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

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| **D.S., Appellant** | ) | |
| **and** | ) | **Docket No. 14-755** |
| | ) | **Issued: September 2, 2014** |
| **U.S. POSTAL SERVICE, POST OFFICE, Coppell, TX, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

### ***JURISDICTION***

On February 20, 2014 appellant filed a timely appeal from the November 12, 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.[2]

### ***ISSUE***

The issue is whether OWCP properly denied appellant's claim for wage-loss compensation for the period July 22 through September 20, 2013.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence to the record following OWCP's November 12, 2013 decision. The Board's jurisdiction is limited to a review of evidence which was before OWCP at the time of its final review. 20 C.F.R. § 501.3(c).

## ***FACTUAL HISTORY***

On June 4, 2013 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date, she sustained an injury to her back when she picked up buckets of mail, turned and felt a "pop" in the middle of her back with instant pain. She stopped work on that date.

An OWCP Form CA-16, authorization for examination and/or treatment, was issued by the employing establishment on June 4, 2013. Appellant was authorized to visit Dr. Les T. Sandknop, a Board-certified osteopath. In the attached attending physician's report, Dr. Sandknop noted that appellant had a slow gait and limited range of movement and pain in the thoracic and lumbar spine. He stated that appellant gave him a history of injury of picking up buckets, turning and feeling a sharp pain in her back. Dr. Sandknop checked a box indicating that the diagnosed conditions were causally related to her employment and noted that she was totally disabled starting June 4, 2013.

On July 26, 2013 appellant's claim was accepted for thoracic sprain of the back and lumbar sprain of the back. Appellant received continuation of pay from June 5 through July 19, 2013.

Appellant filed claims for wage-loss compensation alleging that she was totally disabled due to her accepted conditions from July 22 through September 20, 2013.

In treatment notes dated June 6 and July 8, 2013, Dr. Sandknop assessed appellant with lumbago and sprains and strains and examined her. He recommended that she not work. Appellant submitted progress notes from a registered nurse dated from June 28 through August 22, 2013.

In a duty status report dated June 18, 2013, Dr. Sandknop diagnosed appellant with thoracic and lumbar sprain and recommended that she not return to work. He noted that she had been injured by lifting buckets of mail. Dr. Sandknop continued to recommend that appellant be off work in duty status reports through July 8, 2013. In the July 8, 2013 duty status report, he noted that her next appointment with him was on July 22, 2013. In duty status reports dated from July 22 through August 2, 2013, Dr. Sandknop continued to recommend that appellant be off work. Dr. Sandknop advises that he examined appellant on these dates. In an August 22, 2013 duty status report, a person with an illegible signature noted that appellant's next appointment with him was on September 20, 2013.

By letter dated July 19, 2013, Dr. Sandknop stated that appellant was "out of work due to a sprained lumbar injury and cannot work due to lifting." He noted that she had been off work since June 4, 2013, when she sprained her back.

Appellant underwent a magnetic resonance imaging (MRI) scan on August 9, 2013 by Dr. Michael J. Sze, a Board-certified radiologist, who noted a diffuse disc bulge and facet hypertrophy without neural compromise at L4-5, and a minimal one millimeter center disc protrusion with facet hypertrophy and no neural compromise at L5-S1.

By letter dated August 12, 2013, OWCP requested that Dr. Sandknop report on appellant's ability to return to work by providing diagnosed conditions and medical findings supporting continued disability.

In a work capacity evaluation dated August 22, 2013, Dr. Sandknop stated that appellant was incapable of performing her usual job. He noted that she could work up to four hours per day, with restrictions of no pushing, pulling, lifting, squatting, kneeling or climbing.

On August 23, 2013 Dr. Craig B. Lankford, Board-certified in physical medicine and rehabilitation, diagnosed appellant with persistent low back pain and lumbar degenerative spondylosis at L4-5 and L5-S1. He noted that her underlying condition had been aggravated from lifting a mail crate at work. Dr. Lankford performed a physical examination, noting a restricted lumbar range of motion for flexion and extension.

