

FACTUAL HISTORY

The case has been before the Board on two prior appeals. Appellant has filed two claims for injury that had been administratively linked. On April 7, 2006 she filed a traumatic injury claim alleging an upper back injury while in the performance of duty as a security screener on March 23, 2006. OWCP accepted the claim for cervical, left shoulder and left arm sprain/strain. As the Board indicated in a June 24, 2010 decision,² appellant returned to work on June 2, 2008 in a limited-duty position. She filed a claim for a recurrence of disability on June 6, 2008. The Board affirmed OWCP decisions dated October 17, 2008 and May 20, 2009, finding the medical evidence was not sufficient to establish the claim for recurrence.

On August 29, 2008 appellant filed an occupational disease or illness claim (Form CA-2) alleging that her job duties had contributed to a lumbar injury. By decision dated July 14, 2010, the Board affirmed an August 4, 2009 OWCP decision finding that appellant had not established a lumbar degenerative condition as casually related to her federal employment.³

Appellant requested reconsideration and submitted an April 21, 2011 report from Dr. M. Stephen Wilson, a Board-certified orthopedic surgeon, who diagnosed a “cumulative injury to the lumbar spine resulting in radiculopathy due to anatomical abnormalities due to disc lesions at L4[-]5 and L5[-]S1, causing compression and irritation of the L5 and S1 nerve roots.” He opined that appellant’s repetitive lifting, bending and twisting in her federal employment was the primary cause of the cumulative lumber injury.

On June 23, 2011 OWCP accepted displacement of lumbar intervertebral disc without myelopathy. Appellant was advised to claim any period of disability by submitting a Form CA-7 claim for compensation. She filed a Form CA-7 on October 19, 2012, claiming compensation from October 1, 2011 to October 31, 2012.

With respect to medical evidence during the period commencing October 1, 2011, appellant submitted reports from Dr. F. Allen Johnston, a Board-certified orthopedic surgeon. In a report dated November 10, 2011, Dr. Johnston provided results on examination and indicated a lumbar magnetic resonance imaging (MRI) scan was recommended. He stated that appellant was “still not able to work.” In a report dated December 8, 2011, Dr. Johnston again stated that she was unable to work. The record indicates that appellant underwent an MRI scan on January 30, 2012. In a report of that date Dr. Lawrence Glorioso, a radiologist, diagnosed bulging discs L3-S1.

By report dated February 13, 2012, Dr. Johnston noted that appellant had an L4-5 discectomy in May 2010, and had an S1 joint injection two weeks ago. He stated that an MRI scan showed a prominent L4-5 disc bulge, and appellant continued to have “symptoms at least a couple of times a week going down her right leg.” Dr. Johnston stated that appellant was unable to work, and she would be seen for possible L4-5 surgery.

² Docket No. 09-1943 (issued June 24, 2010).

³ Docket No. 10-84 (issued July 14, 2010).

In a report dated March 28, 2012, Dr. Kelly Scrantz, a Board-certified neurosurgeon, provided results on examination and stated that appellant needed a myelogram. By report dated August 17, 2012, he provided results on examination and diagnosed sciatica. Dr. Scrantz reported that an L4-5 lumbar fusion surgery would be appropriate. In a report dated September 6, 2012, an OWCP medical adviser opined that the proposed surgery was appropriate treatment for the work injury. Appellant underwent surgery on November 15, 2012.

By decision dated January 15, 2013, OWCP denied the claim for compensation from October 1, 2011 to October 31, 2012.⁴ It found the medical evidence did not establish an employment-related disability for the period claimed.

Appellant requested reconsideration by letter dated September 30, 2013. She argued that the medical evidence of record was sufficient to establish an employment-related disability for the period claimed. On October 7, 2013 appellant submitted a brief report from Dr. Scrantz dated September 25, 2013, stating that she had a 25-pound lifting restriction, with no repetitive bending, twisting, or turning.

In a report dated September 9, 2013, Dr. J. Arden Blough, Board-certified in family medicine, provided a history and results on examination. He stated that appellant continued to have ongoing back and neck pain that required treatment. By report dated November 22, 2013, Dr. Samir Patel, a Board-certified anesthesiologist, provided a history and results on examination. He diagnosed S1 joint dysfunction and lumbar postlaminectomy syndrome.

