild disc degradation at L4-5 with disc osteophyte complex contacting the left L4 nerve root within the compromised neuroforamen. There was a less prominent bone spur in the left foramen at L5-S1 contacting the undersurface of the ipsilateral nerve root, but to a lesser extent. Dr. Robert stated that the MRI scan, which was nine months old, did not fit appellant's complaints of bilateral lower extremity, severe back pain and neurogenic claudication. He wanted to obtain flexion and extension films and to repeat the lumbar MRI scan. Dr. Robert stated that if there was no change on the MRI scan, then appellant would more than likely not have any surgical indications. However, he related that if it showed increased degeneration in the L4-5 disc, then appellant may have discogenic-like pain along with L4 nerve root compression.

An October 31, 2011 diagnostic report that, contained the printed name of Dr. John N. Joslyn, a Board-certified radiologist, stated that x-rays of the lumbar spine showed minimal scoliosis of unknown significance and etiology and age-appropriate spondylosis. Another report dated October 31, 2011 that contained Dr. Joslyn's printed name stated that a lumbar MRI scan showed a left lateral L4-5 bulging disc, L4-Sl facet arthropathy and mild L4-5 neural foraminal narrowing.

On November 3, 2011 Dr. Zaveri reported that he evaluated appellant on December 20, 2010 for lower back pain and pain radiating into his leg which was suggestive of lumbar radiculopathy. At that time appellant was unable to work and was advised to take time off work. Dr. Zaveri noted that on January 2, 2011 appellant was seen again for radiculopathy, put on steroids and advised to take further time off work. On January 24, 2011 appellant's pain continued and Dr. Zaveri added an anti-inflammatory medicine. Dr. Zaveri concluded that appellant was unable to return to work as a letter carrier from December 20, 2010 to February 1, 2011 due to lumbar radiculopathy with severe pain.

Also, on November 3, 2011 Dr. Zeringue reported that appellant was unable to work from January 31 to March 30, 2011 secondary to pain. He released appellant to limited-duty work that involved mostly sitting on March 30, 2011. Appellant advised Dr. Zeringue that he was unable to walk secondary to pain and therefore could not work, but after receiving a second epidural steroid injection he was able to walk some without severe pain. Dr. Zeringue reiterated his prior diagnoses of neurogenic claudication, spinal stenosis, chronic pain syndrome and long-term pain medicine. In a December 8, 2011 note, he indicated that appellant had a right L3 to 5 and S1 medial branch/dorsal ramus block on December 7, 2011. Appellant advised Dr. Zeringue that afterward he had over 60 percent pain relief and better range of motion with his back. He was scheduled for radiofrequency ablation of the right L3 to 5 and S1 medial branch/dorsal ramus nerves on December 9, 2011.

In a November 9, 2011 report, Dr. Robert noted the October 31, 2011 lumbar MRI scan and x-ray results. He stated that appellant had abnormal motion. Dr. Robert advised that, in general, the imaging results did not fit appellant's complaints. He concluded that appellant was not a surgical candidate and sent him back to Dr. Zeringue for further treatment.

By decision dated December 27, 2011, OWCP denied appellant's claims for leave buyback commencing December 21, 2010 and wage-loss compensation commencing February 24, 2011. The medical evidence was not sufficiently rationalized to establish that he was disabled during the claimed periods due to his December 16, 2010 employment injury.

