

and upper back conditions and its relationship to his employment on November 18, 2011.² By decision dated May 24, 2013, OWCP vacated a January 24, 2013 decision denying his claim and accepted the conditions of C3-4, C4-5, and C5-6 cervical spine degenerative disc disease aggravation and C3-4 and C4-5 cervical spine arthropathy aggravation, which was subsequently expanded to include other psychogenic pain. In the May 24, 2013 decision, it noted that a January 13, 2009 loss of wage-earning capacity decision had been issued under OWCP File No. xxxxxx509 which remained in effect and that claims for disability benefits could be considered³ relevant to appellant's claim for wage-loss compensation for the period November 18 to 21, 2011, which was initially submitted under OWCP File No. xxxxxx509, is set forth below.

In a December 6, 2011 report, Dr. Jack L. Rook, a treating Board-certified physiatrist, noted that appellant was seen for a three-month follow-up evaluation and that he was working full-time on the night shift including overtime work. Appellant related that his neck and shoulder/back pain was progressively worsening which resulted in missing work.

In a December 6, 2011 disability note, Dr. Rook indicated that appellant was disabled from working on November 18 and 19, 2011 due to shoulder, neck, and back pain which the doctor attributed to OWCP File No. xxxxxx509.

Following the acceptance of his claim on May 31, 2013, appellant submitted medical evidence including diagnostic testing, injection notes, and reports from Dr. Rook and Dr. Jeffrey Bruce Kleiner, an examining Board-certified orthopedic surgeon, covering the period December 16, 2011 through June 19, 2013. In progress reports for the period February 15, 2012 to June 19, 2013, Dr. Rook reviewed magnetic resonance imaging (MRI) scans, provided physical examination findings and diagnoses of multiple level cervical degenerative disc disease and facet degeneration.

Dr. Kleiner, in a February 15, 2012 report, provided physical examination findings and attributed appellant's symptoms to cervical facet arthropathy and possibly internal cervical disc disruption.

In a letter dated January 25, 2014, appellant requested that he be paid for the time itemized on the Form CA-7 he submitted under OWCP File No. xxxxxx509 under the current

² Appellant noted November 15, 2011 as the date he first became aware of the relationship of his condition to his employment duties. OWCP used November 18, 2011 as the date-of-injury as that is the date he identified as first being aware of his condition. On July 24, 2012 appellant filed a claim for a recurrence of disability for the period November 18 to 21, 2011 under OWCP File No. xxxxxx509. He also stated that due to the neck strain from his work, he was forced to remove his name from the overtime list. By decision dated March 9, 2012, OWCP denied appellant's claim for a recurrence of disability for the period November 18 to 21, 2011 under OWCP File No. xxxxxx509. By decision dated January 25, 2013, it denied modification.

³ On May 31, 2013 OWCP combined the current claim under OWCP File No. xxxxxx697 with OWCP File No. xxxxxx509, with the latter number listed as the Master File No. Under OWCP File No. xxxxxx509 the accepted conditions were right shoulder and upper arm rotator cuff sprain, right rotator cuff tear, and closed dislocation thoracic vertebra with November 13, 2005 noted as the date of injury.

claim. He stated that the disability for the period in question was due to his cervical condition which OWCP accepted under the current claim.

In the current claim, on February 25, 2014 appellant filed a claim for wage-loss compensation (Form CA-7) for the period November 18 to 21, 2011. He also submitted a leave analysis for this period.

Appellant submitted medical evidence in the form of physical therapy notes and doctors reports.

By letter dated March 28, 2014, OWCP informed appellant that it was unable to process his claim for wage-loss compensation starting November 18, 2011 due to the lack of any contemporaneous medical evidence supporting disability for the period claimed due to the accepted employment conditions.

In response to OWCP's request, appellant submitted additional reports from Drs. Rook and Kleiner and diagnostic testing from December 6, 2011 to May 29, 2014. Dr. Rook, in progress reports dated March 13 and June 10, 2014, provided physical examination findings and related that appellant stated that his neck was progressively worsening. In a May 29, 2014 report, Dr. Kleiner noted that appellant returned for an updated evaluation with his last visit several years ago. A physical examination revealed limited cervical range of motion.

