



## ISSUE

The issue is whether appellant has met his burden of proof to establish total disability for intermittent periods from July 8, 2012 through May 30, 2014, due to the accepted July 4, 2012 employment injury.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> On March 26, 2013 appellant, through counsel, filed a timely appeal of OWCP's February 27, 2013 merit decision denying his claim. The Director of OWCP filed a motion on September 9, 2013 and requested that the Board set aside OWCP's February 27, 2013 decision and remand the case for further specified development.<sup>4</sup> In a January 24, 2014 Order Granting Remand, the Board found that, at the time of the alleged injury, appellant was in the performance of duty. The Board remanded the case to OWCP to issue a *de novo* decision following any necessary further development on the nature and extent of appellant's employment-related medical condition and any related disability claimed by appellant. The facts and circumstances as presented in the prior decision are incorporated herein by reference. The relevant facts follow.

On July 7, 2012 appellant, then a 42-year-old federal air marshal, filed a traumatic injury claim (Form CA-1) alleging that on July 4, 2012 he slipped on oil while exiting his car, hitting his back on the car door. The injury occurred in the terminal B parking garage at the Bush International Airport in Houston, Texas, 30 minutes prior to appellant's scheduled work time.

On April 11, 2014 OWCP accepted the claim for a lumbar strain.

On November 17, 2014 appellant filed a claim for compensation for wage-loss compensation (Form CA-7) for the period July 8 through November 30, 2012, as well as for the period August 27, 2012 through May 30, 2014.

The medical evidence indicates that appellant first sought treatment at a hospital on July 8, 2012 and was treated for back pain and sciatica by Dr. Chinh Q. Pham, a Board-certified family practitioner. The history of injury indicated that appellant had slipped and fallen on his buttocks two days previously, and that he experienced worsening back pain. Appellant was excused from work from July 8 through 13, 2012 and restrictions were provided upon return to work.

An authorization for examination and/or treatment (Form CA-16) was signed and issued by the employing establishment on July 8, 2012 for the July 4, 2012 work injury. Dr. Pham

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<sup>3</sup> Docket No. 13-1041 (issued January 24, 2014).

<sup>4</sup> The Director acknowledged that appellant was in the performance of duty on July 4, 2012 when he slipped on oil while exiting his car in an employee airport parking garage approximately 30 minutes prior to his report time. The Director noted that while the employing establishment did not own the garage, it had contracted for the use of the parking garage where the injury occurred, paid its employee's parking expenses and the employing establishment's employees had to swipe their badges to gain access to the garage, had to display a permit in order to park, and were required to park in a designated area of the garage.

completed the attending physician's report that same day, wherein he reported degenerative disc disease based on x-ray testing.<sup>5</sup> He diagnosed sciatica and back strain and indicated by checking a box marked "yes" that the diagnosed conditions were caused or aggravated by the employment activity. Dr. Pham opined that appellant was able to resume light work on July 15, 2012.

In a July 20, 2012 report, Dr. Jeffrey E. Liang, a Board-certified family practitioner, noted that appellant was evaluated for low back pain after a slip/fall injury and that his symptoms had been present for two weeks. The history of injury was noted as occurring on or about July 4, 2012, when appellant slipped on oil while exiting his car. He fell and landed on the car's door jamb. A lumbar spine x-ray revealed mild degenerative changes. An impression of degenerative disc disease and back strain were provided. Appellant was released to activity as tolerated. In a July 20, 2012 note, Dr. Liang noted that appellant had requested that he be excused from work until August 8, 2012.

In an August 8, 2012 note, Dr. Mohammad Etminan, an orthopedic surgeon, noted the history of appellant's July 4, 2012 work injury. He diagnosed herniated lumbar disc and lumbar degenerative disc disease. Dr. Etminan indicated that appellant would be undergoing right L5 and right S1 transforaminal injections and was to remain out of work from August 8 through 22, 2012, after which time he could return to full duty. He also referred appellant to physical therapy for lumbar radiculopathy, herniated lumbar disc, and lumbar strain.

In an August 10, 2012 note, Dr. Candice Burnette, a Board-certified physiatrist, related that appellant was unable to work, but that he would be able to return to work on August 24, 2012.

In an August 12, 2012 note, Dr. Pham noted that she reviewed appellant's July 13, 2012 magnetic resonance imaging (MRI) scan of the lumbar spine. She concluded that appellant needed to be seen by an orthopedic doctor as soon as possible. Dr. Pham excused appellant from work from July 13 through 21, 2012.

In an August 23, 2012 note, Dr. Burnette indicated that appellant was under her care for his medical condition and that he was unable to return to work until further evaluation. In a September 11, 2012 note, she indicated that appellant was unable to return to work until further notice.

On October 1, 2012 Dr. Burnette indicated that appellant was able to perform light duty with restrictions. On October 4, 2012 appellant accepted the employing establishment's light-duty assignment.

In October 15 and November 19, 2012 reports, Jennifer Parrish, a physician assistant, provided an assessment of lumbar radiculopathy and lumbar disc disruption.

