



## **FACTUAL HISTORY**

On July 21, 2010 appellant, then a 28-year-old firefighter, filed a claim for a traumatic injury (Form CA-1) alleging that on July 15, 2010 he experienced a jolt to his lower back extending into his left leg while getting out of an ambulance. OWCP accepted the claim for lumbar sprain and an aggravation of displacement of a lumbar intervertebral disc without myelopathy at L4-5. It paid appellant wage-loss compensation and medical benefits beginning November 16, 2010 for temporary total disability.

On November 16, 2010 Dr. Leon K. Liem, a Board-certified neurosurgeon, performed a discectomy at L4-5 on the left side. On February 28, 2011 he released appellant to return to his usual employment and appellant was taken off the compensation rolls effective March 2, 2011 when he returned to work full time.

By letter dated December 13, 2013, OWCP advised appellant that it had reopened his case for medical treatment and approved his request to change his attending physician to Dr. Frank Izuta, who specializes in occupational medicine.

A magnetic resonance imaging (MRI) scan of the lumbar spine, obtained on January 8, 2014, showed a broad-based disc protrusion at L5-S1 with retrolisthesis and “an old left-sided 4-5 hemilaminectomy. The protrusion with inferior migration previously seen just below the endplate to [the] left has regressed significantly. The right lateral component of disc has increased in size today resulting in mild mass effect on [the] right side of [the] thecal sac and right L4 nerve root sleeve within its foramen.”

On February 11, 2014 Dr. Izuta referred appellant to a spinal surgeon for a consultation. In a disability certificate dated March 13, 2014, Dr. Kyle Mitsunaga, a Board-certified orthopedic surgeon, determined that appellant was unable to work from March 14 to April 25, 2014.

In a form report dated March 25, 2014, Dr. Mitsunaga diagnosed lumbar spondylosis and spinal stenosis. He provided a history of an injury while stepping out of an ambulance and checked a box marked “yes” that the condition was employment related, noting that he had not experienced symptoms before the incident. Dr. Mitsunaga opined that appellant was totally disabled from February 21 to April 25, 2014.

On April 17, 2014 appellant filed a claim for compensation (Form CA-7) for the period March 23 to April 19, 2014. He also filed a claim for compensation from April 20 to 28, 2014.

On April 24, 2014 Dr. Mitsunaga indicated that he was treating appellant for spinal stenosis and lumbar spondylosis. He found that appellant could return to work on April 28, 2014 without limitations.

In a progress report dated April 15, 2014, Dr. Izuta diagnosed a strain, herniated disc, and instability of the lumbar spine. He deferred a determination of appellant’s work status to Dr. Mitsunaga.

By letter dated April 28, 2014, OWCP advised appellant that it had not accepted as employment related the additional conditions diagnosed by Dr. Mitsunaga of lumbar spondylosis and spinal stenosis. It informed him that the medical evidence was currently insufficient to establish a recurrence of disability and requested that he submit additional factual and medical information, including a report from his attending physician, explaining the relationship between any disability and his accepted work injury.

In a report dated February 21, 2014, received by OWCP on August 19, 2014, Dr. Mitsunaga discussed appellant's history of the July 15, 2010 employment injury and subsequent discectomy at L4-5. He noted that appellant currently complained of increasing lumbar pain radiating into both legs. Dr. Mitsunaga reviewed objective studies and diagnosed a prior left microdiscectomy at L4-5, low back pain, bilateral lumbar radiculopathy, and lumbar spondylosis with stenosis at L4-5 and L5-S1. He recommended possible surgery if conservative treatment was not successful.

By decision dated September 18, 2014, OWCP denied appellant's claim for compensation for disability from March 23 to April 28, 2014. It found that he had failed to establish that he was unable to perform his work duties during this period due to the accepted employment injury.

On September 29, 2014 Dr. Mitsunaga noted that appellant was requesting compensation from March 23 to April 19, 2014 due to disability from his July 15, 2010 work injury of a lumbar sprain and lumbar back displacement. He described in detail the July 15, 2010 work injury and advised that appellant was now experiencing "residual after effects, irritation, discomfort, aggravating flare ups in [appellant's] lumbar region, and shooting spasms down his left lower extremity." Regarding the claimed period of disability, Dr. Mitsunaga related:

"[Appellant] was declared incapacitated at that time due to a spontaneous change in his medical condition which worsened because of his previous injuries he endured on July 15, 2010 to his lumbar region while working on shift employed with [the employing establishment]. Currently, under my care, [appellant] was unable to perform his duties as a [f]ederal [f]ire [f]ighter because of his change in medical condition, which has worsened and he has been trying to continue to bear and tolerate the agonizing discomfort even after postsurgical efforts."

Dr. Mitsunaga advised that he obtained an MRI scan that showed a progression of the accepted work-related conditions to lumbar spondylitis and spinal stenosis because appellant had not received adequate care and physical therapy after his original injury.

On October 8, 2014 appellant requested reconsideration.

In a decision dated January 6, 2015, OWCP denied modification of its September 18, 2014 decision.

In a February 15, 2015 report, Dr. Mitsunaga opined that appellant was disabled from March 23 to April 19, 2014 as a result of increased weakness and impairment caused by his July 15, 2010 employment injury. Due to appellant's worsening symptoms, he obtained an MRI scan, which showed that appellant's "spontaneous increase of disability due to weakness and

impairment was because of his work[-]related injuries....” Dr. Mitsunaga advised that the work injury also caused lumbar spondylitis and spinal stenosis.

