

FACTUAL HISTORY

On February 23, 2012 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 22, 2012 she injured her back while trying to retrieve and scan packages. She stopped work on February 24, 2012. OWCP accepted the claim for closed dislocation of thoracic and lumbar vertebra, and back sprain, lumbar region and paid benefits. Appellant received compensation benefits intermittently on the supplemental rolls from April 7, 2012 through May 17, 2013.

Under OWCP File No. xxxxxx699, appellant filed a claim for injuries sustained on November 13, 2012 when she fell off a wet porch in the performance of duty and landed on her left knee and hands. No condition has been accepted under that claim. The present case, File No. xxxxxx003, and File No. xxxxxx699 have been administratively combined with the current claim serving as the master case file.

Under File No. xxxxxx491, date of injury December 7, 2013, appellant claimed that she fell off an icy porch while delivering mail on December 7, 2013 and injured her right foot, both shoulders and reinjured her back. This claim was also combined under master File No. xxxxxx491. Based on a November 8, 2014 second opinion examination,³ OWCP accepted the conditions of sprain of back, lumbar region, and contusions of multiple sites, not elsewhere classified. It found that these resolved 10 to 12 weeks postinjury. Appellant stopped work on December 14, 2013 and has not returned.

As a result of the February 22, 2012 work injury in the current claim, appellant was issued restrictions by her treating chiropractor. She accepted a modified work assignment on March 5, 2012. On March 22, 2012 appellant began seeing Dr. Frederick John Gunningham, a family practitioner, and OWCP added a lumbar sprain to the list of accepted conditions on her claim. Dr. Gunningham continued appellant's work restrictions and she received regular follow-up care for her February 22, 2012 work injury. On August 11, 2012 appellant was seen at the emergency room for a new lumbar sprain she claimed was the result of driving her mail truck on a bumpy road. On November 27, 2012 Dr. Gunningham reported no change in appellant's condition and continued her work restrictions. He made no mention of her November 13, 2012 work injury where she claimed she fell off a porch and injured her left knee, both arms, and shoulders.

³ In a November 8, 2014 report, Dr. Aleksandar Curcin, a Board-certified orthopedic surgeon and OWCP referral physician, evaluated appellant under File No. xxxxxx491, date of injury December 7, 2013. He reviewed the statement of accepted facts, the medical record, and presented examination findings. Dr. Curcin indicated that the diagnoses attributed to the December 7, 2013 injury were resolved lumbar sprain/strain and multiple contusions. He indicated that there appeared to be discrepancy in the medical records with a visit to the emergency room eight days following the claimed injury with no documentation of any such trauma and in contradiction to the record stating that no injuries were reported. Dr. Curcin found no objective findings to establish a diagnosis at the time of examination and indicated that there is no evidence of aggravation of the December 7, 2013 work injury. He noted appellant had nonindustrial preexisting chronic low back pain, chronic opioid dependence, and psycho emotional issues which were not related to the December 7, 2013 work injury. Dr. Curcin indicated that the accepted conditions had resolved within 10 to 12 weeks postinjury and she could return to work without restrictions.

On January 22, 2013 Dr. Gunningham reported that appellant's lumbar sprain remained unchanged. Appellant mentioned that she had a slip and fall on a porch while delivering a package and injured her left knee, but she did not require medical care. In an April 30, 2013 report, Dr. Gunningham advised that he had been caring for appellant since her February 22, 2012 back injury. He reported that her back strain responded slowly to conservative care and that she had developed some new neurological symptoms and was placed on light duty on June 28, 2012. Dr. Gunningham noted that the April 2012 magnetic resonance imaging (MRI) scan and July neurologic testing of the nerves of the legs confirmed no surgical intervention was needed. He advised that appellant was given a few days off work in August for flare up of back pain and had continued to work and improve until she fell on November 13, 2012 while at work. Dr. Gunningham noted that appellant had reported this to the employing establishment, but not to him until January 22, 2013 when she had arm and pelvic weakness again. He indicated that the February 6, 2013 cervical spine MRI scan showed no obvious need for surgery and that he sent her for urologic evaluation due to history of pelvic incontinence. Dr. Gunningham indicated on January 25, 2013 that he allowed appellant to do normal activities, but by February 28, 2013, her bowel/bladder weakness was worse and he put her on restricted lifting. With regard to her work status, he indicated that appellant had steady improvement prior to the November fall and had worsened considerably since then. Dr. Gunningham opined that, while he did not believe she would have a permanent problem with her back, she had not reached a fixed and stable condition.