Appellant submitted two undated work excuse notes signed by a registered nurse. She also submitted an unsigned response to OWCP's August 12, 2013 letter.

Appellant submitted summaries of office visits from September 20 through October 31, 2013, and a medical source statement dated November 5, 2013, each signed by a registered nurse. She also submitted physical therapy notes dated from September 6 through October 9, 2013, signed by a physical therapist.

In a duty status report dated September 20, 2013, a person with an illegible signature stated that appellant should not return to work.

By letter dated October 9, 2013, OWCP informed appellant that the information submitted was insufficient to establish her claim. It requested that she submit evidence supporting disability for the relevant period. It provided her 30 days to submit the required evidence.

Appellant submitted an unsigned work excuse slip dated October 11, 2013, which stated that she could return to work on October 11, 2013 on light duty.

In a work capacity evaluation dated October 11, 2013, Dr. Sandknop stated that appellant could work with restrictions of no more than four hours of repetitive wrist and elbow movements; no more than one hour of lifting, squatting, kneeling, or climbing; pushing, pulling, and lifting no more than five pounds; and breaks of fifteen minutes every four hours. He noted that appellant could work only four hours per day and estimated that the restrictions would apply for one month.

In a duty status report dated October 15, 2013, Dr. Sandknop stated that appellant should not return to work. He noted that her next appointment was scheduled for November 11, 2013.

On October 25, 2013 Dr. Lankford noted that appellant still experienced back pain after four weeks of physical therapy. He examined her, noting a restricted lumbar range of motion on flexion and extension.

In a duty status report dated October 31, 2013, Dr. Sandknop stated that appellant could return to work on light duty for four hours per day.

By decision dated November 12, 2013, OWCP denied appellant's claim for compensation for the period July 22 through September 20, 2013. It found that the evidence did not establish that she was disabled during the claimed period as a result of her accepted injury.

## ***LEGAL PRECEDENT***

An employee 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.[3] 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.[4] Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.[5] 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 an employee to self-certify his or her disability and entitlement to compensation.[6]

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[7] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[8]

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.[9] Disability is thus not synonymous with physical impairment, which may or may not result in 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.[10]

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[3] *See Amelia S. Jefferson*, 57 ECAB 183, 187 (2005); *see also Nathaniel Milton*, 37 ECAB 712, 722 (1986); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *See Amelia S. Jefferson, id. See also David H. Goss*, 32 ECAB 24, 27 (1980).

[5] *See Edward H. Horton*, 41 ECAB 301, 303 (1989).

[6] *See William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[7] *See Viola Stanko* (*Charles Stanko*), 56 ECAB 436, 443 (2005); *see also Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (2005).

[9] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[10] *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).

With respect to claimed disability for medical treatment, section 8103 of FECA provides for medical expenses, along with transportation and other expenses incidental to securing medical care for injuries.[11] Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition. OWCP's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.[12]

OWCP's procedure manual provides that wages lost for compensable medical examination or treatment may be reimbursed.[13] It notes that a claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.[14] As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.[15]

## ***ANALYSIS***

Appellant has the burden of proof to establish by the weight of the substantial, reliable and probative evidence that a causal relationship exists between her claimed total disability for the period July 22 through September 20, 2013 and the accepted conditions of thoracic and lumbar sprain.[16] The treatment records of her physicians do not provide such rationalized medical opinion. Therefore, the medical evidence submitted is insufficient to meet appellant's burden of proof for the entire period claimed.[17] However, the Board finds that appellant is entitled to wage-loss compensation for attending specific medical appointments for this period.

Dr. Sandknop did not provide a narrative report explaining how appellant's claimed disability was causally related to her accepted injury. The record contains duty status reports and disability notes from Dr. Sandknop for the period June 4 through September 20, 2013. None of these reports provide a rationalized explanation as to how appellant's inability to work was causally related to her accepted lumbar and thoracic sprain.

