

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

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G.B., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Santa Clarita, CA, Employer )

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**Docket No. 16-1003  
Issued: December 5, 2016**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 11, 2016 appellant filed a timely appeal from a February 18, 2016 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 met his burden of proof to establish total disability beginning March 19, 2015, causally related to his work injuries.

On appeal appellant asserts that he was improperly denied compensation for that period because he could not perform his job duties due to accepted conditions. He further claims additional and consequential conditions.

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

## **FACTUAL HISTORY**

Appellant, then a 53-year-old electronic technician, filed several occupational disease claims (Form CA-2) in 2009. Under OWCP File No. xxxxxx502, on March 16, 2009 OWCP accepted bilateral carpal tunnel syndrome, bilateral medial epicondylitis, and bilateral lateral epicondylitis. Under OWCP File No. xxxxxx503, on August 28, 2009 OWCP accepted sprain of back, lumbar region. On March 19, 2010 appellant filed a traumatic injury claim (Form CA-1) for a cervical spine injury, adjudicated by OWCP under File No. xxxxxx951. On August 20, 2010 OWCP accepted brachial neuritis or radiculitis and sprain of neck.

Appellant received wage-loss compensation. On May 19, 2011 he accepted a part-time modified clerk position for two hours a day. Appellant began full-time modified electronic technician duties on December 23, 2011.<sup>2</sup> A duty status report (Form CA-17) dated March 3, 2015 set out his restrictions, which included limiting sitting to 1.5, hours, pulling/pushing limited to 2 hours, and kneeling, bending, stooping, twisting, fine manipulation, and reaching above the shoulder limited to 3 hours, with a 25-pound weight restriction.

In April 21, 2015 correspondence, appellant's representative at the time maintained that appellant's morbid obesity prevented him from performing his job duties, noting that his treating physician recommended bariatric surgery. On May 8, 2015 appellant telephoned OWCP, stating that his condition had worsened and he needed compensation. OWCP informed him of the evidence needed and forwarded a recurrence claim (Form CA-2a). Appellant wrote his congressional representative on May 11, 2015 reporting that he had been unable to work due to his accepted conditions, which were aggravated by morbid obesity. He indicated that he was seeking FECA compensation and bariatric surgery to alleviate the obesity.

On June 3, 2015 OWCP administratively combined all of appellant's previous claims, with the current claim, OWCP File No. xxxxxx502, becoming the master file. In a telephone call on June 16, 2015, it informed him that his claims were open for medical treatment of the accepted conditions and that he needed to submit medical evidence to support disability. On June 23, 2015 appellant submitted a claim for compensation (Form CA-7) for disability from work commencing March 19, 2015 under each of his claim files. The employing establishment indicated that work was available within his restrictions.

On July 10, 2015 OWCP again informed appellant of the evidence needed to support his claim.

Medical evidence relevant to the period of claimed disability includes a March 3, 2015 report in which Dr. Mauro Zappaterra, a physiatrist, advised that appellant would be disabled on March 5, 6, 9, 12, and 13, 2015. Dr. Zappaterra advised that appellant's disability could have been caused by his crippling morbid obesity, which would have at times disabled him and

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<sup>2</sup> The physical requirements of the modified assignment noted intermittent activity with a 25-pound lifting restriction. On February 24, 2015 the Office of the Solicitor of the Department of Labor recommended to OWCP that an overpayment of compensation in the amount of \$9,852.11 be written off, based on appellant's bankruptcy filing. The overpayment was created because appellant received compensation for six hours of partial disability for the period December 23, 2011 through April 7, 2012 after he returned to work on December 23, 2011.

aggravated other conditions. He indicated that appellant was pursuing bariatric surgery to correct his obesity, which would help him return to work. On March 27, 2015 Dr. Zappaterra noted that appellant weighed 407 pounds and was 5 feet 11 inches tall. He diagnosed bilateral carpal tunnel syndrome, bilateral sprains and strains of hand and wrist, bilateral medial and lateral epicondylitis, shoulder bursitis, sprains and strains of neck, lumbar spine musculoligamentous sprain/strain, internal derangement of right hip, possible left hip internal derangement, bilateral internal knee derangement, right ankle internal derangement, and possible left ankle internal derangement. Dr. Zappaterra advised that appellant was totally disabled.