In a July 18, 2013 report, an OWCP medical adviser reviewed the medical record to address the questions of whether there was sufficient evidence to support that the accepted conditions of closed dislocation lumbar and thoracic vertebra had resulted in chronic low back pain syndrome with neurologic symptoms, and whether Cymbalta was considered to be appropriate treatment. He found no evidence to support the concept that the accepted conditions resulted in chronic low back pain syndrome with neurologic symptoms. The medical adviser explained that the lumbar vertebral condition was present prior to the February 22, 2012 work incident and any aggravation would be an entirely subjective call, limited strictly to the symptom of pain, as there was no objective evidence of anatomic or physiologic aggravation or any neurologic damage/abnormality related to the low back. He approved the use of Cymbalta as it was accepted for use in low back pain, regardless of the cause of the pain.

OWCP determined that Cymbalta should be authorized solely for the purpose of facilitating payment to appellant's pharmacy for medication prescribed. There is no medical documentation to support that the Cymbalta was prescribed for the accepted conditions. After obtaining Cymbalta for her low back pain, appellant was found capable of working full time with restrictions.

On December 10, 2013 Dr. Gunningham reported that appellant's lumbar strain had improved on Cymbalta and she was working at light-duty capacity. There is no mention of an intervening injury.

As noted, appellant filed a claim for a December 7, 2013 work injury when she slipped and fell on a porch. She stopped work on December 14, 2013 and has not returned. The December 15, 2013 hospital report noted that appellant reported that the onset of her back pain and chronic back pain began about eight days ago. Appellant denied an injury.

On January 7, 2014 Dr. Gunningham reported that appellant requested that he open a new claim for her December 7, 2013 injury. He assessed a new left shoulder strain, a new right foot sprain and deterioration of the lumbar strain. Dr. Gunningham advised that the original injury of File No. xxxxxx003 was aggravated by the December 7, 2013 work injury.

In March 19 and June 16, 2014 reports, Dr. Gunningham opined that appellant's bilateral sciatica, chronic pain syndrome, and fibromyalgia were unchanged. He continued to opine that appellant was totally disabled. Dr. Gunningham also recommended transfer of care to a specialist for ongoing treatment.

In a July 11, 2014 report, Dr. Heather Tick, a family practitioner, evaluated appellant for total body pain. She noted the history of the 2012 work injury, presented examination findings, and diagnosed chronic pain due to injury and back pain. Dr. Tick referred appellant to physical therapy.

By report dated July 25, 2014, Dr. Gunningham continued to opine that appellant's lumbar strain and chronic low back pain were unchanged. He advised that her condition was fixed and stable and that she was totally disabled from work. In a September 11, 2014 report, Dr. Gunningham indicated that appellant reached maximal medical stability with regards to her orthopedic injury but would require treatment for the chronic pain syndrome, fibromyalgia, and depression which were function limiting and expected to be of long duration. He opined that she was totally disabled for work.

On September 25, 2014 appellant filed Form CA-7 claims for compensation for the period May 28 through October 31, 2014. By letter dated September 29, 2014, OWCP advised appellant that she had to submit medical evidence supporting disability during the period claimed. It advised her that her physician had to establish that the two additional claims, with dates of injury of November 13, 2012 and December 7, 2013, both in denied status, had no effect on her lumbar strain that worsened her condition. OWCP noted that the February 22, 2012 claim was accepted for a lumbar sprain and that the chronic pain syndrome diagnosis was accepted only so she could be prescribed the prescription drug Cymbalta.⁴ It found there was no indication that appellant sustained a herniated disc in her lumbar spine based on the December 15, 2013 lumbar spine MRI scan and that her current conditions of incontinence, fibromyalgia, and chronic pain syndrome have not been established as due to the February 22, 2012 work injury. Appellant was provided 30 days to provide the requested information.

In an October 13, 2014 report, Dr. Gunningham reported that appellant's fibromyalgia had deteriorated. He indicated that he could not verify that appellant had injuries on November 13, 2012 and December 7, 2013 as she was not examined close enough to those dates to have any objective injuries to report.

