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

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| **M.S., Appellant** | ) | |
| **and** | ) | **Docket No. 17-0105** |
| | ) | **Issued: December 7, 2017** |
| **DEPARTMENT OF HOMELAND SECURITY TRANSPORTATION SECURITY ADMINISTRATION, RIO GRANDE VALLEY INTERNATIONAL AIRPORT, San Antonio, TX, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*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 October 25, 2016 appellant filed a timely appeal from a September 28, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its September 28, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore, this additional evidence cannot be considered for the first time on appeal. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

## ***ISSUES***

The issues are: (1) whether appellant has established that her claim should be expanded to include the additional conditions of lumbosacral radiculopathy and ischiocapsular ligament right hip sprain as a result of the accepted December 30, 2015 employment injury; (2) whether appellant has established disability on or after March 12, 2016 as a result of her accepted employment-related injury; and (3) whether OWCP abused its discretion in denying appellant's request for authorization of a wheelchair.

## ***FACTUAL HISTORY***

On January 5, 2016 appellant, then a 36-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that, on December 30, 2015, she sustained injury to her right leg, middle lower buttocks area, and groin when a passenger grabbed her by the shoulder to prevent herself from falling, but pulled appellant down to the floor with her. She reported that the passenger caused her injury when she then pushed on appellant's left leg and then on her right leg.

By decision dated February 1, 2016, OWCP accepted the claim for sprain of sacroiliac (SI) joint and sprain of other parts of the lumbar spine and pelvis. Appellant stopped work on the date of injury and received wage-loss compensation intermittently on the supplemental rolls from February 7 through March 12, 2016.

Appellant sought treatment with Dr. Audrey Jones, a doctor of osteopathic medicine, beginning January 4, 2016. In her report, Dr. Jones described the December 30, 2015 employment incident. She also noted appellant's history of a fall four years prior when she was treated for back pain which resolved after one visit. Dr. Jones diagnosed right SI joint sprain and pelvic sprain.

In a February 3, 2016 report, Dr. Jones noted appellant's complaints of severe right lower back and groin pain. A January 11, 2016 x-ray of the lumbar spine revealed slight scoliosis with mild degenerative change, and a January 11, 2016 x-ray of the pelvis/hips revealed minimal degenerative changes of the bilateral hips. Dr. Jones recommended a magnetic resonance imaging (MRI) scan of the lumbar spine and pelvis and physical therapy. In a February 3, 2016 duty status report (Form CA-17), she restricted appellant from working more than six hours per day.

On February 9, 2016 the employing establishment provided appellant a limited-duty assignment within her work restrictions.

In a February 16, 2016 medical report, Dr. Jones noted appellant's complaints of continued low back and pelvic pain, reviewed diagnostic testing, and provided findings on physical examination. A February 4, 2016 MRI scan of the pelvis revealed a focal tear in the superior portion of the left side labrum of the head joint. A February 4, 2016 MRI scan of the lumbar spine revealed slight disc bulging/herniation at L4-5 with no other acute findings on examination. Dr. Jones diagnosed right SI joint sprain and pelvic sprain. She further requested the diagnosis be upgraded to include radiculopathy from the lumbosacral region. Dr. Jones

reported that review of the lumbar spine MRI scan showed a slight disc herniation at L4-5 which did not explain why appellant was so symptomatic and had not improved with conservative treatments. She noted referral to an orthopedist for right hip pain. Dr. Jones further noted severe right hip pain despite diagnostic testing showing only minimal degenerative changes and a focal tear in the left-sided labrum of the head joint, which was not bothering appellant. In a February 26, 2016 report, she noted follow up for right lower back and pelvic pain. In a March 4, 2016 report, Dr. Jones noted follow up and reported that appellant continued to experience right-sided low back pain, but was also experiencing left-sided low back pain. Appellant complained of trouble walking and requested a wheelchair so that she could go to stores with her family. Dr. Jones noted prior treatment of SI epidural steroid injections.

On March 5, 2016 appellant filed a claim for compensation (Form CA-7) for leave without pay beginning February 21, 2016.[3]

In a March 10, 2016 report, Dr. Jones noted that appellant underwent two bilateral SI steroid injections on March 7, 2016, but complained of continued low back and right hip pain. She diagnosed right SI joint sprain and pelvic sprain. Dr. Jones requested that OWCP expand appellant's claim to include lumbosacral radiculopathy for continued low back pain and ischiocapsular ligament right hip sprain due to continued right hip pain, laterally and anteriorly.