By decision dated June 30, 2014, OWCP denied appellant's claim for wage-loss compensation for the period November 18 to 21, 2011 due to the lack of any supporting medical evidence.

Subsequent to the June 30, 2014 decision, OWCP received additional medical evidence including diagnostic testing for the period December 6, 2011 to May 29, 2014, physical therapy reports for the period August 27 to November 3, 2014, and other medical reports.

In reports dated April 4, 2012, August 22, 2013, September 10, October 21 and November 10, 2014, Dr. Rook provided physical examination findings and noted the treatment appellant was receiving. On September 10 and October 21, 2014 he provided work restrictions in duty status reports (Form CA-17).

In a letter dated December 12, 2014, appellant's then-counsel requested reconsideration and submitted a reconsideration request from appellant dated December 10, 2014.⁴ Appellant related that he was taken off work for the period November 18 to 21, 2011 by Dr. Rook due to exacerbation of neck pain which was documented by magnetic resonance imaging scans. In concluding, he stated that the evidence he submitted supports his claim for wage-loss compensation due to his accepted neck injury for the period in question.

By decision dated December 18, 2014, OWCP denied modification.

⁴ Appellant's prior counsel withdrew his representation on April 16, 2015.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁶ For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.⁷ 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.⁸

Under FECA the term “disability” means 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 an incapacity to earn wages.¹⁰ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.¹¹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wages.

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 their disability and entitlement to compensation.¹²

ANALYSIS

OWCP accepted appellant’s claim for C3-4, C4-5, and C5-6 spine degenerative disc disease aggravation and C3-4 and C4-5 spine arthropathy aggravation. Appellant filed a Form CA-7 claiming wage-loss compensation for the period November 18 to 21, 2011. OWCP denied his claims for wage-loss compensation for the period in question as it found the medical evidence of record insufficient to establish any disability causally related to the accepted conditions. It informed appellant that pain was a symptom, not a diagnosed medical condition.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel A. Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁷ See *Amelia S. Jefferson*, *id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

⁸ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁹ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

¹⁰ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹¹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹² See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

The Board finds that appellant failed to meet his burden of proof to establish entitlement to compensation for the period November 18 to 21, 2011. The record is devoid of any medical evidence supporting appellant's contention that he was disabled from working for this period. OWCP advised him regarding the need to submit medical evidence supporting his disability. The relevant evidence submitted by appellant was a December 6, 2011 report and December 6, 2011 disability note from Dr. Rook. In the report, he related to Dr. Rook that he was missing work due to progressively worsening neck, shoulder, and back pain. Dr. Rook, in the disability note reported that appellant was disabled from working on November 18 and 19, 2011 due to shoulder, neck, and back pain. He did not, however, explain how or why residuals of the employment injury caused appellant's disability for the period November 18 to 21, 2011 other than to note that he was disabled due to neck, shoulder, and back pain. Additionally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.¹³

The record also contains medical evidence from 2013 and 2014 including reports from Dr. Rook for the period February 15, 2012 to November 10, 2014 and reports for the period February 15, 2012 to May 29, 2014 from Dr. Kleiner. These reports are irrelevant to the issue at hand as they postdate the period in question and do not contain any information to support disability for the claimed period.¹⁴

In summary, the medical evidence of record is unsupported by sufficient medical rationale or reasoning which explains why the claimed disability for the period November 18 to 21, 2011 was caused or aggravated by the accepted C3-4, C4-5, and C5-6 cervical spine degenerative disc disease aggravation and C3-4 and C4-5 cervical spine arthropathy aggravation. The Board finds that the evidence submitted was insufficient to establish entitlement to wage-loss compensation for the period claimed and OWCP properly denied appellant's claim.

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 failed to establish he is entitled to wage-loss compensation for the period November 18 to 21, 2014.

¹³ *Laurie S. Swanson*, 53 ECAB 517 (2002).

¹⁴ *See James W. Scott*, 55 ECAB 606 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 24, 2015 and December 18, 2014 are affirmed.

Issued: October 21, 2015
Washington, DC

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

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

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