By decision dated December 17, 2014, OWCP denied appellant's claim for compensation for the period May 28 to October 31, 2014. It found that the medical evidence of record did not establish that appellant was temporarily totally disabled when she stopped work on December 14, 2013 to the present.

⁴ See above discussion.

In a December 27, 2014 report, Dr. Robert G. Billow, an osteopath and physical medicine and rehabilitation specialist, noted the history of the February 12, 2012 work injury, reviewed diagnostic studies, and presented examination findings. An impression of low back pain, gait instability, and neck pain were provided. Dr. Billow indicated that, after he reviewed appellant's diagnostic tests, he could not identify the etiology of her symptoms.

On December 23, 2014 appellant, through counsel, requested a telephonic hearing, before a hearing representative of the Branch of Hearings and Review, which was held on July 7, 2015. Appellant testified that she had good days and bad days. She noted that she had symptoms of leg numbness, bladder issues, and loss of balance. Appellant indicated her treatment and the practitioners that she saw. She also indicated that she last worked December 13, 2013 and had been receiving social security benefits since December 2013.

Several additional reports were received from Dr. Gunningham. In his December 15, 2014 report, Dr. Gunningham reported that appellant's fibromyalgia was unchanged. In his January 8, 2015 report, he noted that she saw a medical specialist in November related to the December 7, 2013 work injury and had found her improved and ready to work full-time regular duties. Dr. Gunningham found appellant's chronic low back pain was unchanged. He indicated that failed back syndrome did not require a severe initial injury and that she needed comprehensive pain and depression treatment.

In his March 14, 2015 report, Dr. Gunningham advised that he made no mention of a fall and reinjury to appellant's lower back on December 7, 2013 because appellant did not report it during her December 10, 2013 examination. He noted that she went to the emergency room on December 15, 2013 and reported the injury then. Dr. Gunningham noted that he saw appellant on December 19, 2013 with a report of collapsing at work on December 7, 2013. He advised that her December 10, 2013 examination showed both subjective and objective evidence of worsening, which included restricted range of motion and flexion and episodes of urinary incontinence since the December 7, 2013 fall, which prompted neurosurgical follow-up. Dr. Gunningham noted that the question as to how he was unable to detect injuries from the December 7, 2013 work injury on his December 10, 2013 examination revolved around the medical condition of fibromyalgia. He asserted that appellant had clearly progressed from a seemingly simple lumbar strain to a chronic pain condition that should become an accepted diagnosis related to her job injury. Dr. Gunningham advised that it was not unusual for patients with fibromyalgia to undergo flares of muscle pain triggered by minor injuries or overuse. He indicated that he believed this is what happened in appellant's case and that she was experiencing residuals from her work injury.

On March 24, 2015 Dr. Gunningham reported that appellant's fibromyalgia had improved. In his July 16, 2015 report, he reported that appellant's fibromyalgia and chronic pain syndrome had improved. Dr. Gunningham advised that he had clearly set forth his opinion that the lumbar strain was the initial trigger for the development of the chronic pain syndrome and that there was no objective test available to prove or refute this. He indicated that he knew appellant prior to her injury and was not aware of any other injury or condition that occurred outside of the work environment that could be held responsible for her current state.

In an April 21, 2015 report, Dr. William Dinenberg, a Board-certified orthopedic surgeon and OWCP referral physician, noted the history of work injuries on February 22 and November 12, 2012,⁵ reviewed the medical record along with a statement of accepted facts, and presented examination findings. He diagnosed lumbar sprain related to the February 22, 2012 work injury; degenerative disc and facet disease of lumbosacral spine, preexisting the February 22, 2012 work injury and without aggravation; and fibromyalgia. Dr. Dinenberg opined that the lumbosacral sprain/strain had resolved within 6 to 12 weeks from the injury and, while she had objective findings of preexisting degenerative disc and facet disease of the lumbosacral spine, there was no aggravation by the February 22, 2012 work injury. He indicated that there were no residuals on examination that were causally related to the work injury but opined that they were most likely due to her fibromyalgia condition, which was outside of his orthopedic specialty. Dr. Dinenberg opined that appellant was at maximum medical improvement from her February 22, 2012 work injury and no further orthopedic treatment was necessary. In a work capacity evaluation form he opined that, from an orthopedic standpoint only, appellant was capable of performing her usual job without restrictions.