In a March 10, 2016 Form CA-17, Dr. Jones restricted appellant from working more than five hours per day.

In another March 10, 2016 narrative report, Dr. Jones again requested that OWCP expand the accepted conditions to include lumbosacral radiculopathy and ischiocapsular ligament right hip sprain. She again reported that appellant had continued pain despite conservative treatment, including two SI injections, and she made a referral to a neurologist. Dr. Jones described the December 30, 2015 employment injury, reporting that at the time of appellant's initial injury she felt a pop in her groin when the woman pushed down on her right thigh while her knees were split. She discussed appellant's course of treatment, reviewed diagnostic testing, and provided findings on physical examination. Dr. Jones requested an expansion of the diagnosis of right hip sprain as appellant had not improved with conservative treatment, remained very symptomatic, and had exacerbations with long periods of walking for which she requested a wheelchair. She further noted that appellant was working light duty, taking medications, and attending physical therapy.

On March 10, 2016 the employing establishment provided appellant a limited-duty assignment within her five-hours-per-day work restriction.

Appellant stopped work completely on March 15, 2016 and did not return, seeking wage-loss compensation for ongoing temporary total disability. On March 16, 2016 she filed a Form CA-7 for leave without pay and night differential pay from March 6 to 19, 2016. Appellant submitted a March 15, 2016 return to work/school note, though which a physician at the Green

[3] The Board notes that OWCP subsequently approved wage-loss compensation for time lost from March 5 through 12, 2016.

Tree Health Clinic excused her from work from March 15 through 22, 2016. The physician's signature was illegible.

In a March 22, 2016 medical report, Dr. Jones documented appellant's complaints of pain and provided findings on physical examination.

In a March 23, 2016 form report, Dr. Alejandro Betancourt, a Board-certified neurosurgeon, diagnosed sprain of the SI joint and sprain of other parts of the lumbar spine and pelvis. He restricted appellant from returning to work from March 23 through April 23, 2016, requesting she wear a lumbar brace while working.

By letter dated April 12, 2016, OWCP informed appellant that the medical evidence of record was insufficient to support her claims for compensation. Appellant was advised of the evidence needed to establish her claims and was afforded 30 days to submit the additional evidence.

In an April 8, 2016 medical report and Form CA-17, Dr. Jones documented appellant's treatment and restricted her from work.

On April 12, 2016 OWCP routed Dr. Jones' March 10, 2016 report, a statement of accepted facts (SOAF), and the case file to an OWCP district medical adviser (DMA), for review and a determination as to whether the wheelchair request was medically necessary for and causally related to appellant's accepted conditions of sprain of the SI joint and sprain of other parts of the lumbar spine and pelvis. It further requested that the DMA provide an opinion regarding whether the claim should be expanded to include lumbosacral radiculopathy and ischiocapsular ligament right hip sprain. OWCP requested the DMA review Dr. Jones' March 10, 2016 report for comment regarding causal relationship and medical necessity of the prescribed treatment.

In medical reports dated April 15 through May 13, 2016, Dr. Shahid Rashid, a Board-certified anesthesiologist, reported that appellant was under his care for pain management and could not return to work until further notice. He noted appellant's complaints of low back pain which radiated to her hips and legs. Appellant reported that her pain was the result of a work-related injury that occurred on December 30, 2015 when she was helping a person from falling. Dr. Rashid noted use of a walker for support and stability with ambulations. He provided epidural steroid injections and diagnosed low back pain, lumbar radiculopathy, lumbar foraminal stenosis, lumbar spinal stenosis, lumbar facet dysfunction, lumbar disc displacement without myelopathy, sacroiliitis, bilateral hip pain, hip osteoarthritis, internal derangement of left hip, and internal derangement of right hip.

In an April 25, 2016 medical report, Dr. Betancourt described the December 2015 work injury which resulted in a sprain of the lumbar spine at the SI level. He noted complaints of continued low back pain radiating to the hips and lower extremities with pain in the groin area. Dr. Betancourt reported a history of a work-related injury with severe back pain radiating to the bilateral hips with problems ambulating, resulting in the use of a walker with wheels. He noted problems walking with ataxia on the gait and decreased muscle mass on the thigh,

recommending a thoracic MRI scan to rule out disc disease. Dr. Betancourt diagnosed piriformis syndrome, SI inflammation, and thoracic disc disease.