By letter dated December 26, 2012, appellant, through his attorney, requested reconsideration of the December 27, 2011 decision and submitted medical evidence. In a December 20, 2012 report, Dr. Zeringue assessed appellant as having neuritis/neuralgia. Also, appellant still had a possibility of a component of plantar fasciitis. Dr. Zeringue advised that appellant could continue performing light-duty work. In a December 26, 2012 report, he advised that appellant was unable to perform his work duties from January 31 to February 8, 2011 because he had severe symptoms of lumbar radiculitis, which were confirmed by an MRI scan that showed severe neuroforaminal stenosis at L4, left greater than right at the L5 nerve root. Dr. Zeringue stated that in any case of sciatica, the type of job appellant had, which included prolonged walking, stooping, bending and carrying loads for an extended period of time, could aggravate his condition. Appellant stated that it was in his best interest to get an epidural injection or other conservative treatment such as, rest and anti-inflammatories before going back to work because his work could provoke his condition. In reports dated October 10, 2010 to March 14, 2013, Dr. Zeringue advised that appellant had plantar fasciitis, lumbosacral radiculitis, claudication and lumbar facet disease. In a March 21, 2012 report, he noted appellant's improved back pain due to his radiofrequency ablation and complaint of pain from his knee to his ankle. Dr. Zeringue listed findings on physical examination and assessed claudication versus neurogenic claudication. He ordered diagnostic testing and gave appellant a note excusing him from work during the prior week and a couple of weeks after the radiofrequency ablation procedure. On May 9, 2012 Dr. Zeringue noted that appellant only drove while delivering mail and he had a burning sensation in his heels. He listed physical examination findings and reiterated his prior diagnoses of chronic pain syndrome and long-term use of medicines. Dr. Zeringue assessed perhaps compartmental syndrome of the lower extremities, but stated that since appellant was driving this was not an issue. He also assessed plantar fasciitis. Dr. Zeringue gave appellant a note to allow him to continue driving instead of walking to deliver mail.

A February 20, 2012 report which contained the printed name of Dr. Lehman K. Preis, Jr., a Board-certified internist, stated that an electrocardiogram was normal.

In an October 1, 2013 decision, OWCP denied modification of the December 27, 2011 decision. It found that the medical evidence submitted was not sufficiently rationalized to establish appellant's entitlement to leave buyback commencing December 21, 2010 and wage-loss compensation commencing February 24, 2011 causally related to his accepted December 16, 2010 employment injury.

## ***LEGAL PRECEDENT***

In situations where compensation is claimed for periods when leave was used, OWCP has the authority and the responsibility to determine whether the employee was disabled during the period for which compensation is claimed.[2] It determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for leave buyback, after which the employing establishment will determine whether it will allow the employee to buy back the leave used.[3]

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.[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] The medical evidence required to establish a period of employment-related disability is rationalized medical evidence.[6] Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.[7] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[8]

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. For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.[9]

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[2] *See Glen M. Lusco*, 55 ECAB 148 (2003).

[3] *Id.*

[4] *See* 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

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

[6] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[7] *Leslie C. Moore*, 52 ECAB 132 (2000).

[8] *S.D.*, Docket No. 10-1820 (issued March 18, 2011).

[9] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

## ***ANALYSIS***

OWCP accepted that appellant sustained a thoracic or lumbosacral neuritis or radiculitis not otherwise specified on December 16, 2010 while working as a letter carrier. Appellant claimed compensation for leave buyback commencing December 21, 2010 and LWOP commencing February 24, 2011. OWCP denied his claim on the grounds that the evidence was insufficient to establish that the claimed disability was due to his accepted employment injury. Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed disability and the accepted condition.[10] The Board finds that he did not submit sufficient medical evidence to establish employment-related disability for the periods claimed due to his accepted injury.

Dr. Zaveri's January 5 and 12, 2011 examination found that appellant had low back pain and sciatica. He initially recommended light-duty work for three weeks and subsequently recommended rest from January 12 to 19, 2011 with a return to full-duty work on January 20, 2011. The Board notes that OWCP has not accepted appellant's claim for sciatica. For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.[11] Dr. Zaveri did not provide a medical opinion addressing whether appellant's diagnosed conditions and resultant disability were causally related to the accepted December 16, 2010 employment-related injury. The Board has held that a physician's opinion, which does not address causal relationship, is of diminished probative value.[12] In his November 3, 2011 report, Dr. Zaveri placed appellant off work from December 20, 2010 to February 1, 2011 due to lumbar radiculopathy with severe pain, but failed to provide any medical rationale explaining how the accepted employment injury caused his disability. Medical opinions which contain no rationale or explanation are of little probative value.[13] For the stated reasons, the Board finds that Dr. Zaveri's reports are insufficient to establish appellant's claim.

