

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

D.T., Appellant)	
)	
and)	Docket No. 16-0152
)	Issued: March 10, 2016
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Columbia, SC,)	
Employer)	
)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 3, 2015 appellant, through counsel, filed a timely appeal from a September 16, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 has established an employment-related disability from January 16 to February 10, 2009 or March 26, 2009 to July 24, 2014.

FACTUAL HISTORY

The case has previously been before the Board. On January 30, 2009 appellant, then a 48-year-old mailhandler, claimed he sustained a hernia in the performance of duty on January 16,

¹ 5 U.S.C. § 8101 *et seq.*

2009 when he was unloading a truck. He stopped work on January 16, 2009 and did not return. The issue before the Board in the prior appeals was whether appellant had established a hernia condition causally related to the January 16, 2009 employment incident. By decision dated February 7, 2011, the Board found that while an employment incident on January 16, 2009 was established, the medical evidence did not establish a diagnosed hernia condition casually related to the accepted incident.² In an April 10, 2013 decision, the Board again found that the medical evidence was insufficient to establish the claim.³ OWCP has now accepted the claim for an aggravation of ventral hernia. As the current issue concerns disability for work, the Board will review the previous medical evidence of record with particular focus on that particular issue.

Appellant was treated by Dr. Jon Stanford, a Board-certified surgeon, on January 29, 2009. Dr. Stanford reported that appellant had noticed some abdominal wall discomfort, usually associated with heavy lifting and standing. He provided results on examination and indicated that appellant appeared to have a ventral hernia. Dr. Stanford recommended surgical repair of the hernia. In a note dated February 5, 2009, Dr. Joseph Williams, a Board-certified internist, wrote that appellant was under his care for “medical problems” from January 31, 2009 and could return to work on February 9, 2009. In a (Form CA-17) (duty status report) dated February 9, 2009, Dr. Stanford indicated that appellant would be unable to work for six weeks. By form report dated February 9, 2009, Dr. Williams indicated that appellant was initially treated on January 27, 2009 and he diagnosed ventral hernia. He indicated that there would be no permanent effects after surgery, although hernias can reoccur.

On February 11, 2009 appellant underwent laparoscopic hernia repair with mesh surgery by Dr. Stanford. In a report dated February 23, 2009, Dr. Stanford indicated that appellant still had complaints of pain following surgery, and would not be able to return to normal work for two to four weeks. He completed a “disability certificate” indicating that appellant was totally disabled from February 11 to March 25, 2009. By report dated February 24, 2009, Dr. Williams reported that appellant was “scheduled to go back to work within the next several weeks. His prognosis is good. [Appellant] apparently will be on disability for at least [two] months, perhaps [three] months.”

Dr. Stanford provided a brief report dated March 17, 2009, reporting that appellant had stated that he could not return to work secondary to pain issues. He indicated that appellant “does have some discomfort on the lateral aspects of his wound near the fascial suture scars though I cannot appreciate any seroma recurrence or other significant pathology distraction.” According to Dr. Stanford, appellant stated that he could not go back to work and was applying for disability. He completed a duty status report (Form CA-17) dated March 17, 2009 indicating that appellant could work six to eight hours with restrictions.

By report dated March 24, 2009, Dr. Stanford indicated that appellant complained of pain in his abdomen. He provided results on examination, reporting that he could not find any port site hernias or significant pain on examination. Dr. Stanford reported that the pain was probably normal postoperative pain and would resolve with time. In a report dated September 28, 2009,

² Docket No. 10-1358 (issued February 7, 2011).

³ Docket No. 13-0140 (issued April 10, 2013).

he indicated that appellant failed to follow up with treatment after March 24, 2009. Dr. Stanford reported that a computerized tomography (CT) scan dated March 20, 2009 showed normal postoperative changes. As to disability, he reported that appellant had been given six weeks of total disability after surgery. Dr. Stanford noted that on March 17, 2009 appellant had reported that he felt he could not go back to work, and some work restrictions were provided as work activity could exacerbate abdominal pain.

OWCP accepted the claim for aggravation of ventral hernia on July 9, 2014. On August 14, 2014 appellant filed a (Form CA-7) claim for compensation for the period January 16, 2009 to July 24, 2014.

Appellant submitted a September 26, 2014 note from Dr. Williams, noting that the February 2009 surgery involved placement of a mesh. Dr. Williams wrote appellant “can no longer work in this type of job because of the hernia.”

By decision dated October 9, 2014, OWCP denied the claim for wage-loss compensation commencing January 16, 2009. It found that the medical evidence was insufficient to establish an employment-related disability.

On October 16, 2014 appellant, through counsel, requested a hearing before an OWCP hearing representative. A hearing was held on March 27, 2015. On April 17, 2015 appellant submitted a CA-20 form report from Dr. Jonessa Atienza, a Board-certified internist. Dr. Atienza diagnosed ventral hernia and wrote that appellant could not perform heavy lifting. By report dated April 27, 2015, she related that she first treated appellant on February 3, 2015 and noted a reducible ventral hernia which had been documented on prior examinations. Dr. Atienza asserted that since the January 16, 2009 employment injury he had been unable to work. She opined that because of the ventral hernia appellant “cannot resume work which entails heavy lifting.”