In a May 16, 2016 medical report, Dr. Arnold Berman, a Board-certified orthopedic surgeon serving as OWCP's DMA, responded to OWCP's April 12, 2016 request. He summarized findings on examination and diagnostic testing. Dr. Berman reported that a February 3, 2016 follow-up examination noted a chief complaint of pelvis and low back pain and revealed right SI pain when straightening, as well as tenderness in the left tensor fascia lata, right iliotibial tract band, and right glute. He reported no basis to justify the use or purchase of a wheelchair as appellant had no objective findings on examination in regards to the lumbar spine and hip. Dr. Berman explained that the lumbar spine demonstrated negative straight leg raising test, no sensory loss, reflex and motor examination was essentially normal, and she was fully ambulatory. He noted that it would be extremely harmful to appellant's progress if she were to use a wheelchair. Dr. Berman further noted no basis or justification for the wheelchair because her radiological studies demonstrated mild scoliosis and minimal degenerative changes of the lumbar spine and no evidence of radiculopathy since the straight leg raising and all objective tests were negative for radiculopathy. Dr. Berman opined that appellant should maintain maximum levels of activity consistent with the onset of pain as it related to the lumbar spine and that use of a wheelchair would have a negative impact on her functional level.

Dr. Berman further reported that there was no basis to expand the accepted conditions in the claim. Although the MRI scan showed degenerative changes with a focal tear of the labrum of the left hip, there were no clinical abnormalities and no reference to any abnormal findings on examination regarding the hip. Further, while the MRI scan demonstrated a small labral tear, there was no evidence that it had any clinical manifestations. Dr. Berman noted that there was no evidence of lumbar radiculopathy as the lumbar strain had fully resolved, and the sprain of the SI joint represented a questionable diagnosis. As such, he concluded that there was no basis to expand the claim to include lumbar radiculopathy and right hip strain, noting that the only diagnosis of importance was the lumbar strain which had resolved with no residuals.

By decision dated June 7, 2016, OWCP denied authorization for a wheelchair, finding that the medical evidence of record failed to establish that the wheelchair was medically necessary to address the effects of her work-related injury. It further noted that appellant's request to have the case expanded for diagnoses of lumbosacral radiculopathy and ischiocapsular ligament right hip sprain was denied.

In another decision dated June 7, 2016, OWCP denied appellant's claim for wage-loss compensation for the period March 15, 2016 and continuing, finding that the medical evidence of record failed to establish that she was disabled from work as a result of her accepted December 30, 2015 employment injury.

By letter dated June 27, 2016, received June 30, 2016, appellant requested reconsideration. She referenced submission of multiple medical reports and argued that her physicians established that she was disabled as a result of her work-related injury. Appellant further argued that her request for a wheelchair should be authorized and that the claim should be expanded to include lumbosacral radiculopathy and ischiocapsular ligament right hip sprain. In

support of her claim, appellant resubmitted medical evidence previously of record, as well as new medical documentation.

In medical reports dated February 17 and March 23, 2016, Dr. Betancourt noted a history of the work injury and provided findings on examination. He reported that appellant complained of severe pain to the bilateral hips with problems ambulating using a back brace. Physical therapy revealed pain to the bilateral SI groove with examination revealing compression, distraction, faber, and thigh trust tests bilaterally which confirmed sacroiliitis. Dr. Betancourt further noted that an x-ray of the hip revealed degeneration to the bilateral hips and that a lumbar MRI scan revealed a bulging disc which was not surgical at the moment. He recommended continued physical therapy.

In progress notes dated May 5 through August 5, 2016, Dr. Rashid reported findings on physical examination and provided epidural steroid injections to the right lumbar spine. In a June 6, 2016 report, he noted that appellant reported a decrease in low back pain that was radiating to her right hip and right leg following the epidural steroid injection. However, appellant complained of continued low back pain which radiated to her hips and right leg. Dr. Rashid noted lower back examination findings where range of motion was restricted and painful in all directions. He reported that appellant was unable to perform a straight leg raising test due to pain and her inability to cooperate. Bilateral hip examination revealed tenderness in the right anterior groin and right infragluteal area tenderness. Dr. Rashid diagnosed low back pain, lumbar radiculopathy, lumbar disc displacement without myelopathy, sacroiliitis, bilateral hip pain, internal derangement of left hip, and internal derangement of right hip. In an August 5, 2016 report, he recommended electromyography (EMG) and nerve conduction velocity (NCV) testing and diagnosed low back pain, lumbar radiculopathy, sacroiliitis, sprain of SI joint, sprain of other parts of lumbar spine and pelvis, bilateral hip pain, and lumbar facet dysfunction.

