



## ISSUE

The issue is whether appellant has established intermittent periods of total disability from November 6, 2014 to January 9, 2015 causally related to her accepted employment injury.

## FACTUAL HISTORY

On October 14, 2014 appellant, then a 42-year-old machine operator, filed an occupational disease claim (Form CA-2) alleging that she developed back pain as a result of her employment. She first became aware of her condition and realized its relation to her employment on September 19, 2014. OWCP accepted appellant's claim for sacroiliitis.

On January 3, 2015 appellant filed a claim for wage-loss compensation (Form CA-7) for disability during the period September 19, 2014 to January 9, 2015. On the time analysis form (Form CA-7a) she claimed a total of 308 hours of intermittent disability compensation.<sup>4</sup>

In support of her claim for wage-loss compensation, appellant submitted reports from Dr. Renee M. Tamlyn, a family practitioner. Dr. Tamlyn noted in a September 24, 2014 report that appellant complained of lower back pain, aggravated by bending and standing. She related that appellant missed work earlier that week and would need to miss more work. Dr. Tamlyn reviewed appellant's history and diagnosed muscle spasm. In a disability slip, she requested that appellant be excused from work through September 30, 2014. In an October 9, 2014 disability slip, Dr. Tamlyn reported that appellant could return to work on October 10, 2014 with restrictions of no standing for more than 4 hours without a 15-minute period of sitting and no lifting over five pounds.

Dr. Tamlyn noted clinical findings of low back and radiculopathy symptoms and diagnosed sacroiliitis and sciatica in an October 30, 2014 duty status report (Form CA-17). She indicated that appellant could resume work with restrictions of intermittent standing for four to six hours per day, intermittent walking and kneeling, and minimal bending, stooping, twisting, pulling, pushing, simple grasping, and reaching above the shoulder.

Appellant requested temporary light duty on October 31, 2014. The employing establishment advised that a temporary light-duty position was available from November 1 through December 1, 2014. The physical limitations of the light-duty position were listed as no continuous lifting over 5 pounds, no intermittent lifting over 20 pounds, standing limited to four to six hours per day, and minimal bending, stooping, twisting, pushing, and pulling. The employment duties were noted as requiring manual lifting of flats and priority mail. Appellant signed and accepted the temporary limited-duty position on October 31, 2014.

In a November 2, 2014 report, Dr. Tamlyn provided findings on examination and diagnosed sacroiliitis and muscle spasm. She related that appellant's symptoms of lower back pain, worse on the left side, began on September 21, 2014. Dr. Tamlyn noted that appellant's

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<sup>4</sup> Appellant claimed the following hours of wage-loss compensation during the specific time periods: 40 hours from September 19 to 26, 2014; 16 hours from September 27 to October 3, 2014; 10 hours from October 9 and 10, 2014; 120 hours from October 11 to 31, 2014; 16 hours from November 1 to 14, 2014; 64 hours from November 15 to 28, 2014; 8 hours from November 29 to December 12, 2014; 3 hours from December 13 to 26, 2014; and 32 hours from December 27, 2014 to January 9, 2015.

employment duties included bending and twisting while lifting heavy objects and twisting and reaching to various heights. She explained that the act of bending forward and twisting to lift an object was a very common mechanism leading to sacroiliitis.

In disability slips dated December 1 and 15, 2014, Dr. Tamlyn reported that appellant had missed work on November 21, 22, 25, 26, 28, and 29, 2014 “due to injury.” She indicated that appellant could return to work on December 1, 2014 “with [appellant’s] limited duties that were ordered in previous paperwork.” In a December 15, 2014 disability slip, Dr. Tamlyn recommended that appellant continue light duty until December 31, 2014.

The employing establishment, by letter dated February 6, 2015, controverted the claim. It claimed that there were light-duty jobs available, but that appellant chose to use unscheduled leave for most of the time rather than work. A January 26, 2015 job offer was enclosed.

Appellant continued to receive medical treatment from Dr. Tamlyn.

By letter dated February 18, 2015, OWCP advised appellant that her compensation claim for intermittent periods of total disability from September 19, 2014 to January 9, 2015 could not be processed at that time and advised her that it needed to review the claim to determine whether she was eligible for compensation benefits. It requested that she provide a day-by-day breakdown for the claimed periods of disability and complete the attached Form CA-7a. Appellant was afforded 30 days to submit the additional evidence.

