



## **FACTUAL HISTORY**

On March 13, 2011 appellant, then a 38-year-old information systems security officer, filed a traumatic injury claim alleging that he sustained an aggravation of his “current disability lower/mid back pain” on March 10, 2011. He described the cause of the injury as excessive walking and standing. Appellant explained that he walked a facility that day. Starting on the bottom floor, he walked and stopped momentarily to introduce himself to employees who had not seen him in the past. That took approximately 30 to 40 minutes and caused appellant great pain “because of my herniated disk and sciatica.”<sup>3</sup> The conversation held him up such that he was stationary and standing for the stated duration. Appellant repeatedly stopped and introduced himself until he reached the second floor. He walked and met more people. It took approximately 20 to 30 minutes to cover the second floor because appellant was in a lot of pain and wanted to stop walking and standing. After stopping to talk with one person for approximately 15 minutes or more, he went to his car and took pain medication with water. Appellant sat in the parking lot for 10 to 15 minutes and tried to ease the pain with the car seat vibrator on his back. He stretched and “off weighted,” when drove to his office, where he laid on his heating pad with his legs up on his desk. Appellant was in such severe pain that he did not leave his desk the rest of the day. He took more medication, went home, went to bed, elevated his legs and visited the emergency room the next day.

At the emergency room, appellant was noted to have a history of chronic low back pain. He presented with complaints of increased back pains “since yesterday evening.” Appellant attributed the increased pain to doing a walk-through at work; he was not suppose to walk too far. He noted increased pains that evening which were a lot worse the next morning. Appellant applied bio freeze and took his oxycodone before going to the emergency room.

Appellant’s past medical history included degeneration of lumbar or lumbosacral intervertebral disc, other unspecified disc disorder of the lumbar region and low back pain. He was unable to perform the straight leg raising test; he was unable to extend his leg due to pain in the mid-spine.

Dr. John Paul Orkwis, an osteopath and family physician, completed a form report indicating that appellant’s lumbar disc disease was caused or aggravated by extended standing and walking at work on March 10, 2011. He further indicated that appellant was partially disabled since March 10, 2011 and was able to resume light work on May 20, 2011. Shortly, thereafter, however, Dr. Orkwis completed a duty status report that showed no restriction of appellant’s usual work requirements.

A magnetic resonance imaging (MRI) scan of the lumbar spine, obtained on July 16, 2011, showed normal alignment. At the L5-S1 level, there was disc desiccation and some disc height loss with an annular fissure again noted. There was also a central disc protrusion without narrowing of the thecal sac. The impression was no significant interval change when compared with an MRI scan obtained in 2008 and 2009.

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<sup>3</sup> The record shows that appellant had a service-connected intervertebral disc syndrome of the lumbar spine with radiculopathy down the left and right lower extremity.

Dr. Orkwis noted that appellant was under care for a protruding central disc at the L5-S1 spinal cord level. Appellant had documented visits to the emergency room on January 28 and March 11, 2011 for exacerbation of back pain. “This is consistent with the presentation of the illness. When a patient has a disc protrusion, there are a variety of physical activities that may cause exacerbation of the back pain.”

OWCP accepted appellant’s traumatic injury claim for aggravation of preexisting degeneration of lumbar or lumbosacral intervertebral disc.

Appellant filed Forms CA-7 claiming wage-loss compensation for periods beginning October 4, 2011.<sup>4</sup> He claimed that this disability was a result of his March 10, 2011 employment injury.

In a decision dated April 10, 2012, OWCP denied appellant’s disability claim on the grounds that there was no evidence the accepted aggravation totally disabled him during the periods in question.

Appellant thereafter filed numerous Forms CA-7 claiming wage-loss compensation for periods beginning March 11, 2011.<sup>5</sup> He claimed that this disability was a result of his March 10, 2011 employment injury.

In a decision dated September 14, 2012, OWCP denied appellant’s disability claim on the grounds that the record lacked a comprehensive medical opinion providing objective findings and fully explaining the claimed disability for work. It found that he had not established that he was entitled to wage-loss compensation due to his accepted condition.

Appellant, through his representative, requested reconsideration. He argued that he suffered a reagravation of preexisting degeneration of lumbar or lumbosacral intervertebral disc. Appellant noted that his physician found him incapable of performing the essential functions of his position. Therefore, his position was not suitable during the time frames in question. To support his reconsideration request, appellant submitted progress notes.

In a decision dated October 31, 2013, OWCP reviewed the merits of appellant’s case and denied modification of its prior decision.