In a May 24, 2016 report, Dr. Betancourt reported treating appellant for a December 30, 2015 work-related injury. Appellant experienced continued pain and had been developing weakness and loss of balance, noting that she barely walked with a walker. Physical examination revealed all five signs of SI joint pain including thigh thrust, faber test, compression test, distraction test, and SI groove pain. Dr. Betancourt provided appellant steroid injections and reported that, if her condition improved with rehabilitation, she could return to work. If she did not improve after six months of epidural injections, she would likely require fusion at the SI joint. Dr. Betancourt opined that he did not believe that appellant was physically capable of performing the heavy-duty work she used to do which could worsen her injury and result in the need for surgery.

In a May 25 and July 25, 2016 form report, Dr. Betancourt restricted appellant from returning to work from May 25 through August 25, 2016.

In a July 25, 2016 report, Dr. Betancourt diagnosed trochanteric bursitis. He noted a history of a work-related injury which caused continued severe pain to the hip area. Dr. Betancourt recommended bilateral trochanteric bursitis injections for pain and inflammation.

By letter dated August 17, 2016, OWCP informed appellant that the reports of Dr. Betancourt were insufficient to establish her claim for total disability. It requested additional medical evidence and afforded appellant 30 days to submit the necessary evidence.

Appellant subsequently submitted an August 12, 2016 report from Dr. David Sack, Board-certified in occupational medicine, who noted his request to review the case file as the employing establishment's medical review physician. Dr. Sack noted that his review was limited to the available medical and claim documentation with no personal examination of appellant. He reported that there were minimal objective findings for radiculopathy, as the examinations were incomplete due to appellant's pain and inability to cooperate, and mainly documented subjective limited range of motion due to pain, subjective tenderness to palpation (with no spasms documented), and decreased sensation to light touch which was also a subjective finding. Dr. Sack reported that appellant continued to seek treatment for pain and was using a walker to ambulate. He noted minimal physical objective evidence in the medical notes on file or in the MRI scan previously reviewed to point to an anatomic source for appellant's continued symptoms. Dr. Sack reported that, if OWCP did not close the case based on the report of the DMA, then appellant should be referred to a second opinion with EMG/NCV testing to document objective indicators of pathology or injury.

By letter dated September 1, 2016, appellant argued that she submitted the required medical evidence to establish her claim. She also noted submission of a supplemental August 25, 2016 report from Dr. Betancourt which addressed OWCP's issues with her claim for disability and explained why she could not return to work.

In an accompanying August 25, 2016 report, Dr. Betancourt reported that he evaluated appellant for an injury that she sustained at work on December 30, 2015. Since the evaluation appellant was barely walking with the assistance of a walker. Dr. Betancourt reported that appellant was unable to lift anything from the floor, unable to bend, and could barely sit and stand for more than 30 minutes. Appellant was unable to support herself sitting in a chair and could not stand up from the chair by herself without assistance. Dr. Betancourt noted a diagnosis of bilateral sacral injury, severe in nature, as well as bilateral superior trochanteric bursitis that appeared to be related to the injury that she sustained at work. He concluded that appellant could not perform her regular work duties as she was unable to lift, twist, walk passengers through a scan unit, or bend and check passengers below the knees.

In medical reports dated June 21 through August 17, 2016, Dr. Alex Flores, a treating chiropractor, provided examination findings and diagnosed sprain of the SI joint and sprain of other parts of the lumbar spine and pelvis.

By decision dated September 28, 2016, OWCP denied modification of the June 7, 2016 decisions, finding that the medical evidence of record failed to establish that she was disabled from work due to the accepted December 30, 2015 employment injury. It further noted that she failed to establish the medical necessity for a wheelchair or that the claim should be expanded to include the requested additional diagnosed conditions.