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<sup>5</sup> A July 8, 2012 x-ray of the lumbar spine contained an impression of mild degenerative changes of the lumbar spine with no acute findings. A July 8, 2012 x-rays of the spine coccyx and pelvis revealed minimal degenerative changes about the pelvis with no acute abnormalities about the sacrum or coccyx.

In a November 26, 2012 report, Dr. Kenneth Alo, an anesthesiologist, diagnosed lumbar radiculopathy and disc disruption and indicated a lumbar discectomy and decompression were medically necessary. On November 20, 2012 appellant underwent L3-4 discectomy and neural decompression, which was authorized by OWCP.

In a December 20, 2012 report, Dr. Vladimir Redko, a Board-certified anesthesiologist, related appellant's history of injury. He noted that MRI scan of the lumbar spine demonstrated multilevel herniated discs. Appellant therefore underwent epidural steroid injections and then lumbar discectomy on November 20, 2012. Dr. Redko related that, while appellant's leg pain improved, his back pain radiating to the thigh and hip did not get better. He concluded that appellant should remain off work. In an April 1, 2013 report, Dr. Redko indicated that appellant could return to light-duty work.

On April 22, 2013 appellant underwent revision L3-4 and L4-5 bilateral hemilaminotomies, with foraminotomies with medial facetectomies and bilateral foraminotomies. The record does not reflect that this procedure was authorized.

In July 2 and 16, 2013 reports, Sarah Ngo, a physician assistant, diagnosed displacement of L4 disc without myelopathy, lumbago, and radiculopathy, status/post revision lumbar decompression L3-4, L4-5 on April 22, 2013.

Appellant returned to limited duty in May 2013 and stopped work again in August 2013. In May 2014 he was removed from his employment due to his inability to perform his regular duties.

By letter dated November 28, 2014, OWCP requested additional medical evidence establishing appellant's disability for work during the periods claimed. It noted that the record revealed diagnosis of herniated lumbar disc, which is not an accepted condition. OWCP also noted that appellant was claiming disability due to a worsening of his accepted work-related condition and that a comprehensive medical report from a physician, which included the history of his injury and a thorough explanation with objective findings, was necessary to show how his condition worsened such that he was no longer able to perform the duties of his position. Appellant was afforded 30 days to submit the additional evidence.

On December 8, 2014 OWCP accepted the additional condition of displacement of lumbar intervertebral disc without myelopathy.

By decision dated February 19, 2015, OWCP denied appellant's claim for compensation for intermittent periods from July 8, 2012 through May 30, 2014. It found that he had not submitted any medical opinion evidence that supported disability during the claimed periods as a result of the July 4, 2012 work injury.

On March 3, 2015 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. The hearing was held on September 17, 2015. At the hearing, appellant indicated that OWCP did not pay for any of his surgeries and his physicians now recommended a fusion procedure for his back condition.

Duplicative medical evidence, previously of record, was resubmitted. In a September 24, 2015 report, Dr. Robert A. Mohr, a Board-certified orthopedic surgeon, noted the history of the July 4, 2012 work injury, appellant's medical course, and that he still suffered pain following surgery. An impression of sciatica, postlaminectomy syndrome lumbar region, lumbar radiculitis, lumbar spinal stenosis, and lumbago were provided. Dr. Mohr indicated that he would provide a letter of medical causation. No further information was received.

By decision dated December 8, 2015, an OWCP hearing representative affirmed OWCP's February 19, 2015 decision.

### **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.<sup>6</sup> The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>7</sup>

Whether a particular injury causes an employee to be disabled from 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>8</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>9</sup> The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>10</sup>

### **ANALYSIS**

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish total disability during the intermittent periods from July 8, 2012 through May 30, 2014 due to the July 4, 2012 employment injury.

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<sup>6</sup> *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

<sup>8</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

OWCP accepted that appellant's slip and fall on July 4, 2012 resulted in a lumbar strain and later displacement of lumbar intervertebral disc without myelopathy. In November 2012 appellant underwent authorized right and left L3-4 discectomies and, on April 22, 2013, he underwent revision L3-4 and L4-5 hemilaminectomies with revision L3-4 and L4-5 discectomies.

Appellant has not met his burden of proof to establish his claim for intermittent periods of disability as the physicians of record failed to provide a clear medically-reasoned explanation as to why appellant could not work full time for the specific claimed periods because of the July 4, 2012 work injury.<sup>11</sup>

The emergency room report of July 8, 2012 from Dr. Pham noted the history of injury and diagnosed back pain and sciatica. While the report indicated that appellant was excused from work from July 8 through 13, 2012, there was no medical rationale supported by objective findings as to why appellant was unable to work.<sup>12</sup>

On the Form CA-16, Dr. Pham diagnosed sciatica and back strain, which he indicated by checking a box marked "yes" that such diagnosed conditions were caused or aggravated by the employment activity. He opined that appellant was able to resume light work on July 15, 2012. Sciatica however is not an accepted condition. The Board has held that a report that addresses causal relationship with a check mark, without more by way of medical rationale, is of diminished probative value.<sup>13</sup>

In his July 20, 2012 report, Dr. Liang noted the history of injury and diagnosed degenerative disc disease and back strain. He released appellant to activity as tolerated. Dr. Liang reported in a July 20, 2012 note, that appellant requested that he be excused from work until August 8, 2012, however, he did not follow appellant's request.