In a letter dated February 18, 2015, appellant related that she wanted to clarify the problems she experienced at work with management. She explained that on October 10, 2014 J.B., the postmaster, gave her a light-duty request form to fill out and sign, but the request form noted that the request was for a “nonjob[-]related injury.” Appellant informed J.B. that the request was for a job-related injury, but J.B. refused to change the clause and became very offensive. She asserted that she was sent home and not allowed to work. Appellant related that she received a letter from J.B., signed October 21, 2014, which threatened disciplinary action since she had not worked since October 11, 2014. She explained that she went to the employing establishment to drop off the requested paperwork and informed B.I., the plant manager, of the light-duty request. Appellant related that he was able to get the “nonjob[-]related injury” clause removed, so she signed the request form and returned to work. She explained that over the next couple of months she missed a lot of work due to the discomfort of her hip. Appellant noted that the past week she was finally allowed to work four to six hours a day.

Appellant resubmitted the light-duty request form dated October 31, 2014 where the phrase “nonjob[-]related condition or injury” was crossed out.

By letter dated March 3, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish her claim for intermittent periods of total disability from September 19, 2014 to January 9, 2015. It requested that she submit additional evidence to establish that she was disabled from work during the claimed period as a result of her accepted employment injury. Appellant was afforded 30 days to submit the additional information.

In a May 8, 2015 decision, OWCP denied appellant’s wage-loss claim for the period September 19, 2014 to January 9, 2015. It found that the medical evidence of record failed to establish that she was disabled for work on the specific dates claimed due to her work-related

medical condition. OWCP noted that Dr. Tamlyn attributed appellant's inability to work predominantly to pain and did not provide objective physical findings to support that her condition worsened to the extent that she could no longer work.

On June 12, 2015 OWCP received appellant's request for a review of the written record by an OWCP hearing representative. On August 11, 2015 it received her request to convert her request for review of the written record to a request for reconsideration.

In a November 1, 2015 report, Dr. Tamlyn indicated that appellant had been under her care since September 24, 2014 for a work injury that occurred on September 19, 2014. She described the medical treatment that she had provided. Dr. Tamlyn reported that she took appellant off work on September 20, 23, 27, and 30, 2014 because appellant was unable to work due to the pain that muscle spasms caused and because her job duties would exacerbate her symptoms. She noted that she reevaluated appellant on October 9, 2014 and provided work restrictions until further notice.

Dr. Tamlyn further related that appellant returned to work on October 10, 2014, but was sent home by management. She noted that it appeared that the employing establishment would not allow appellant to return to work throughout October 2014. Dr. Tamlyn indicated that she issued work restrictions again on October 30, 2014 based on her "low back pain and radiating left hip pain." She explained that "pain" was not her diagnosis, but rather, the "symptom [appellant was] experiencing from the conditions I have diagnosed her with and these conditions are a direct result of the patient's work activity." Dr. Tamlyn reported that she examined appellant again on December 1, 2014 and recommended that she continue light duty. She took appellant off work again on December 27 and 30, 2014. Dr. Tamlyn described her continued medical treatment of appellant and explained how she believed that appellant's work activity aggravated her sacroiliitis condition, as well as conditions of lumbar radiculopathy and piriformis syndrome, and rendered her unable to work at certain times as indicated in previous medical records.

By decision dated November 16, 2015, OWCP denied modification of its May 8, 2015 decision.

Appellant again requested reconsideration, through counsel, by letter dated and received on December 2, 2015. Counsel described appellant's employment duties and reviewed the medical treatment she received from Dr. Tamlyn. He asserted that Dr. Tamlyn had provided medical reports which took appellant off work during periods of temporary total disability due to her conditions of sacroiliitis, lumbar radiculopathy, and piriformis syndrome. Counsel also noted that, beginning October 11, 2014, the employing establishment would not accommodate appellant's established work restrictions based on her refusal to sign false paperwork.<sup>5</sup>

By decision dated March 4, 2016, OWCP vacated the May 8, 2015 decision in part and accepted appellant's claim for disability compensation for the period September 19 to October 31, 2014. It noted that the medical evidence of record established that she was totally disabled from September 19 to October 9, 2014 as a result of her employment injury. OWCP

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<sup>5</sup> Counsel also requested that OWCP expand appellant's claim to include lumbosacral neuritis or radiculopathy and piriformis syndrome.

further indicated that Dr. Tamlyn released appellant to work with restrictions beginning October 9, 2014, however, the employing establishment had only provided appellant with a valid job offer within her restrictions, effective November 1, 2014. Accordingly, it determined that compensation was payable for the period September 19 through October 31, 2014, but the remaining period of disability from November 6, 2014 to January 9, 2015 was denied due to insufficient medical evidence to support total disability.