In an April 7, 2015 report, Dr. Eric Foxman, a Board-certified psychiatrist, advised that appellant was seen for psychiatric clearance in anticipation of bariatric surgery. He advised that appellant was morbidly obese, could not sit comfortably in a regular chair, and could not stand for more than a limited period of time due to knee pain. Dr. Foxman maintained that appellant's limited mobility due to his excessive weight made it impossible for him to meet productivity demands at work because he could not easily move about or assume the postures required to repair the automated machinery he maintained. He opined that a bariatric procedure would help appellant return to productive employment, concluding that at present his ability to function at work was severely limited.

On April 8, 2015 Dr. Ana Lopes, a Board-certified family physician, advised that appellant was unable to work due to his chronic medical conditions and his disability could last up to one year.

In reports dated April 21 to July 17, 2015, Dr. Zappaterra reiterated appellant's diagnoses and continued to advise that he was totally disabled. On April 21, 2015 he indicated that appellant was seen for strain of the lumbar spine. Dr. Zappaterra reported that appellant had repetitive task vertebral trauma injuries and the deformity from this condition caused frequent back pain. He noted that appellant's work duties required that he stand for two hours at a time, but about March 19, 2015 he placed restrictions on standing for only 15 minutes. Dr. Zappaterra also found that appellant had difficulty walking for more than 100 feet without resting. He opined that the demands of appellant's occupation worsened his condition, noting that the type machine he worked on had four tiers, and that he had to stand, lean, bend, stoop, squat, sit, or lay on the floor in order to perform his work duties, which caused excruciating pain. Dr. Zappaterra concluded that appellant needed trigger point injections and needed to convalesce in order for his body to repair. On June 18, 2015 he advised that appellant's obesity was causing greater issues with his lumbar spine, opining that due to his obesity, bending at work exacerbated his lower back pain. Dr. Zappaterra noted limited range of motion and difficulty with activities of daily living. In duty status reports dated April 21 to July 17, 2015, he indicated by checking a box marked, "yes," that appellant could resume work, but provided restrictions where appellant could lift one pound for one hour daily, could bend, stoop, and grasp for one hour daily, and could sit, stand, walk, kneel, twist, push, pull, reach above the shoulder, and perform fine manipulation for half an hour daily. Appellant could not climb.

By decision dated August 11, 2015, OWCP denied appellant's claim for disability compensation for the period commencing March 19, 2015 because the medical evidence of record did not establish that he was disabled as a result of his accepted work-related conditions under either File Nos. xxxxxx502, xxxxxx503, or xxxxxx951.

Appellant timely requested a review of the written record before OWCP's Branch of Hearings and Review.

On a treatment note dated July 17, 2015, Dr. Zappaterra again advised that, due to appellant's obesity, bending at work exacerbated his lower back pain, and that he had limited range of motion and difficulty with activities of daily living. In duty status reports dated August 24 and September 24, 2015, he reiterated his previous physical restrictions. On October 21, 2015 Dr. Zappaterra indicated that, due to financial hardship, appellant requested a lessening of restrictions. He advised that appellant could perform the activities as outlined by the employing establishment.<sup>3</sup> Dr. Zappaterra reiterated these restrictions on duty status reports dated November 18 and December 16, 2015 and January 13 and February 10, 2016.

In an undated report, Dr. Lopes referenced File Nos. xxxxxx502, xxxxxx503, and xxxxxx951. She advised that appellant became her patient on October 31, 2008. Appellant claimed to have suffered injuries caused by repetitive tasks at work and was temporarily totally disabled. Dr. Lopes maintained that his job duties, where he had to work in small confined areas, manipulate tools and mechanical assemblies that required frequent grasping, pushing, pulling, bending, stooping, twisting, and lifting to repair machinery, caused strain on his hands and arms and worsened his lumbar spine condition, causing excruciating pain. She further described cervical spine pain that radiated into appellant's right shoulder, aggravated by his work, such as having to contort and maneuver himself to enter compartments of machines, which put increased pressure on his neck, shoulders, lower back, and lower torso. Dr. Lopes opined that he had additional consequential injuries to his knees, hips, ankles, and shoulders that had not been accepted by OWCP. She indicated that appellant had received weight loss surgery. Dr. Lopes maintained that his accepted injuries had worsened and that other conditions should be accepted. She concluded that appellant needed financial compensation, not excuses and technical dodges.