Appellant’s representative argues that OWCP failed to review the totality of the medical evidence contained in the two case files relating to the accepted employment injuries. She argues that appellant has met his burden of proof to establish total disability for the time periods claimed.

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<sup>4</sup> These periods included: October 4 to 7, 14 to 21 and 24 to 25 and December 5 to 15, 2011. Appellant also claimed wage-loss compensation from December 15, 2011 to January 6, 2012.

<sup>5</sup> In 2011, these periods included: March 11, 14 to 23 and 14 to 25, April 12 to 22 and 25 to 27, May 9 to 18 and 25 to 27, June 22 to 29, July 25, August 10 and 15 to 25, September 13 to 14 and September 30 to October 5, 13 to 20 and 24 to 26, November 18 and November 30 to December 2, December 4 to 17 and 19 to 27, 2011. In 2012, these periods included May 22, June 11 to 15 and June 28, 2012.

## LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.<sup>6</sup> A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,<sup>7</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>8</sup>

It is not sufficient for the claimant to establish merely that he or she has disability for work. He or she must establish that the disability is causally related to the accepted employment injury. The claimant must submit a rationalized medical opinion that supports a causal connection between the disability claimed and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the employment injury and must explain from a medical perspective how the disability in question is related to that injury.<sup>9</sup>

## ANALYSIS

On March 10, 2011 appellant spent approximately one hour walking a facility at work and stopping to talk to people along the way. This caused him such severe pain that he had to seek relief. Appellant went to the emergency room the next day. Given his significant medical history, OWCP accepted his traumatic injury claim for an aggravation of preexisting degeneration of lumbar or lumbosacral intervertebral disc.

Appellant thereafter filed a series of Forms CA-7 claiming compensation for wage-loss resulting from the aggravation that occurred on March 10, 2011. He did not submit a narrative medical report reviewing the periods of disability claimed and rationally explaining, on the basis of objective findings, how that disability was attributable to the March 10, 2011 aggravation, as opposed to disability that might otherwise arise from his accepted chronic lumbar disc disease. The distinction is critical. As the Board noted earlier, it is not sufficient for appellant to establish merely that he was disabled for work or that his position was no longer suitable to his chronic medical condition. Appellant must establish through rationalized medical opinion evidence that the disability for which he claims compensation was caused by what happened on March 10, 2011 when he spent about an hour walking a facility at work and stopping to talk to people along the way.

Dr. Orkwis, the attending osteopath, indicated on a form report that appellant was partially disabled since March 10, 2011 and was able to resume light work on May 20, 2011. His duty status report showed no restriction in appellant's usual work requirements beginning

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<sup>6</sup> 5 U.S.C. § 8102(a).

<sup>7</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>8</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>9</sup> *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

May 20, 2011. In the absence of sound medical reasoning, this evidence is insufficient to establish the element of causal relationship.<sup>10</sup>

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.<sup>11</sup> The Board has held that when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>12</sup>

Further, 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.<sup>13</sup>

Appellant's representative argues that OWCP failed to review the totality of the medical evidence contained in the two case files relating to the accepted employment injuries. The issue in this case is whether appellant has met his burden to establish that his March 10, 2011 employment injury caused any particular disability for work. The Board has reviewed the medical evidence submitted in this case and can find no discussion of whether any specific disability for work was the result of what happened on March 10, 2011. Without a narrative medical opinion directly addressing the specific periods for which appellant seeks compensation,<sup>14</sup> the evidence in this case fails to establish that he sustained disability for work causally related to the March 10, 2011 aggravation of his preexisting disease. Accordingly, the Board finds that he has not met his burden of proof. The Board therefore affirms OWCP's October 31, 2013 decision on the issue of disability due to the March 10, 2011 employment injury.

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.

All the CA-7 forms appellant filed claiming compensation for wage loss identified the cause of that wage loss as the March 10, 2011 employment injury.<sup>15</sup> All of the forms identified OWCP File No. xxxxxx373, which was created for the employment injury currently on appeal.

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<sup>10</sup> Medical conclusions unsupported by rationale are of little probative value. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

<sup>11</sup> See *Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

<sup>12</sup> *John L. Clark*, 32 ECAB 1618 (1981).

<sup>13</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>14</sup> The physician need not itemize each of the periods claimed so long as he or she has reviewed a breakdown of those periods.

<sup>15</sup> Appellant sometimes identified the injury date as March 11, 2011.

Any claim for disability resulting from appellant's injury in 2009 should be pursued under the appropriate case number.

**CONCLUSION**

The Board finds that appellant has not met his burden to establish that the disability for which he claims compensation is causally related to his March 10, 2011 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2014  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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