## ***LEGAL PRECEDENT -- ISSUE 1***

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[4]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.[5] 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.[6]

Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[7]

## ***ANALYSIS -- ISSUE 1***

OWCP accepted appellant's claim for sprain of the SI joint and sprain of other parts of lumbar spine and pelvis as a result of the December 30, 2015 employment injury. Appellant subsequently requested that OWCP expand her claim to include the additional diagnosed conditions of lumbosacral radiculopathy and ischiocapsular ligament right hip sprain. The Board finds that appellant has not met her burden of proof to establish that these claimed conditions were causally related to the December 30, 2015 employment injury.[8]

In support of her claim, appellant submitted medical reports from Dr. Jones dated January 4 through April 8, 2016 which requested the diagnoses be expanded to include lumbosacral radiculopathy and ischiocapsular ligament right hip sprain. In her March 10, 2016 report, she noted that the diagnoses should be expanded to include lumbosacral radiculopathy and ischiocapsular ligament right hip sprain because of appellant's continued pain. The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis.[9] Moreover, an increase in pain alone does not constitute objective evidence of disability.[10]

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[4] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[5] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[6] *James Mack*, 43 ECAB 321 (1991).

[7] *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[8] *T.K.*, Docket No. 16-1543 (issued March 13, 2017).

[9] *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[10] *M.R.*, Docket No. 14-11 (issued August 27, 2014).

While Dr. Jones described the December 30, 2015 employment injury, she failed to provide rationale explaining how the additional diagnoses of lumbosacral radiculopathy and ischiocapular ligament right hip sprain were causally related to the accepted work injury. The Board has held that 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.[11] Dr. Jones failed to address how the specific employment injury physiologically caused these conditions, only generally noting that appellant did not improve with conservative treatment, remained very symptomatic, and had exacerbations with long periods of walking. While she mentioned that appellant felt a pop in her groin at the time of the injury, she failed to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how the type of fall appellant sustained would cause or aggravate appellant's lumbosacral radiculopathy and ischiocapsular ligament right hip sprain.[12] As such, Dr. Jones' reports are of limited probative value and insufficient to meet appellant's burden of proof.[13]

In medical reports dated April 15 through August 5, 2016, Dr. Rashid diagnosed low back pain, lumbar radiculopathy, lumbar foraminal stenosis, lumbar spinal stenosis, lumbar facet dysfunction, lumbar disc displacement without myelopathy, sacroiliitis, sprain of the SI joint, sprain of other parts of lumbar spine and pelvis, bilateral hip pain, hip osteoarthritis, and bilateral internal derangement of her hip. While he provided numerous diagnoses, Dr. Rashid failed to provide any opinion that these conditions were caused or aggravated by the December 30, 2015 employment injury. Although he described the December 30, 2015 employment injury, Dr. Rashid only generally repeated appellant's allegations pertaining to the work injury. Such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the accepted employment incident actually caused the diagnosed conditions.[14] As such, Dr. Rashid's reports are insufficient to establish that appellant's claim should be expanded to include the additional diagnosed conditions.

In medical reports dated February 17 to August 25, 2016, Dr. Betancourt described the December 30, 2015 employment injury and provided examination findings. In his August 25, 2016 report, he noted a diagnosis of bilateral sacral injury, severe in nature, as well as bilateral superior trochanteric bursitis that appeared to be related to the accepted employment injury. The Board finds that Dr. Betancourt's opinion on causation is highly speculative as he generally noted that her diagnosis appeared to be related to the work injury without a firm conclusion that the employment injury did in fact cause or aggravate her diagnosed conditions.[15] The opinion of a physician supporting causal relationship must not be speculative or equivocal.[16] To be of

[11] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[12] *S.W.*, Docket 08-2538 (issued May 21, 2009).

[13] *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

[14] *K.W.*, Docket No. 10-98 (issued September 10, 2010).

[15] *See Michael R. Shaffer*, 55 ECAB 339 (2004).

[16] *Rickey S. Storms*, 52 ECAB 349 (2001).

probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty.[17] As Dr. Betancourt failed to provide a medically sound explanation of how the specific employment injury, in particular physiologically, caused or aggravated her diagnosed conditions, his reports are insufficient to establish her claim.[18]

The remaining medical evidence is also insufficient to establish appellant's claim. The May 16, 2016 medical report of Dr. Berman, serving as OWCP's DMA, provided support that the claim should not be expanded to include lumbar radiculopathy and right hip strain, explaining that there were no clinical abnormalities to explain these additional findings. Dr. Berman noted that there was no evidence of radiculopathy as objective tests revealed negative findings and radiological studies demonstrated mild scoliosis and minimal degenerative changes of the lumbar spine. With respect to appellant's right hip, diagnostic studies revealed a focal tear of the labrum of the left hip despite subjective complaints on the right. Dr. Sack's August 12, 2016 report also fails to provide support for expansion of the claim as he noted little physical objective evidence in the medical notes or diagnostic testing which pointed to an anatomic source for appellant's continued symptoms.