In a May 12, 2015 report, an OWCP medical adviser reviewed the medical record to determine whether or not appellant's fibromyalgia condition was caused or contributed to by appellant's work injury. She noted the history of the November 12, 2012 and December 7, 2013 work injuries and her review of the medical record. The medical adviser advised that a review of the claim file revealed symptom patterns that were atypical and nonphysiologic which could not be explained by the objective findings. She noted that Dr. Gunningham indicated that some of the findings may be explained by fibromyalgia. The medical adviser opined that it was highly medically unlikely that the described date-of-injury events and localized lumbar sprain now resolved had resulted in her current constellation of symptoms which were currently diagnosed as fibromyalgia and a chronic pain syndrome.

A December 12, 2014 social security evaluation request was also provided.

By decision dated September 3, 2015, an OWCP hearing representative affirmed OWCP's December 17, 2014 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of her claim by the weight of the evidence.⁷ For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.⁸ Whether a particular injury causes an employee to become

⁵ This appears to be a typographical error as the correct date of injury was November 13, 2012.

⁶ 5 U.S.C. § 8101 *et seq.*

⁷ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel A. Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁸ See *Amelia S. Jefferson, id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁹

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.¹⁰ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.¹¹ An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.¹² 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 her employment, she is entitled to compensation for any loss of wages.

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹³

ANALYSIS

OWCP accepted appellant's claim for closed dislocation of thoracic and lumbar vertebra and lumbar sprain. The current claim serves as the master case, with File No. xxxxxx699, date of injury November 13, 2012, as the subsidiary file.¹⁴ Appellant filed a Form CA-7 claiming wage-loss compensation for the period May 28 through October 31, 2014. OWCP denied her claims for wage-loss compensation for the period in question as it found the medical evidence of record insufficient to establish any disability causally related to the accepted conditions. It informed appellant that well-reasoned rationale from her physician would be needed for consideration of subsequent injuries claimed from November 13, 2012 and from December 7, 2013.

⁹ See *Edward H. Horton*, 41 ECAB 301 (1989).

¹⁰ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

¹¹ *Roberta L. Kaamoana*, 54 ECAB 150 (2002).

¹² *Merle J. Marceau*, 53 ECAB 197 (2001).

¹³ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁴ Under claim, File No. xxxxxx699, no condition has been accepted.

The Board finds that appellant failed to meet her burden of proof to establish disability for the period May 28 through October 31, 2014 causally related to her accepted conditions. The record reflects that, after obtaining Cymbalta, appellant was found to be capable of work full-time with restrictions. She worked full-time light duty and stopped work shortly after her December 7, 2013 work injury, on December 14, 2013, and has not returned.

Dr. Gunningham did opine in several reports that appellant was totally disabled. On January 7, 2014 he indicated that appellant's lumbar sprain had deteriorated. However, Dr. Gunningham provided no medical explanation as to how he determined that this specific condition had deteriorated. He examined appellant three days after the December 7, 2013 work injury and found no signs of trauma or new injury. In his March 14, 2015 report, Dr. Gunningham advised that appellant did not report her reinjury to her lower back on December 7, 2013 to him during the December 10, 2013 examination, but noted that she went to the emergency room on December 15, 2013 and reported the injury then. He also indicated that appellant's fibromyalgia condition rendered him unable to detect injuries from the December 7, 2013 work injury on his December 10, 2013 examination. Dr. Gunningham advised that her December 10, 2013 examination showed both subjective and objective evidence of worsening, which included restricted range of motion and flexion and episodes of urinary incontinence since the December 7, 2013 fall, which prompted neurosurgical follow-up. He further advised that appellant had progressed from a seemingly simple lumbar strain to a chronic pain condition and that she continued to experience residuals of the work injuries sustained. Dr. Gunningham explained that it was not unusual for patients with fibromyalgia to undergo flare-ups of muscle pain triggered by minor injuries or overuse. However, no fibromyalgia or pain condition has been accepted in this case. Dr. Gunningham offered no medical rationale explaining why fibromyalgia was causally related to the accepted conditions. The Board has held that medical evidence which does not offer an opinion regarding the cause of an alleged condition is of limited probative value.¹⁵

Furthermore, review of Dr. Gunningham's reports reflects that appellant's diagnoses of chronic pain and fibromyalgia conditions appear to be based on appellant's subjective complaints, such as flares in muscle pain. While he noted diminished range in motion and flexion, this could be the result of self-limiting effort as such tests were not done multiple times to replicate the result. Findings on examination are needed to justify a physician's opinion that an employee is disabled for work.¹⁶ Thus, Dr. Gunningham's reports are insufficient to accept that appellant's fibromyalgia or chronic pain conditions are causally related to her employment. Furthermore, his reports do not substantiate that the accepted conditions disabled appellant during the time period alleged.