By decision dated May 22, 2015, the hearing representative modified the October 9, 2014 OWCP decision. The hearing representative found that appellant was entitled to compensation from February 11 to March 25, 2009 based on the hernia surgery and the medical evidence, but compensation from January 16 to February 10, 2009, and from March 26, 2009 to July 24, 2014, remained denied as the medical evidence did not establish an employment-related disability.

Appellant, through counsel, requested reconsideration on June 30, 2015. He submitted a June 22, 2015 report from Dr. Atienza, again writing that appellant had been unable to return to work. Dr. Atienza noted that she did not evaluate appellant in 2009, but “ventral hernias can be aggravated by heavy lifting and as such [appellant] cannot resume work which entails this type of activity.”

By decision dated September 16, 2015, OWCP reviewed the merits of the claim and found that the evidence was insufficient to warrant modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden to establish the essential elements of his or her claim, including that any disability or specific condition for which

compensation is claimed is causally related to the employment injury.⁴ Whether a particular injury causes an employee to be disabled for work, and the duration of that disability, are medical issues that must be proven by a preponderance of the reliable, probative, and substantial medical evidence.⁵

The Board has noted that in assessing medical evidence the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The factors which enter into such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁶ Medical rationale is a medically sound explanation for the opinion offered.⁷

ANALYSIS

In the present case, OWCP accepted that appellant sustained an aggravation of a ventral hernia on January 16, 2009. The issue is the period of disability causally related to the employment injury. The hearing representative found that appellant was entitled to compensation from the time of hernia surgery on February 11, 2009 through March 25, 2009. Therefore, the remaining periods of disability claimed are January 16 to February 10, 2009, and March 26, 2009 to July 24, 2014.

With respect to the period January 16 to February 10, 2009, there is little evidence regarding disability. Dr. Stanford treated appellant on January 29, 2009, but he noted only a complaint of some abdominal wall discomfort. He did not refer to appellant's job duties or opine that appellant was disabled for work. The brief note from Dr. Williams dated February 5, 2009 refers to disability from "medical problems" without further explanation. The CA-17 form dated February 9, 2009 from Dr. Stanford opines that appellant will be disabled for six weeks. This is consistent with his opinion as to the recovery from the surgery on February 11, 2009, which has been accepted by OWCP. The Board finds no probative medical evidence establishing disability from January 16 to February 10, 2009 due to the accepted employment injury.

The period from March 26, 2009 to July 24, 2014 is similarly lacking in probative medical evidence supporting an employment-related disability for the mail handler position. It is important to note that the possibility of a future injury or disability is not compensable under

⁴ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁶ *Gary R. Sieber*, 46 ECAB 215 (1994).

⁷ See *Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound and logical).

FECA.⁸ That is, an opinion that a claimant could suffer a recurrence of a condition if returned to work does not establish an employment-related disability.⁹

Dr. Stanford found that appellant would be disabled for six weeks after the February 11, 2009 hernia surgery, or March 25, 2009. On March 17, 2009 he reported that appellant felt he could not go back to work. This is insufficient to establish an employment-related disability. Appellant's own belief that he is not able to go back to work does not establish disability for work.¹⁰ Dr. Stanford does not provide detailed results on examination or a rationalized opinion that appellant would continue to be disabled for his date-of-injury position. In a March 24, 2009 report, he notes that there was no significant pain on examination. Dr. Stanford does not discuss appellant's job duties or provide a rationalized opinion that appellant was disabled due to the employment injury.

In the September 28, 2009 report, Dr. Stanford acknowledges that appellant did not follow up after the March 24, 2009 examination, and the CT scan dated March 20, 2009 had shown normal postoperative changes. He noted that work restrictions had been provided on March 17, 2009 as work could exacerbate the condition. As noted, the fear of a future exacerbation is not a compensable disability.

The additional medical evidence of record does not establish an employment-related disability from March 26, 2009 to July 24, 2014. The brief note from Dr. Williams indicated only that appellant "could no longer work in this type of job" without further explanation. He does not provide a factual history discussing appellant's job duties or provide additional medical rationale regarding disability.

The reports from Dr. Atienza are of limited probative value to the issue presented. In the April 27, 2015 report, she refers to heavy lifting, and in the June 22, 2015 report opines that heavy lifting can aggravate a hernia and appellant could not resume such work. Again, the possibility of a future aggravation does not establish an employment-related disability.

The Board finds that the evidence of record does not contain a medical report with a complete background and an opinion supported by medical rationale that established an employment-related disability for the periods claimed. In the absence of probative medical evidence, the Board finds that appellant has not established an employment-related disability from January 16 to February 10, 2009 or March 26, 2009 to July 24, 2014.

On appeal, appellant argues that the medical evidence of record is sufficient to establish an employment-related disability. For the reasons discussed, the Board finds the evidence does not establish disability causally related to the employment injury for the periods claimed.

⁸ *C.B.*, Docket No. 15-1565 (issued November 17, 2015); *Mary Geary*, 43 ECAB 300, 309 (1991).

⁹ *See Pat Lazarra*, 31 ECAB 1169, 1174 (1980) (fear of a recurrence of disability upon return to work is not a basis for compensation).

¹⁰ *M.H.*, Docket No. 15-1611 (issued November 3, 2015).

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 has not established an employment-related disability for the periods January 16 to February 10, 2009 or March 26, 2009 to July 24, 2014.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 16, 2015 is affirmed.

Issued: March 10, 2016
Washington, DC

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

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

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