The reports of appellant's chiropractor, Dr. Flores, are also insufficient to establish appellant's claim.[19] A chiropractor is not considered a physician under FECA unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.[20] Dr. Flores did not diagnose subluxation based on the results of an x-ray.[21] Therefore, his reports do not constitute probative medical evidence as he does not meet the statutory definition of physician under FECA.

On appeal appellant asserts that the December 30, 2015 employment incident caused her additional injury. Appellant, however, has not submitted a rationalized medical report showing that she sustained work-related conditions on December 30, 2015 other than the already accepted sprain of the SI joint and sprain of other parts of the lumbar spine and pelvis. As such, the Board finds that appellant has not met her burden of proof to establish additional work-related conditions causally related to the accepted December 30, 2015 employment injury.[22]

[17] *See Beverly R. Jones*, 55 ECAB 411 (2004).

[18] *T.G.*, Docket No. 14-751 (issued October 20, 2014).

[19] In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under 5 U.S.C. § 8101(2).

[20] *See Kathryn Haggerty*, 45 ECAB 383 (1994).

[21] 5 U.S.C. § 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[22] *Patricia J. Bolleter*, 40 ECAB 373 (1988).

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.

## ***LEGAL PRECEDENT -- ISSUE 2***

Under FECA,[23] the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[24]

Whether a particular injury causes an employee to be disabled from work and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.[25] Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work. When a physician's statements consist only of a repetition of the employee's complaints that excessive pain caused an inability to work, without making an objective finding of disability, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.[26] The Board will not require OWCP to pay compensation for disability without 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.[27]

## ***ANALYSIS -- ISSUE 2***

OWCP accepted appellant's claim for sprain of SI joint and sprain of other parts of the lumbar spine and pelvis as a result of the December 30, 2015 employment incident. Appellant has the burden of proving by the weight of the substantial, reliable, and probative evidence a causal relationship between her claimed disability on or after March 12, 2016 and the accepted December 30, 2015 employment injury.[28] The reports of her physicians do not provide a rationalized medical opinion finding her disabled from work on or after March 12, 2016 due to her accepted sprain of SI joint and sprain of the lumbar spine and pelvis. Therefore, the medical evidence submitted is insufficient to meet appellant's burden of proof.[29]

In a March 10, 2016 Form CA-17, Dr. Jones restricted appellant to five hours per day of work. She did not comment on appellant's work restrictions until an April 8, 2016 Form CA-17 which found her totally disabled and restricted her from working. While the Form CA-17 noted

[23] 5 U.S.C. §§ 8101-8193.

[24] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[25] *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

[26] *G.T.*, 59 ECAB 447 (2008); *see Huie Lee Goal*, 1 ECAB 180, 182 (1948).

[27] *Id.*

[28] *See supra* note 25; *see also Amelia S. Jefferson*, 57 ECAB 183 (2005).

[29] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

right SI joint sprain and pelvic sprain, Dr. Jones failed to explain why appellant was disabled and unable to complete her job functions as a result of the accepted work conditions. Because she did not provide any medical rationale for her conclusion that appellant was unable to work due to the December 30, 2015 employment injury, her reports are of diminished probative value and insufficient to establish her claim for disability.[30]

The reports of Dr. Rashid also fail to establish appellant's claim for disability beginning on or after March 12, 2015. In his April 15, 2016 report, Dr. Rashid explained that appellant was under his care for pain management and could not return to work until further notice. He noted numerous diagnoses including low back pain, lumbar radiculopathy, lumbar foraminal stenosis, lumbar spinal stenosis, lumbar facet dysfunction, lumbar disc displacement without myelopathy, sacroiliitis, bilateral hip pain, hip osteoarthritis, and bilateral internal derangement of hip. As previously noted, the claim has only been accepted for sprain of the SI joint and sprain of other parts of the lumbar spine and pelvis. As Dr. Rashid provided numerous diagnoses, it is unclear if appellant's disability is related to the accepted work-related injuries or a result of a preexisting, nonoccupational condition.[31] He also failed to address appellant's capacity for work or the reasons why she was unable to continue her duties other than generally noting pain and the use of a walker. The Board has held that a medical opinion that is not fortified by rationale is of diminished probative value.[32] As Dr. Rashid failed to provide a rationalized opinion as to why appellant was disabled as a result of her accepted December 30, 2015 work injuries, his reports are insufficient to meet appellant's burden of proof.[33]