Dr. Zeringue's reports are also insufficient to establish appellant's claim. In the December 26, 2012 report, he found that appellant was unable to work from January 31 to February 8, 2011 due to severe symptoms of lumbar radiculitis. Dr. Zeringue advised that appellant's job, which included prolonged walking, stooping, bending and carrying loads for an extended period of time, could aggravate his condition. He did not explain how the accepted employment injury caused appellant's disability during the stated period.[14] Dr. Zeringue's reports dated October 10, 2010 to March 14, 2013 found that appellant had neurogenic

[10] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

[11] *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[12] *See A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[13] *F.T.*, Docket No. 09-919 (issued December 7, 2009) (medical opinions not fortified by rationale are of diminished probative value); *Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof).

[14] *Id.*

claudication, spinal stenosis, chronic pain syndrome, lumbar radiculitis, lumbar facet disease and long-term use of pain medicine. He further found that appellant could not work from January 31 to March 30, 2011 and a week prior to and several weeks after his December 9, 2011 radiofrequency ablation procedure. The Board notes that OWCP has not accepted the conditions of neurogenic claudication, spinal stenosis, chronic pain syndrome and Dr. Zeringue did not provide any medical rationale explaining how appellant's conditions and resultant disability were caused by the December 16, 2010 employment injury.[15] In the December 20, 2012 report, Dr. Zeringue found that appellant had neuritis/neuralgia and possibly a component of plantar fasciitis. He advised that appellant could continue performing light-duty work. Dr. Zeringue's diagnosis that appellant had "possibly" a component of plantar fasciitis is speculative in nature.[16] Moreover, he did not provide an opinion explaining whether appellant had any disability causally related to the accepted injury.[17] The remaining reports from Dr. Zeringue did not address whether appellant had any employment-related disability during the claimed period. For the stated reasons, the Board finds that his reports are insufficient to establish appellant's claim.

Dr. Robert's reports found that the October 31, 2011 lumbar MRI scan and x-ray results did not fit appellant's complaints of bilateral lower extremity and severe back pain and neurogenic claudication and, thus, he was not a surgical candidate. He did not opine that appellant had any condition or disability during the claimed period causally related to the accepted employment injury.[18] The Board finds therefore that Dr. Robert's reports are insufficient to establish appellant's claim.

The December 20, 2010 prescription, January 24, 2011 note and May 5 and October 17, 2011 reports which contained illegible signatures, the January 24 and October 31, 2011 and February 20, 2012 reports which contained the printed names of Drs. Swart, Joslyn and Preis have no probative value in establishing that appellant had any employment-related disability during the claimed period. It is well established that medical evidence lacking proper identification is of no probative medical value.[19]

In the absence of rationalized medical evidence, appellant failed to meet his burden of proof to establish entitlement to leave buyback and wage-loss compensation commencing December 21, 2010 due to his December 16, 2010 employment injury.

On appeal, appellant's attorney contended that Dr. Zeringue's December 26, 2012 medical report established that appellant sustained a recurrence of disability due to his employment-related injury. As stated, Dr. Zeringue failed to provide a rationalized medical

[15] *See* cases cited *supra* note 11.

[16] Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

[17] *See A.D.*, *supra* note 12.

[18] *Id.*

[19] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

opinion explaining how the accepted employment-related lumbar radiculitis caused appellant's claimed disability.

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 failed to establish that he was disabled for purposes of leave buyback and wage loss commencing December 21, 2010 due to his December 16, 2010 employment injury.

## ***ORDER***

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

Issued: July 8, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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