

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

S.E., Appellant	)	
	)	
and	)	<b>Docket No. 14-1125</b>
	)	<b>Issued: October 1, 2014</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Dayton, OH, Employer</b>	)	
	)	

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

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 15, 2014 appellant, through counsel, filed a timely appeal from a February 25, 2014 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 has established an employment-related disability commencing December 5, 2012.

**FACTUAL HISTORY**

On August 24, 2012 appellant, then a 41-year-old part-time flexible mail handler, filed a traumatic injury claim (Form CA-1) alleging that he sustained a back injury in the performance

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

of duty on August 23, 2012. Appellant was lifting a heavy parcel and experienced low back pain. He stopped work on August 23, 2012.

In a report dated November 30, 2012, Dr. Barry Fisher, a Board-certified family practitioner, provided results on examination and stated that appellant was much improved. He indicated that appellant would return to work on December 3, 2012. A note dated November 30, 2012 from Dr. Fisher stated that appellant could return to work December 3, 2012 without restrictions.

OWCP accepted the claim for lumbosacral and pelvis sprains. Appellant received wage-loss compensation from October 8 to December 2, 2012.

Appellant returned to full-duty work on December 3, 2012 and stopped working on December 5, 2012. On January 25, 2013 he submitted a January 11, 2013 note from Dr. Fisher stating that he was unable to work from December 5, 2012 to January 22, 2013 due to his back injury. Appellant filed a claim for compensation (Form CA-7) for the period October 6 to December 28, 2012.

On February 6, 2013 OWCP received an unsigned report dated January 22, 2013 showing the names of Dr. Jeffrey Hoskins, a Board-certified orthopedic surgeon, and a physician's assistant.<sup>2</sup> The report provided a history that appellant "sometime this summer" was picking up a parcel and somehow injured his back. After providing results on examination, the report stated that appellant did not feel he could perform his full duties. It provided restrictions of 20-pound lifting, with no repetitive bending, twisting or lifting.

In a form report (OWCP-20) dated February 6, 2013, Dr. Hoskins checked a box "yes" that appellant's back condition was causally related to the employment activity. He listed that the period of total disability was December 5, 2012 to January 22, 2013.

According to the employing establishment, appellant returned to work at four hours a day on February 23, 2013. He submitted CA-7 claims for compensation commencing February 3, 2013.

In a report dated May 9, 2013, Dr. Matthew Hodges, an osteopath, provided a history of injury and findings on examination. He diagnosed lumbosacral strain/sprain and indicated that appellant would receive an S1 joint injection. Dr. Hodges stated that this was appropriate given the mechanism of injury and the examination findings and it was causally related to the employment injury. Appellant underwent a right sacroiliac steroid joint injection on July 24, 2013. In a report dated September 3, 2013, Dr. Hodges advised that appellant continued to have persistent pain and did not improve with the S1 joint injection.

By decision dated September 27, 2013, OWCP denied appellant's claim for compensation commencing December 5, 2012. It found the medical evidence was insufficient to establish that his work stoppage was causally related to his accepted injury after his release to full duty by Dr. Fisher as of December 3, 2012.

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<sup>2</sup> The report concludes that appellant was seen "by myself" and includes a typist designation using the initials of the physician's assistant.

Appellant requested reconsideration on December 2, 2013. He submitted an October 24, 2013 OWCP-20 form report from Dr. Hodges, who again checked a box “yes” to indicate causal relationship between appellant’s back condition and employment activity. Dr. Hodges noted that appellant continued to need a 20-pound lifting restriction.

In a report dated February 4, 2014, Dr. Hodges provided results on examination and noted that a magnetic resonance imaging (MRI) scan of October 8, 2013 showed a small disc herniation at L4-5. He stated there was a small annular tear and that this was likely the cause of appellant’s symptoms. Dr. Hodges stated that appellant should not lift over 50 pounds on any one occasion.

By decision dated February 25, 2014, OWCP reviewed the merits of the claim and denied modification of the September 27, 2013 decision. It found that the medical evidence was insufficient to establish any employment-related disability for the period claimed.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>6</sup> 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 he or 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.<sup>7</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> 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).

<sup>6</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

<sup>7</sup> *Id.*

## ANALYSIS

OWCP accepted that appellant sustained lumbosacral and pelvis sprains on August 23, 2012 when he lifted a heavy parcel. Appellant returned to work on December 3, 2012 at full duty as recommended by Dr. Fisher. He then stopped work on December 5, 2012 and claimed wage-loss compensation for total disability commencing that day. The Board notes that appellant has the burden of proof to establish the claimed period of disability.<sup>8</sup> Appellant received compensation pursuant to a CA-7 claim for compensation from October 8 to December 2, 2012.

With respect to the claim for compensation commencing December 5, 2012, the Board finds that appellant did not meet his burden of proof. The Board notes that OWCP procedures discuss claims for recurrent disability within 90 days of a return to work.<sup>9</sup> The focus is on disability and the claimant should provide a narrative report describing the duties that cannot be performed, and the demonstrated objective findings that form the basis for renewed disability.<sup>10</sup>

The Board notes that there is no evidence that appellant received medical treatment on December 5, 2012. It was not until January 11, 2013 that Dr. Fisher submitted a brief note advising that appellant was unable to work as of December 5, 2012 due to a back condition. This note is of limited probative value as it does not provide a full medical history, results on examination, or an opinion supported by sound medical reasoning that appellant was disabled due to an employment injury.<sup>11</sup> Dr. Fisher did not address his prior release of appellant to full duty on December 3, 2012.

Appellant was seen on January 22, 2013 by Dr. Hoskins, but the initial report submitted is not established as medical evidence from a physician under FECA. The report shows the names of both Dr. Hoskins and a physician's assistant. Without any signature or other evidence, it is not clear whether Dr. Hoskins' prepared the medical report.<sup>12</sup> It is well established that medical evidence lacking proper identification is of no probative medical value.<sup>13</sup>

The form report from Dr. Hoskins dated February 6, 2013 and the form reports from Dr. Hodges are of little probative value. They do not provide a complete medical history, results on examination discussing objective findings or a reasoned medical opinion on the issue of appellant's disability on or after December 5, 2012. The checking of a box "yes" in a form report,

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<sup>8</sup> See *J.N.*, Docket No. 10-606 (issued April 20, 2011). In cases where appellant is receiving compensation on the periodic rolls, and OWCP would have the burden to terminate compensation, the Board has held that a short-lived return to work would not shift the burden of proof. See *Carl C. Graci*, 50 ECAB 557 (1999).

<sup>9</sup> Appellant filed a CA-7, but OWCP procedures note that a CA-7 may be the first form received for recurrent disability. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (June 2013).

<sup>10</sup> *Id.* at Chapter 2.1500.5 (June 2013).

<sup>11</sup> See *L.N.*, Docket No. 08-1644 (issued September 21, 2009).

<sup>12</sup> Medical evidence from a physician's assistant does not constitute competent medical evidence as a physician's assistant is not a physician under 5 U.S.C. § 8101(2). *George H. Clark*, 56 ECAB 162 (2004).

<sup>13</sup> *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

without additional explanation or rationale, is of diminished probative value.<sup>14</sup> The February 4, 2014 report from Dr. Hodges does not discuss the claimed periods of disability.

As such, the Board finds that appellant did not meet his burden of proof. 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 an employment-related disability commencing December 5, 2012.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 25, 2014 is affirmed.

Issued: October 1, 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

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<sup>14</sup> See *Barbara J. Williams*, 40 ECAB 649, 656 (1989).