In medical reports dated February 17 through August 25, 2016, Dr. Betancourt diagnosed bilateral superior trochanteric bursitis, bilateral sprain of the SI joints, piriformis syndrome, SI inflammation, and thoracic disc disease. The Board notes that Dr. Betancourt failed to report on appellant's disability until May 24, 2016 when he noted that appellant was not physically capable of performing the heavy-duty work she used to do as it could worsen her injury and result in the need for surgery. The Board has long held that prophylactic work restrictions do not establish a basis for wage-loss compensation.[34] A fear of future injury is not compensable under FECA.[35] Moreover, Dr. Betancourt failed to address appellant's disability for the period claimed beginning on March 12, 2016.

Dr. Betancourt's August 25, 2016 report also failed to provide a fully-rationalized opinion that appellant was disabled as a result of the December 30, 2015 employment injury. He noted that she was barely walking with the assistance of a walker, was unable to lift anything from the floor, unable to bend, could barely sit and stand for more than 30 minutes, was unable to support herself sitting in a chair, and could not stand up from the chair by herself without

[30] *S.B.*, Docket No. 13-1162 (issued December 12, 2013).

[31] *J.H.*, Docket No. 12-1848 (issued May 15, 2013).

[32] *Cecilia M. Corley*, 56 ECAB 662 (2005).

[33] *Deborah L. Beatty*, 54 ECAB 334 (2003).

[34] *D.N.*, Docket No. 14-657 (issued June 26, 2014).

[35] *Manuel Gill*, 52 ECAB 282, 286 n.5 (2001).

assistance. Dr. Betancourt noted a diagnosis of bilateral sacral injury, severe in nature, as well as bilateral superior trochanteric bursitis that appeared to be related to the injury that she suffered at work. He concluded that appellant could not perform her regular work duties as she was unable to lift, twist, walk passengers through a scan unit, or bend and check passengers below the knees. In this instance, it is unclear if the physician is attributing appellant's disability to the accepted SI joint sprain or the bilateral superior trochanteric bursitis which has not been accepted as a condition related to the December 30, 2015 employment injury.[36] Dr. Betancourt failed to explain how and why appellant's condition continued to worsen despite continued treatment and having been off work since March 12, 2016,[37] nor did he discuss the objective examination findings and why they did not correlate with appellant's subjective complaints, as noted by Dr. Jones, Dr. Berman, and Dr. Sack. Moreover, diagnostic studies reveal a preexisting degenerative condition of the lumbar spine. Dr. Betancout did not address why appellant's complaints and disability were not caused by her preexisting injury, nor did he discuss whether her preexisting injury had progressed beyond what might be expected from the natural progression of that condition.[38] It remains unclear whether appellant's disability was caused by the December 30, 2015 employment injury, a result of a preexisting condition, or due to degenerative changes. A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.[39] While Dr. Betancourt had some knowledge of appellant's job duties, he failed to provide a fully-rationalized opinion finding her disabled as a result of the accepted December 30, 2015 employment injuries beginning on or after March 12, 2016. As such, his reports are insufficient to meet appellant's burden of proof.[40]

The Board notes that appellant also submitted return to work medical notes and forms containing illegible signatures which found her disabled from March 15 through April 23, 2016, and May 25 through August 25, 2016. Consequently, these documents are of no probative value on appellant's claim for wage-loss compensation, as it cannot be discerned whether a physician signed or authored the documents.[41]

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.[42] The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.[43] Because appellant has not submitted

[36] *W.F.*, Docket No. 12-479 (issued November 27, 2012); *Dean E. Pierce*, 40 ECAB 1249 (1989).

[37] *S.T.*, Docket No. 11-1316 (issued January 25, 2012).

[38] *R.E.*, Docket No. 14-868 (issued September 24, 2014).

[39] *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[40] *L.J.*, Docket No. 14-523 (issued August 7, 2014).

