



On appeal appellant generally disagrees with OWCP decisions.

### **FACTUAL HISTORY**

On December 23, 2013 appellant, then a 52-year-old equipment operator, filed a traumatic injury claim alleging that on December 5, 2013 she had injured her hip and back when she was jolted by a forklift while driving equipment at work. She did not stop work. On January 17, 2014 OWCP accepted sprain of the back, lumbar region. In February 2014, appellant came under the care of Dr. John D. Dockery, Board-certified in physical medicine and rehabilitation, who reported a history that she had been hit by another forklift in December 2013.

Appellant filed a Form CA-7, claim for compensation, for the period August 26 to September 5, 2014. On August 26, 2014 Dr. Dockery noted a history that appellant was last seen five months previously when she was doing well and reported that about a month previously her lower back pain had returned with radiation into the right leg, worse with standing. Physical examination demonstrated 5/5 strength, intact sensation, and a negative straight leg raise. Dr. Dockery diagnosed degenerative joint disease and recommended a magnetic resonance imaging (MRI) scan of the lumbar spine. He further advised that appellant was unable to work.

By letter dated September 8, 2014, OWCP informed appellant of the evidence needed to support her disability claim. This was to include a report from her physician that included a thorough explanation, supported by objective findings, of how her accepted condition had worsened to the extent that she could no longer perform work duties. Appellant submitted additional Form CA-7 claims for compensation for the period September 6 to 16, 2014.

A September 15, 2014 MRI scan of the lumbar spine demonstrated degenerative disc changes and discogenic endplate edema and a minimal disc bulge and facet change at L4-5 and L5-S1. On September 17, 2014 Dr. Dockery noted his review of the MRI scan study. He noted that appellant had right-sided pain in the L4 and L5 area and sciatic notch with positive facet loading on physical examination. Dr. Dockery diagnosed lumbar sprain, degenerative lumbar intervertebral disc, thoracic/lumbosacral neuritis, and lumbosacral spondylosis. He advised that appellant could return to light duty on September 18, 2014 with no lifting over 20 pounds. On October 21, 2014 Dr. Dockery performed right L4 and L5 facet joint injections.

By decision dated October 29, 2014, OWCP denied appellant's claim for compensation for the period August 26 to September 16, 2014 because the medical evidence did not explain why she was unable to work as a result of the December 5, 2013 employment injury for the period alleged.

On November 24, 2014 appellant requested reconsideration. She stated that she disagreed with the decision and would obtain additional supportive medical evidence. Appellant submitted no additional evidence.

In a nonmerit decision dated December 2, 2014, OWCP denied appellant's reconsideration request.

### **LEGAL PRECEDENT -- ISSUE 1**

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. Disability is thus not synonymous with physical impairment, which may or may not result in an 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.<sup>3</sup> Furthermore, 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 reliable, probative, and substantial medical evidence.<sup>4</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>5</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical 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.<sup>6</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant did not meet her burden of proof to establish that she had any employment-related disability from August 26 to September 16, 2014 due to the accepted condition, sprain of back, and lumbar region.

In support of her disability claim, appellant submitted reports from Dr. Dockery dated August 26 and September 17, 2014. Dr. Dockery initially noted a history that she had been doing well when last seen five months previously, but that she now reported an approximate one-month history of lower back pain with radiation into the right leg, worse with standing. He described examination findings of 5/5 strength, intact sensation, and a negative straight leg raise. Dr. Dockery diagnosed degenerative joint disease, recommended an MRI scan study of the lumbar spine, and advised that appellant was unable to work. On September 17, 2014 he reported that the September 15, 2014 MRI scan study demonstrated degenerative changes. Dr. Dockery described examination findings of right-sided pain in the L4 and L5 and diagnosed lumbar sprain, degenerative lumbar intervertebral disc, thoracic/lumbosacral neuritis, and lumbosacral spondylosis. He advised that appellant could return to light duty on September 18,

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<sup>3</sup> See 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>4</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>5</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>6</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>7</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

2014 with no lifting over 20 pounds. On October 21, 2014 Dr. Dockery performed right L4 and L5 facet joint injections.

Even though Dr. Dockery advised that appellant could not work from August 26 to September 18, 2014, he did not offer any explanation of the mechanics of how the December 5, 2013 lumbar sprain caused her diagnosed low back condition. The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.<sup>8</sup> Dr. Dockery's reports are insufficient to establish that appellant was totally disabled for the claimed period.

As appellant did not submit sufficient rationalized medical opinion evidence to establish that she was unable to work from August 26 to September 16, 2014 due to the accepted lumbar sprain, she failed to establish that she was disabled, and is thus not entitled to wage-loss compensation for the period claimed.<sup>9</sup>

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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.<sup>10</sup> Section 10.608(a) of OWCP regulations provide that a timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(3).<sup>11</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>12</sup> Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>13</sup>

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<sup>8</sup> See *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>9</sup> *N.R.*, Docket No. 14-114 (issued April 28, 2014).

<sup>10</sup> 5 U.S.C. § 8128(a).

<sup>11</sup> 20 C.F.R. § 10.608(a).

<sup>12</sup> *Id.* at § 10.608(b)(1) and (2).

<sup>13</sup> *Id.* at § 10.608(b).

## ANALYSIS -- ISSUE 2

With her November 24, 2014 reconsideration request appellant merely stated that she disagreed with the decision and that she would obtain additional supportive medical evidence. She did not allege or contend that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. Consequently, appellant was not entitled to a merit review of the merits of her claim under the first and second requirements under section 10.606(b)(3).<sup>14</sup>

With respect to the third above-noted requirement under section 10.606(b)(3), appellant submitted no additional evidence.

## CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she was totally disabled for the period August 26 to September 16, 2014. The Board further finds that OWCP properly refused to reopen her case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>14</sup> *Id.* at § 10.606(b)(2).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 2 and October 29, 2014 are affirmed.

Issued: October 1, 2015  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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