[11] 5 U.S.C. § 8103(a).

[12] *Dorothy J. Bell*, 47 ECAB 624, 625 (1996); *Zane H. Cassell*, 32 ECAB 1537, 1541 (1981).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (February 2013).

[14] *See Daniel Hollars*, 51 ECAB 355, 356 (2000); *Jeffrey R. Davis*, 35 ECAB 950, 951 (1984).

[15] *Id.*

[16] *See supra* note 4.

[17] *See Alfredo Rodriguez*, 47 ECAB 437, 442 (1996).

In a letter dated July 19, 2013, Dr. Sandknop stated that appellant was "out of work due to a sprained lumbar injury and cannot work due to lifting." He noted that she had been off work since June 4, 2013, when she sprained her back. Dr. Sandknop did not, however, address specific dates of disability, or explain how appellant's claimed disability was causally related to her accepted condition. In an August 22, 2103 work capacity evaluation, he stated that she was incapable of performing her usual job, but noted that she could work up to four hours per day, with restrictions of no pushing, pulling, lifting, squatting, kneeling, or climbing. Yet in a duty status report of the same date, Dr. Sandknop stated that appellant should not return to work for 12 days. In a duty status report of September 20, 2013, he again stated that she should not return to work. He did not explain or resolve the apparent contradiction between these reports. This unexplained contradiction diminishes the probative value of Dr. Sandknop's opinion on appellant's disability for the claimed period.

Appellant submitted reports and notes signed by a registered nurse practitioner and a physical therapist. These documents do not support appellant's claim because under FECA, the reports of nonphysicians, including physical therapists and nurses, do not constitute probative medical evidence unless countersigned by a physician.[18] Lacking countersignatures, these documents do not constitute probative medical evidence.[19] Appellant also submitted several documents that were illegibly signed, such that the author could not be determined. Consequently, these reports are of no probative value and do not establish her claim for compensation, as it cannot be discerned whether a physician signed the reports.[20]

The remaining evidence of record, including diagnostic studies and reports from Dr. Lankford and Sze, do not provide any opinion as to whether appellant was disabled during the claimed period. Therefore, appellant has not submitted sufficient evidence to establish her claim for wage-loss compensation for the entire period July 22 through September 20, 2013.

The Board finds, however, that appellant has submitted sufficient evidence to establish that she attended specific medical appointments related to the accepted conditions on July 22, August 2, 22, and September 20, 2013 with Dr. Sandknop; August 9, 2013 with Dr. Sze, which included an MRI scan; and on August 23, 2013 with Dr. Lankford, which included a physical examination. Each of these visits related to appellant's accepted injury of lumbar and thoracic sprain. As noted, with respect to claimed disability for medical treatment, a claimant may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.[21] On remand, OWCP shall develop appellant's claim to determine if she is entitled to up to four hours of wage loss for these medical appointments and travel time.

[18] *See* 5 U.S.C. § 8101(2); *M.B.*, Docket No. 12-1695 (issued January 29, 2013) (regarding nurse practitioners); *Vickey C. Randall*, 51 ECAB 357, 360 n.4 (2000) (regarding physical therapists).

[19] The Board notes that the work capacity evaluation of August 22, 2013 was signed by both a registered nurse and Dr. Sandknop, and thus constituted probative medical evidence.

[20] *See Merton J. Sills*, 39 ECAB 572, 575 (1988); *see also Sheila A. Johnson*, 46 ECAB 323, 327 (1994).

[21] *Supra* note 14.

## ***CONCLUSION***

The Board finds that OWCP properly denied appellant's claim for wage-loss compensation for the period July 22 through September 20, 2013. The Board further finds that OWCP did not sufficiently develop whether appellant is entitled to wage-loss compensation for attending certain medical appointments during this period.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 12, 2013 is affirmed in part and the case set aside in part for further development consistent with this decision.

Issued: September 2, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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