In a February 18, 2016 decision, an OWCP hearing representative affirmed the August 11, 2015 decision. She reviewed the medical evidence and noted that appellant reported to his Congressman that he stopped work because his morbid obesity was aggravating his employment-related conditions. The hearing representative found that, as morbid obesity had not been accepted as employment related, its impact on employment-related conditions would not be compensable. She concluded that the medical evidence submitted had insufficient rationale to support disability from work beginning March 19, 2015, and further noted that, if appellant believed the work he had been performing at the time of his work stoppage caused or aggravated conditions, he should file a new occupational disease claim.

### **LEGAL PRECEDENT**

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

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<sup>3</sup> *Id.*

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>4</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>5</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>6</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>7</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>8</sup>

### ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish employment-related disability beginning March 19, 2015 due to his accepted conditions.

The evaluation of medical evidences includes the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. The opinion of a physician must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship.<sup>9</sup> Medical evidence submitted by a claimant to support his or her claim for compensation benefits should reflect a correct history, and the physician should offer a medically sound explanation of how the specific duties appellant performed caused or aggravated the claimed condition.<sup>10</sup>

In support of his disability claim, appellant submitted a number of reports from Dr. Zappaterra, an attending psychiatrist, who advised that appellant was totally disabled. On April 21, 2015 Dr. Zappaterra noted that around March 19, 2015 appellant found that he could only stand for 15 minutes and had difficulty walking more than 100 feet without resting. He maintained that the type of work appellant did, where he had to stand, lean, bend, stoop, squat, and lay on the floor caused excruciating pain. In later reports, however, Dr. Zappaterra indicated

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<sup>4</sup> See 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>5</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>6</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>8</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>9</sup> *K.W.*, 59 ECAB 271 (2007).

<sup>10</sup> See *T.G.*, Docket No. 14-751 (issued October 20, 2014).

that appellant's obesity was causing greater issues, noting limited range of motion, and difficulty with activities of daily living. He advised that appellant's crippling morbid obesity would have disabled him and aggravated other conditions, and that bariatric surgery would help him return to productive work.

Dr. Foxman, who provided an April 7, 2015 psychiatric clearance for bariatric surgery, noted at that time that appellant was morbidly obese and this limited his ability to meet work demands. He opined that the surgery would help appellant return to productive employment.

On April 8, 2015 Dr. Lopes merely advised that appellant was unable to work due to chronic medical conditions. In an undated report, she noted that he had the bariatric surgery. Dr. Lopes maintained that appellant's job duties, where he was required to work in small confined areas, caused strain on his hands, arms, and worsened his lumbar condition, noting that he had to contort and maneuver himself to enter machine compartments. She further asserted that he had additional conditions that should be accepted.

All of appellant's attending physicians noted that appellant was morbidly obese and this caused restrictions to his ability to perform his job duties. Morbid obesity however has not been accepted as work related.<sup>11</sup> Any disability from work due to this condition is not employment related and appellant is therefore not entitled to disability compensation for the period due to this condition.

The issue of whether a claimant's disability is related to an accepted condition is a medical question, which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>12</sup> The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.<sup>13</sup> None of the medical reports explain with sufficient rationale how his accepted conditions caused him to be disabled from work as of March 19, 2015.<sup>14</sup>

As appellant failed to submit sufficient rationalized medical opinion evidence to establish that he was unable to work beginning March 19, 2015 due to accepted conditions, he has failed to meet his burden of proof. He was thus not entitled to wage-loss compensation for period claimed.<sup>15</sup>

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<sup>11</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

<sup>12</sup> *Sandra Pruitt*, 57 ECAB 126 (2005).

<sup>13</sup> See *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>14</sup> See *S.B.*, Docket No. 13-1162 (issued December 12, 2013).

<sup>15</sup> *N.R.*, Docket No. 14-114 (issued April 28, 2014).

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 meet his burden of proof to establish total disability beginning March 19, 2015 and continuing, causally related to accepted conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 18, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board