Dr. Tick evaluated appellant on July 11, 2014 and diagnosed chronic pain, the Board notes that pain is a symptom, not a diagnosis.¹⁷ Furthermore she offered no opinion regarding the issue of appellant's disability during the period in question. The Board will not require

¹⁵ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

¹⁶ *Laurie S. Swanson*, 53 ECAB 517 (2002).

¹⁷ See *G.W.*, Docket No. 15-1439 (issued March 14, 2016).

OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.¹⁸

OWCP second opinion physician, Dr. Curcin evaluated appellant to determine the status of her December 7, 2013 injury. In his November 8, 2014 report, he found that appellant's lumbar sprain/strain and contusions had resolved.

Dr. Billow, in his December 27, 2014 report, diagnosed low back pain, gait instability and neck pain. However, he indicated that after he reviewed appellant's diagnostic tests, he could not identify the etiology of her symptoms.

Dr. Dinenberg, an OWCP referral physician, opined in his April 21, 2015 report that the lumbosacral sprain/strain which stemmed from the February 22, 2012 work injury resolved within 6 to 12 weeks. Though appellant has degeneration and facet disease, Dr. Dinenberg opined that those conditions were not aggravated by the accepted injury. He additionally opined that there were no residuals causally related to the February 22, 2012 work injury. Rather, they were believed to be related to fibromyalgia. However, Dr. Dinenberg offered no opinion regarding any possible relationship between fibromyalgia, but appellant's job or work injuries.¹⁹ He further advised that appellant did not have any restrictions secondary to the February 22, 2012 work injury. The Board thus finds that Dr. Dinenberg's reports do not establish disability during the time period alleged.

OWCP's medical adviser reviewed the medical record and opined on May 12, 2015 that none of appellant's current symptoms of low back pain, bladder issues, neck pain, or gait instability could be explained by any clinical finding or objective test results. Since there was evidence indicating that the physical injuries associated with appellant's employment had resolved, the medical adviser opined that any fibromyalgia or pain condition did not result from any work event.

In his July 16, 2015 report, Dr. Gunningham again provided an assessment of fibromyalgia and chronic pain syndrome. He maintained his opinion that the lumbar sprain which appellant sustained was the trigger of those conditions. Dr. Gunningham explained that there was no objective test available to prove or refute this and that he was not aware of any other injury or condition that occurred outside of the work environment that could be held responsible for her current state. However, he offered no clear rationale as to how appellant's fibromyalgia condition was causally related to her February 2012 work injury. Dr. Gunningham's observation that appellant was asymptomatic before the work incident and symptomatic after is insufficient, without supporting rationale, to establish causal relationship.²⁰ Again, this report did not address the issue of appellant's disability during the period alleged. Thus, this report is insufficient to establish appellant's claim.

¹⁸ *G.C.*, Docket No. 15-1406 (issued March 10, 2016).

¹⁹ *J.F.*, Docket No. 09-1061 (issued November 17, 2009). Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.

²⁰ *T.M.*, Docket No. 08-975 (issued February 6, 2009).

In summary, the medical evidence of record is unsupported by sufficient medical rationale or reasoning which explains why the claimed disability for the period May 28 to October 31, 2014 was caused or aggravated by the accepted conditions of closed dislocation of thoracic and lumbar vertebra and lumbar sprain. The Board finds that the evidence submitted was insufficient to establish entitlement to wage-loss compensation for the period claimed and appellant has failed to meet her burden of proof.

On appeal counsel argues that OWCP's decision is contrary to fact and law. However, for the reasons discussed above, appellant has failed to establish entitlement for wage-loss compensation for the period claimed.

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

Appellant has not met her burden of proof to establish total disability from work during the period May 28 to October 31, 2014 causally related to her February 22, 2012 employment injury.

ORDER

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

Issued: September 1, 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