In an August 8, 2012 note, Dr. Etminan noted the history of appellant's July 4, 2012 injury and diagnosed herniated lumbar disc and lumbar degenerative disc disease. He indicated that appellant would be undergoing right L5 and right S1 transforaminal injections and would be off work from August 8 through 22, 2012. However, Dr. Etminan failed to provide a medical opinion, supported by rationale and objective findings, that being off work for that period of time was related to the accepted condition.<sup>14</sup>

Several notes were provided by Dr. Burnette in August and September 2012 indicating that appellant was unable to work. However, no diagnosis or medical rationale was provided supported by objective findings as to why appellant was unable to work. Furthermore, the

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<sup>11</sup> *Supra* note 8.

<sup>12</sup> The Board has held that medical conclusions unsupported by medical rationale are of diminished probative value. *See S.C.*, Docket No. 16-0284 (issued June 27, 2016).

<sup>13</sup> *A.B.*, Docket No. 16-0556 (issued June 23, 2016).

<sup>14</sup> *Supra* note 8.

medical evidence must directly address the specific dates of disability for work for which compensation is claimed.<sup>15</sup>

In an August 12, 2012 note, Dr. Pham excused appellant from work from July 13 through 21, 2012. While she noted that appellant needed to see an orthopedic doctor based on his July 13, 2012 MRI scan of the lumbar spine, no discussion of either the results of the July 13, 2012 MRI scan or the causal relationship of the findings of the MRI scan to the accepted work incident were provided. On October 1, 2012 Dr. Burnette indicated that appellant was able to perform light duty with restrictions. Lacking medical rationale to explain why appellant was totally disabled, this opinion from Dr. Pham is of limited probative value.<sup>16</sup>

In his November 26, 2012 report, Dr. Alo indicated that appellant needed a lumbar discectomy and decompression, but failed to offer an opinion on causation or disability. In his December 20, 2012 report, Dr. Redko indicated that appellant was to remain off work, but failed to provide any medical rationale as to why. These reports did not directly address the specific dates of disability for which compensation is claimed, with medical rationale explaining why appellant was totally disabled.<sup>17</sup> On April 1, 2013 Dr. Redko advised that appellant could return to work light duty. Causal relationship was not addressed.<sup>18</sup>

In his September 24, 2015 report, Dr. Mohr noted the history of the July 4, 2012 work injury and found that he still suffered pain following surgery. While he provided an impression of sciatica, postlaminectomy syndrome lumbar region, lumbar radiculitis, lumbar spinal stenosis, and lumbago, he failed to offer an opinion as to the causal relationship of such conditions and whether appellant was disabled from those conditions.<sup>19</sup>

As noted, appellant must submit rationalized medical evidence supporting causal relationship between the disabling condition and the accepted injury. Furthermore, the medical evidence must directly address the specific dates of disability for work for which compensation is claimed.<sup>20</sup> The need for medical rationale is particularly important where the record shows that appellant has a preexisting degenerative disc disease condition. The physicians also appear to base appellant's inability to work on his subjective complaints. A complaint of too much pain to work without more support does not establish disability for work.<sup>21</sup> None of the physicians of record provided a discussion of how any objective medical findings attributable to the accepted

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<sup>15</sup> C.S., Docket No. 08-2218 (issued August 7, 2009); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *See T.P.*, Docket No. 14-1946 (issued February 13, 2015).

<sup>19</sup> *Id.*

<sup>20</sup> *See supra* note 14.

<sup>21</sup> *See L.A.*, Docket No. 08-1988 (issued April 8, 2009) (a conclusion based on appellant's subjective complaints of pain rather than on any objective tests is insufficient to establish a claim).

conditions supported that appellant could not perform his job duties for the specific claimed periods.

Appellant also provided reports from physician assistants. These documents do not constitute competent medical evidence as they are not from a physician.<sup>22</sup>

On appeal, counsel argues that OWCP's decision is contrary to fact and law. However, as found, appellant has not submitted any rationalized medical evidence to support his claims for wage-loss compensation as the medical evidence submitted did not provide sufficient medical reasoning to support that appellant had work-related disability for specific claimed periods.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish total disability for intermittent periods from July 8, 2012 through May 30, 2014 due to the July 4, 2012 employment injury.

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<sup>22</sup> *L.L.*, Docket No. 13-829 (issued August 20, 2013) (a physician assistant is not a physician under FECA). *See* 5 U.S.C. § 8101(2). This subsection defines the term physician. *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 8, 2015 is affirmed.

Issued: October 26, 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