By decision dated December 23, 2013, OWCP reviewed the merits of the claim and denied modification. It found the medical evidence was insufficient to establish an employment-related disability from October 1, 2011 to October 31, 2012.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ 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.⁷

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

⁴ The decision stated that the period claimed on the Form CA-7 was October 1, 2011 to October 31, 2012, but this appeared to be a typographical error.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ 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).

reliable, probative, and substantial medical evidence.⁸ 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.⁹ 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.¹⁰

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.¹¹ 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.¹²

ANALYSIS

In the present case, appellant filed a Form CA-7 for the period October 1, 2011 to October 31, 2012. The Board notes that the record indicated that she had stopped working as of June 6, 2008. As the Board noted in a prior appeal, appellant had filed a recurrence of disability claim at that time regarding the March 23, 2006 traumatic injury. She also filed a Form CA-7 for the period June 7, 2008 to October 31, 2011 pursuant to that claim. The only issue in this case is the claim for compensation from October 1, 2011 to October 31, 2012 filed in the occupational injury claim.

In this regard, the Board notes that appellant filed additional Form CA-7 claims that are not before the Board. For example, on April 5, 2013 appellant submitted a Form CA-7 for the period September 1 to 30, 2011, and the record indicates appellant received wage-loss compensation for this period. The payment of compensation pursuant to a Form CA-7 does not shift the burden of proof to OWCP in this case. As the Board noted in *J.N.*,¹³ the burden of proof remains with the claimant to submit the necessary evidence to support continuing disability claimed on a Form CA-7. When the claimant is placed on the periodic rolls, then OWCP has the burden of proof to terminate entitlement to compensation. In this case, appellant has the burden of proof to establish an employment-related disability for the period claimed.

⁸ See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹² *Leslie C. Moore*, 52 ECAB 132 (2000).

¹³ Docket No. 10-606 (issued April 20, 2011).

The Board has reviewed the medical evidence and finds that it is not sufficient to meet appellant's burden of proof. The reports dated November 10 and December 11, 2011 from Dr. Johnston provide brief opinions that appellant was unable to work, without further explanation. Dr. Johnston does not provide a complete history, discuss an employment injury or provide a rationalized opinion regarding disability. He does not discuss appellant's job duties or the nature and extent of any disability. The February 13, 2012 report refers to intermittent symptoms, without explaining how this resulted in total disability. With regards to a partial disability, Dr. Johnston did not discuss specific work restrictions related to the employment injury.

The evidence submitted subsequent to the claimed period does not discuss disability from October 1, 2011 to October 31, 2012. Neither Dr. Scrantz, Dr. Blough, nor Dr. Patel provide an opinion on causal relationship between disability during the period claimed and the accepted employment injury. In the absence of rationalized medical evidence based on a complete background, the Board finds that appellant did not meet her burden of proof.

On appeal, appellant argues that OWCP had the burden of proof and improperly terminated her compensation. As noted above, she had the burden of proof to establish the claimed disability. The payment of compensation pursuant to Form CA-7 for September 1 to 30, 2011 does not shift the burden to OWCP.

Appellant also argues that OWCP should have sent the case for a second opinion examination. OWCP may require a claimant to undergo a second opinion examination "as frequently and at the times and places as may reasonably be required."¹⁴ The determination of the need for examination is a matter within the province and discretion of OWCP.¹⁵ For the reasons noted above, appellant did not submit sufficient medical evidence to meet her burden of proof. There is no evidence of an abuse of OWCP's discretion with respect to further development of the evidence. Based on the evidence of record, OWCP properly denied the claim for compensation from October 1, 2011 to October 31, 2012. 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 appellant has not established an employment-related disability from October 1, 2011 to October 31, 2012.

¹⁴ 5 U.S.C. § 8123(a). *See also* 20 C.F.R. § 10.320.

¹⁵ *See C.G.*, Docket No. 14-315 (issued May 21, 2014).

ORDER

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

Issued: November 25, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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