



to establish disability on or after September 28, 1979 due to his accepted work injuries.<sup>2</sup> The Board determined that the medical reports submitted by appellant, including those of Dr. Roger L. Weir, an attending Board-certified neurologist, did not contain a rationalized medical opinion establishing work-related disability on or after September 28, 1979. In a decision dated January 9, 2015, the Board remanded the case to OWCP to conduct a merit review and consider the new and relevant medical evidence appellant submitted after OWCP issued its April 8, 2013 decision.<sup>3</sup>

In a September 17, 2015 decision, the Board affirmed a May 14, 2015 OWCP decision finding that appellant did not meet his burden of proof to establish disability on or after September 28, 1979 due to his accepted work injuries.<sup>4</sup> The Board indicated that appellant submitted several reports of Dr. Macht but found that these reports did not contain a rationalized medical opinion establishing work-related disability on or after September 28, 1979. The Board noted that, in a June 13, 2013 report, Dr. Macht opined that appellant was totally and permanently disabled from work and that he had concluded, “It appears that this disability is causally related to the November 4, 1978 accident at work.” The Board noted that Dr. Macht posited that appellant only had mild-to-moderate arthritis of his wrist and back and that the arthritic changes due to his aging did “not seem sufficient to be approximate [sic] cause of his disability.” The Board found, however, that this report was of limited probative value with respect to appellant’s claim that he had work-related disability on or after September 28, 1979 because it did not contain adequate medical rationale in support of its opinion on causal relationship. The Board found that Dr. Macht did not explain how appellant’s January 8, 1972 or November 4, 1978 work injuries, accepted for soft tissue neck and low back conditions, would be competent to cause disability on or after September 28, 1979. Dr. Macht indicated that appellant was totally disabled at the time he produced his June 13, 2013 report, but he did not identify any specific period of disability or explain how the limited objective findings he observed on that date caused total disability.

In its September 17, 2015 decision, the Board also discussed a May 16, 2014 report in which Dr. Macht again concluded that appellant was totally and permanently disabled from work due to his November 4, 1978 work injury. He repeated his earlier statement that appellant only had mild-to-moderate arthritis of his wrist and back and that the arthritic changes due to his aging did “not seem sufficient to be approximate [sic] cause of his disability.” The Board found

---

<sup>2</sup> Docket No. 13-1910 (issued April 9, 2014). OWCP accepted that on November 4, 1978 appellant, then a 40-year-old letter carrier, sustained cervical and low back strains when his postal vehicle was struck from behind by another vehicle. It previously accepted a lumbar strain of January 8, 1972 due to lifting encyclopedias at work. Appellant received continuation of pay from November 4 to December 25, 1978 and disability compensation for intermittent periods between December 26, 1978 and August 29, 1979. He returned to limited-duty work on a full-time basis on August 30, 1979 without any wage loss. Appellant resigned from the employing establishment effective September 28, 1979 and claimed that he was entitled to receive disability compensation beginning September 28, 1979 due to his accepted work injuries.

<sup>3</sup> Docket No. 14-1939 (issued January 9, 2015).

<sup>4</sup> Docket No. 15-1308 (issued September 17, 2015). In its May 14, 2015 decision, OWCP discussed the medical evidence of record, including a May 16, 2014 report of Dr. Allen H. Macht, an attending Board-certified general surgeon, and found that appellant did not establish his disability claim because the medical evidence of record was speculative and did not contain adequate medical rationale to support appellant’s claim.

that Dr. Macht failed to provide sufficient medical rationale, highlighting specific medical evidence including diagnostic testing, to support this argument. The Board noted that Dr. Macht also suggested that appellant had left carpal tunnel syndrome which was related to the November 4, 1978 employment-related accident, but pointed out that no such condition had been accepted by OWCP or established by the medical evidence of record. The Board found that Dr. Macht did not provide medical rationale explaining why appellant's disability on or after September 28, 1979 was not due to some nonwork-related condition, such as the natural progression of underlying degenerative disc disease. The Board found that, although Dr. Macht posited that appellant's degenerative disc condition was not responsible for his continuing neck and back problems, he did not provide any specific discussion of the medical evidence, including the findings of diagnostic testing, to support this argument.

In a December 2, 2015 letter, appellant, through his counsel, at the time, requested reconsideration of the denial of his claim for work-related disability on and after September 28, 1979. Counsel asserted that OWCP's May 14, 2015 OWCP decision denying appellant's disability claim for work-related disability rested on only one premise, *i.e.*, that the medical opinions of Dr. Macht were speculative and thus lacked probative value. He argued that Dr. Macht's opinions were "clearly voiced with medical probability which was the standard of certainty required by the law." Counsel argued that an attached November 16, 2015 letter and the prior reports of Dr. Macht provided a sufficient basis to accept appellant's claim for work-related disability on and after September 28, 1979.