On March 1, 2015 appellant again requested reconsideration. In a decision dated June 3, 2015, OWCP denied modification of its January 6, 2015 decision. It determined that Dr. Mitsunaga’s opinion was equivocal and unspecific and thus insufficient to meet appellant’s burden of proof.

On appeal appellant asserts that his treating physicians provided all the information requested by OWCP.

### **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.<sup>2</sup> For each period of disability claimed, the employee has the burden of establishing that he was disabled from work as a result of the accepted employment injury.<sup>3</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>4</sup>

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.<sup>5</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>6</sup> 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 that 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.<sup>7</sup> 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.

### **ANALYSIS**

OWCP accepted that on July 15, 2010 appellant sustained lumbar sprain and an aggravation of lumbar intervertebral disc displacement at L4-5 in the performance of duty. Appellant underwent an L4-5 left discectomy on November 16, 2010. OWCP paid appellant

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<sup>2</sup> See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

<sup>3</sup> See *Amelia S. Jefferson*, *id.*

<sup>4</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>5</sup> *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

<sup>6</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>7</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

compensation from November 16, 2010 until March 1, 2011, when he returned to his usual employment.

Appellant requested disability compensation from March 23 to April 28, 2014. He has the burden of proof to establish disability from employment on that date as a result of his accepted work injury.<sup>8</sup> Additionally, appellant must submit medical evidence specifically addressing the claimed period of disability. Without this requirement, a claimant could effectively self-certify that he was disabled and entitled to compensation for a particular date or dates.<sup>9</sup>

In a report dated February 21, 2014, Dr. Mitsunaga noted that appellant had a history of a work injury on July 15, 2010 which resulted in an L4-5 discectomy. He diagnosed a prior left microdiscectomy at L4-5, low back pain, bilateral lumbar radiculopathy, and lumbar spondylosis with stenosis at L4-5 and L5-S1. Dr. Mitsunaga did not, however, address the cause of the diagnosed conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>10</sup> In a disability certificate dated March 13, 2014, Dr. Mitsunaga opined that appellant was disabled from March 14 to April 25, 2014. Again, however, he did not address causation and thus his report is of little probative value on the issue of causal relationship.<sup>11</sup>

In a March 25, 2014 form report, Dr. Mitsunaga diagnosed lumbar spondylosis and spinal stenosis and checked a box marked "yes" that the condition was work related. He noted that appellant had no pain prior to the work incident. Dr. Mitsunaga determined that appellant was totally disabled from February 21 to April 25, 2014. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.<sup>12</sup> Dr. Mitsunaga provided as rationale for his determination that appellant had not experienced the pain prior to the accepted incident, but did experience it after the incident. A medical opinion that finds a condition is causally related to an employment injury solely because the employee was asymptomatic before the injury, but symptomatic after is insufficient to establish causal relationship.<sup>13</sup>

On September 29, 2014 Dr. Mitsunaga discussed appellant's claim for compensation for disability from March 23 to April 19, 2014 as a result of his accepted July 15, 2010 work injury of lumbar sprain and lumbar disc displacement. He advised that appellant sustained a spontaneous worsening of his condition such that he was unable to perform his usual employment as a firefighter. Dr. Mitsunaga further found that an MRI scan revealed that

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<sup>8</sup> See *Amelia S. Jefferson*, *supra* note 2.

<sup>9</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> *S.E.*, Docket No. 08-2214 (2009); *Conard Hightower*, 54 ECAB 796 (2003).

<sup>11</sup> *Id.*

<sup>12</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>13</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

appellant now had lumbar spondylitis and spinal stenosis. He attributed the diagnosed conditions of lumbar spondylitis and spinal stenosis to appellant's failure to receive the proper care after the original injury. OWCP had only accepted the claim for lumbar sprain and an aggravation of lumbar disc displacement at L4-5. Where appellant claims that a condition not accepted or approved by OWCP was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.<sup>14</sup> Dr. Mitsunaga did not adequately explain how appellant's condition progressed to lumbar spondylitis and spinal stenosis with resulting disability due to the July 15, 2010 employment injury. Consequently, his opinion is of diminished probative value.<sup>15</sup>

On February 15, 2015 Dr. Mitsunaga determined that appellant was disabled from March 23 to April 19, 2014 due to increased weakness and impairment arising from his accepted July 15, 2010 employment injury. He indicated that diagnostic studies supported increased disability. Dr. Mitsunaga attributed the diagnosed conditions of lumbar spondylitis and spinal stenosis to the original work injury. He did not, however, provide any rationale in support of his opinion. A physician must provide an opinion on whether the employment incident described caused or contributed to claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical, and rationale.<sup>16</sup>

On appeal appellant asserts that his treating physicians provided all the information requested by OWCP. He has the burden, however, to support any claimed period of disability from employment with probative medical evidence directly addressing the specific dates of disability for which compensation is claimed.<sup>17</sup> Appellant failed to submit such evidence and thus has failed to 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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish disability from March 23 to April 28, 2014 causally related to his July 15, 2010 employment injury.

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<sup>14</sup> *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>15</sup> *See V.M.*, Docket No. 15-0601 (issued May 19, 2015); *Willa M. Frazier*, 55 ECAB 379 (2004).

<sup>16</sup> *See J.E.*, Docket No. 14-1132 (issued December 24, 2014); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>17</sup> *Supra* note 9.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 3, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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