



work. OWCP accepted a lumbar sprain. Appellant stopped work on October 24, 2014, but returned to work shortly thereafter in a light-duty position without wage loss.<sup>2</sup>

Appellant stopped work on November 7, 2014 and was terminated for cause effective November 20, 2014.<sup>3</sup> He filed claims for compensation (Form CA-7) claiming ongoing disability commencing November 7, 2014 due to his October 24, 2014 work injury.

In a report dated November 7, 2014, Dr. John P. Fletcher, an attending osteopath and Board-certified family practitioner, diagnosed lumbar strain and indicated that appellant's activity status was "no work" for two weeks.<sup>4</sup> On December 5, 2014 Dr. Fletcher noted that appellant could return to modified duty with restrictions including no lifting, pushing, or pulling more than 10 pounds. On January 6, 2015 he indicated that appellant could return to modified work with the same work restrictions.

In a February 17, 2015 decision, OWCP determined that appellant had not met his burden of proof to establish disability on or after November 7, 2014 due to his October 24, 2014 work injury because he failed to submit sufficient medical evidence in support of his claim. It noted that none of the medical evidence contained an opinion that appellant had disability due to his October 24, 2014 work injury.<sup>5</sup>

In an April 16, 2015 report, Dr. Fletcher indicated that appellant could return to regular duty on April 16, 2015.

In a report dated May 12, 2015, Dr. Francis P. Lagattuta, an attending Board-certified physical medicine and rehabilitation physician, diagnosed lumbar spondylosis. On June 9, 2015 he noted that appellant's restrictions were "per PCP" without providing further elaboration. In a report dated July 14, 2015, Dr. Lagattuta again indicated that appellant's restrictions were "per PCP."

In a report dated August 10, 2015, Dr. John Janda, an attending Board-certified orthopedic surgeon, diagnosed chronic lumbosacral strain, right L5 Pars defect, and ligamentum flavum hypertrophy at L2-3 through L5-S1.

Appellant requested a telephonic hearing with an OWCP hearing representative. During the hearing held on September 24, 2015, he argued that he continued to have disabling residuals of his October 24, 2014 work injury on and after November 7, 2014. Appellant asserted that he was wrongly denied light-duty work after November 7, 2014.

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<sup>2</sup> Appellant did not receive any disability compensation on the daily or periodic rolls. Appellant's light-duty position restricted him from lifting, pushing, or pulling more than 10 pounds.

<sup>3</sup> The employing establishment determined that appellant failed to meet his performance standards.

<sup>4</sup> Appellant submitted reports of physician assistants, including a November 21, 2014 report.

<sup>5</sup> After the issuance of OWCP's February 17, 2015 decision, appellant continued to file claims for compensation alleging continuing disability due to his October 24, 2014 work injury.

After the hearing, appellant submitted an October 26, 2015 report in which Dr. Janda indicated that he complained of back pain which was worsened by prolonged standing. Dr Janda noted that appellant was disabled from performing his regular job duties.

By decision dated December 14, 2015, an OWCP hearing representative affirmed OWCP's February 17, 2015 decision finding that appellant had not established disability on or after November 7, 2014 due to his October 24, 2014 work injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish 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>6</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>7</sup> This meaning, for brevity, is expressed as disability for work.<sup>8</sup>

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 claimant.<sup>9</sup>

### **ANALYSIS**

OWCP accepted that on October 24, 2014 appellant sustained a lumbar sprain due to lifting heavy tubs of mail at work. Appellant stopped work on November 7, 2014 and claimed that he had ongoing disability commencing November 7, 2014 due to his October 24, 2014 work injury.

The Board finds that appellant had not met his burden of proof to establish disability on or after November 7, 2014 due to his October 24, 2014 work injury because he failed to submit sufficient medical evidence in support of his claim.

Appellant submitted a November 7, 2014 report in which Dr. Fletcher diagnosed lumbar strain and indicated that his activity status was "no work" for two weeks. On December 5, 2014 and January 6, 2015 Dr. Fletcher noted that appellant could return to modified duty with

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<sup>6</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>7</sup> *See* 20 C.F.R. § 10.5(f).

<sup>8</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002); *see also A.M.*, Docket No. 09-1895 (issued April 23, 2010).

<sup>9</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

restrictions including no lifting, pushing, or pulling more than 10 pounds. In Dr. Lagattuta's May 12, 2015 report, he diagnosed lumbar spondylosis and on June 9 and July 14, 2015 he noted that appellant's restrictions were "per PCP" without providing further elaboration. In his August 10, 2015 report, Dr. Janda diagnosed chronic lumbosacral strain, right L5 Pars defect, and ligamentum flavum hypertrophy at L2-3 through L5-S1 and on October 26, 2015 he noted that appellant was disabled from performing his regular job duties.

The Board finds that the submission of these reports fails to establish appellant's claim because the reports are of limited probative value regarding the relevant issue of this case, *i.e.*, whether appellant established disability on or after November 7, 2014 due to his October 24, 2014 work injury. Although the physicians recommended varying degrees of disability, none of the physicians provided an opinion that their disability recommendations were due to the October 24, 2014 work injury. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's disability/condition is of limited probative value on the issue of causal relationship.<sup>10</sup> Moreover, the Board notes that several of the reports provide diagnoses of medical condition which have not been accepted by OWCP. As noted, appellant's case has only been accepted for the soft-tissue injury of lumbar sprain.

Appellant submitted reports of physician assistants, including a November 21, 2014 report. However, these reports are of no probative value as none of these care providers is a physician as defined under FECA and, therefore, they are not competent to provide a medical opinion.<sup>11</sup>

On appeal appellant argues that he continues to have disabling residuals of his October 24, 2014 work injury on and after November 7, 2014, but the Board has explained that he has not established such work-related disability.<sup>12</sup> For these reasons, he has failed to meet his burden of proof to establish disability on or after November 7, 2014 due to his October 24, 2014 work injury.

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.

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<sup>10</sup> See *Charles H. Tomaszewski*, 39 ECAB 461 (1988). In addition, none of the reports clearly shows that appellant was disabled from the light-duty work he was performing at the time he stopped work on November 7, 2014. With respect to the opinion of Dr. Fletcher, the Board notes that, in an April 16, 2015 report, Dr. Fletcher indicated that appellant could return to regular duty on April 16, 2015.

<sup>11</sup> See *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *Charley V.B. Harley*, 2 ECAB 208 (1949) (the Board held that medical opinion, in general, can only be given by a qualified physician). See also 5 U.S.C § 8101(2).

<sup>12</sup> Appellant also asserted that he was wrongly denied light-duty work after stopping work in November 2014, but it is noted that he was terminated for cause around that time.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish disability on or after November 7, 2014 due to his October 24, 2014 work injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 14, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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