In his November 16, 2015 letter, Dr. Macht discussed OWCP's May 14, 2015 decision and indicated that the opinion cited Board precedent finding that phrases in medical reports such "could very well had been," "it was quite possible," or "could have led" are considered speculative in nature and are "not allowed as evidence." He wrote that his June 13, 2013 and May 16, 2014 reports did not contain such speculative language. Dr. Macht added, "I use the term medical probability, approximate cause [sic] and more likely all this terminology is supposed to represent a greater than 50 percent probability that the opinions noted in the report are correct. This is the legal standard. I am fully aware of the legal standard and all of my opinions are expressed to that standard."

By decision dated February 25, 2016, OWCP found that appellant did not meet his burden of proof to establish disability on or after September 28, 1979 due to his accepted work injuries. It again found that the medical evidence submitted by appellant, including the reports of Dr. Macht, did not contain sufficient medical rationale to establish work-related disability on or after September 28, 1979.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally

related to the employment injury.<sup>5</sup> In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.<sup>6</sup> This meaning, for brevity, is expressed as disability for work.<sup>7</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 established employment factors.<sup>9</sup>

### ANALYSIS

OWCP accepted that appellant sustained a work-related lumbar strain on January 8, 1972 and work-related cervical and low back strain on November 4, 1978. Appellant received disability compensation for intermittent periods through August 29, 1979 and returned to limited-duty work on a full-time basis on August 30, 1979 without any wage loss. He resigned from the employing establishment effective September 28, 1979 and claimed that he was entitled to receive disability compensation beginning September 28, 1979 due to his accepted work injuries.

In decisions dated April 9, 2014 and September 17, 2015, the Board affirmed prior OWCP decisions finding that appellant did not meet his burden of proof to establish disability on or after September 28, 1979 due to his accepted 1972 and 1978 work injuries. The Board found that the medical evidence of record, including June 13, 2013 and May 16, 2014 reports of an attending physician, Dr. Macht, did not contain adequate medical rationale supporting a causal relationship between appellant's accepted work injuries and disability on or after September 28, 1979.<sup>10</sup>

In a December 2, 2015 letter, appellant, through counsel, at the time, requested reconsideration of the denial of his claim for work-related disability on and after September 28, 1979. Counsel asserted that OWCP improperly characterized the opinions in Dr. Macht's report as speculative and argued that his opinions were "clearly voiced with medical probability which was the standard of certainty required by the law." He submitted a November 16, 2015 letter in which Dr. Macht wrote that his June 13, 2013 and May 16, 2014 reports did not contain speculative language. Counsel explained, "I use the term medical probability, approximate cause [sic] and more likely all this terminology is supposed to represent

---

<sup>5</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>6</sup> *See* 20 C.F.R. § 10.5(f).

<sup>7</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002); *see also A.M.*, Docket No. 09-1895 (issued April 23, 2010).

<sup>8</sup> *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

<sup>9</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>10</sup> *See supra* notes 8 and 9 regarding the need for rationalized medical opinion evidence to establish causal relationship.

a greater than 50 percent probability that the opinions noted in the report are correct. This is the legal standard. I am fully aware of the legal standard and all of my opinions are expressed to that standard.”

The Board notes that, in its April 9, 2014 and September 17, 2015 decisions, it has already extensively discussed Dr. Macht’s narrative medical reports, including those dated June 13, 2013 and May 16, 2014, and found them insufficient to establish appellant’s claim that he had disability on or after September 28, 1979 due to his accepted work injuries. In those decisions, the Board explained that the medical evidence of record lacked probative because it did not contain sufficient medical rationale explaining the pathophysiological relationship between appellant’s accepted work injuries and his claim of disability on or after September 28, 1979.

The Board finds that the only additional medical evidence appellant submitted after the Board’s April 9, 2014 and September 17, 2015 decisions, *i.e.*, the November 16, 2015 letter of Dr. Macht, does not provide the necessary medical rationale to establish appellant’s claim for work-related disability on or after September 28, 1979. Dr. Macht merely voiced meaning of words he had used and asserted in his November 16, 2015 letter, without elaboration, that his prior reports were sufficient to establish appellant’s disability claim.

On appeal, appellant argued that his claim for work-related disability on and after September 28, 1979 was wrongly denied by characterizing Dr. Macht’s reports as speculative. However, Dr. Macht’s reports were not found lacking solely due to the use of speculative language. The Board found that Dr. Macht’s previous narrative reports lacked probative value on the relevant issue of this case because they did not contain sufficient medical rationale explaining the relationship between appellant’s accepted work injuries and his claim of disability on or after September 28, 1979. The November 16, 2015 letter of Dr. Macht does not provide any additional medical rationale on the question of work-related disability on or after September 28, 1979. Thus, appellant has not met 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish disability on or after September 28, 1979 due to his accepted work injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 25, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 27, 2016  
Washington, DC

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

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

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