[41] *See also Sheila A. Johnson*, 46 ECAB 323, 327 (1994); *see Merton J. Sills*, 39 ECAB 572, 575 (1988).

[42] *See supra* note 28.

[43] *See Sandra D. Pruitt*, 57 ECAB 126 (2005).

any reasoned medical opinion evidence to show that she suffered from employment-related residuals or disability on or after March 12, 2016 as a result of her accepted sprain of SI joint and sprain of other parts of lumbar spine and pelvis, the Board finds that appellant has not met her burden of proof to establish her claim for disability compensation.[44]

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.

## ***LEGAL PRECEDENT -- ISSUE 3***

Section 8103(a) of FECA provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician who OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.[45] In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.[46]

In interpreting section 8103, the Board has recognized that OWCP has broad discretion in approving services provided under FECA. OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible, in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness.[47] In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.[48] While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[49]

[44] 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. *L.L.*, Docket No. 13-2146 (issued March 12, 2014). *See also William A. Archer* 55 ECAB 674, 679 (2004).

[45] 5 U.S.C. § 8103(a).

[46] *See Dale E. Jones*, 48 ECAB 648, 649 (1997).

[47] *Dr. Mira R. Adams*, 48 ECAB 504 (1997).

[48] *See Debra S. King*, 44 ECAB 203 (1992).

[49] *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

## ***ANALYSIS -- ISSUE 3***

The Board finds that OWCP did not abuse its discretion in denying appellant's request for a wheelchair.[50]

OWCP accepted appellant's claim for sprain of SI joint and sprain of other parts of the lumbar spine and pelvis. Appellant requested a wheelchair arguing that the equipment was medically necessary. The reports of Dr. Jones note that appellant complained of trouble walking and requested a wheelchair so that she could go to the mall and stores with her family. However, Dr. Jones never determined that the wheelchair was medically necessary and merely repeated appellant's request for the medical equipment. While Dr. Rashid and Dr. Betancourt both noted difficulty walking with a walker, neither physician provided a prescription for a wheelchair or opined that it was causally related to the accepted conditions related to the December 30, 2015 employment injury. The medical evidence of record failed to provide any detailed findings or reasoned explanation for the conclusion that a wheelchair was medically necessary. Medical opinions that lack a rationale for the opinion are of diminished probative value.[51]

The May 16, 2016 report of Dr. Berman, serving as OWCP's DMA, provides support that a wheelchair was not medically necessary.[52] Dr. Berman noted that appellant had no objective findings on examination in regards to the lumbar spine and hip. He further noted no basis or justification for the wheelchair because her radiological studies demonstrated mild scoliosis and minimal degenerative changes of the lumbar spine. Therefore, there could not be any evidence of radiculopathy since the straight leg raising and all objective tests were negative for radiculopathy. Dr. Berman opined that appellant should maintain maximal levels of activity consistent with the onset of pain as it related to the lumbar spine as use of a wheelchair would have a negative impact on her functional level.

An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.[53] OWCP has broad discretion pursuant to section 8103 of FECA to determine whether purchase of a wheelchair is likely to cure or give relief for the accepted employment-related injury. As appellant's physicians offered no medical rationale to explain why she needed a wheelchair due to the accepted work-related injuries, OWCP did not abuse its discretion in this case. There is no probative medical evidence of record explaining the need for a wheelchair.[54]

[50] *A.W.*, Docket No. 16-1812 (issued March 15, 2017).

[51] *See William D. Farrior*, 54 ECAB 566, 569 (2003).

[52] *R.T.*, Docket No. 15-1760 (issued January 4, 2016).

[53] *Gerald A. Carr*, 55 ECAB 225 (2004).

[54] *M.B.*, Docket No. 06-701 (issued December 4, 2006); *Thomas Lee Cox*, 54 ECAB 509 (2003); *Stella M. Bohlig*, 53 ECAB 341 (2002).

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 her burden of proof to expand her claim to include the additional conditions of lumbosacral radiculopathy and ischiocapsular ligament right hip sprain as a result of the accepted December 30, 2015 employment injury. The Board further finds that appellant failed to establish that she continued to suffer from employment-related residuals or disability on or after March 12, 2016 as a result of her accepted employment-related injuries. The Board also finds that OWCP did not abuse its discretion by denying appellant's request for authorization to purchase a wheelchair.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the September 28, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2017
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