On April 12, 2016 OWCP received appellant's request, through counsel, for reconsideration of the March 4, 2016 decision. Appellant noted that she was enclosing an April 3, 2016 report by Dr. Tamlyn, which explained why she was unable to work on the days she claimed. Counsel asserted that Dr. Tamlyn had fully explained appellant's inability to work on certain days and provided a sufficiently rationalized opinion supporting appellant's claimed wage-loss compensation.

In the April 3, 2016 report, Dr. Tamlyn noted that appellant was currently under her care and suffered from lumbosacral neuritis, with nerve compression most likely through the piriformis muscle. She explained that, any time this muscle experienced increased hypertonicity or increased inflammation, it could be expected that her neuritis would worsen and cause increased pain. Dr. Tamlyn noted that repetitive lifting, twisting, or bending in appellant's regular work tasks would cause this increased hypertonicity/inflammation. She reported: "it would be expected that [appellant] would be unable to perform her expected work duties on these days when pain was exacerbated (as she would be physically unable and would potentially worsen the condition by attempting to work." Dr. Tamlyn opined that appellant needed and would continue to need to be absent from work on these days as she was temporarily totally disabled during these times.

In a decision dated August 22, 2016, OWCP denied modification of the March 4, 2016 decision which denied appellant's claim for wage-loss compensation for the period November 6, 2014 to January 9, 2015.

### **LEGAL PRECEDENT**

Under FECA,<sup>6</sup> the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>7</sup> Furthermore, 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 the preponderance of the reliable, probative, and substantial medical evidence.<sup>8</sup>

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> See 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

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

For each period of disability claimed, an employee must establish that he or she was disabled from work as a result of the accepted employment injury. 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 his or her disability and entitlement to compensation.<sup>9</sup>

### ANALYSIS

OWCP accepted appellant's occupational disease claim for lumbar sacroiliitis due to her repetitive duties as a machine operator. Appellant filed a Form CA-7 claiming intermittent periods of total disability for the period September 19, 2014 to January 9, 2015. OWCP accepted her wage-loss compensation for intermittent periods of disability from September 19 to October 31, 2014, but denied compensation for the remaining period. It found that the medical evidence of record was insufficient to establish total disability on the claimed dates during the period November 6, 2014 to January 9, 2015 as a result of her accepted condition.

The Board finds that appellant has failed to submit sufficient medical opinion evidence to establish intermittent periods of total disability from November 6 to December 1, 2014 causally related to her accepted employment injury.

Appellant was treated by Dr. Tamlyn. In the October 30, 2014 Form CA-17, Dr. Tamlyn authorized appellant to work with restrictions of intermittent standing for four to six hours per day, intermittent walking and kneeling, and minimal bending, stooping, twisting, pulling, pushing, simple grasping, and reaching above the shoulder. The Board notes that Dr. Tamlyn did not opine that appellant was unable to work, but related that appellant could work with specific restrictions. Accordingly, Dr. Tamlyn's report failed to establish total disability from work.<sup>10</sup> She also provided disability slips dated December 1 and 15, 2014 wherein she related that appellant missed work from November 21 through 29, 2014 "due to injury." Dr. Tamlyn, however, did not provide any explanation based on medical rationale for how appellant's injury had worsened to the extent that she was unable to work on the specific dates. Medical evidence that states a conclusion, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>11</sup> Because Dr. Tamlyn failed to provide any medical rationale for her conclusion regarding total disability, her opinion is of diminished probative value.<sup>12</sup>

Appellant requested and accepted a light-duty position on October 31, 2014 for temporary light-duty work from November 1 to December 1, 2014. She has provided no evidence to establish that the employing establishment was unable to provide her with a modified-duty assignment within her restrictions during the claimed period November 6 to December 1, 2014. As such appellant has not met her burden of proof to establish temporary

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<sup>9</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>10</sup> *See M.C.*, Docket No. 16-1238 (issued January 26, 2017).

<sup>11</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>12</sup> *S.B.*, Docket No. 13-1162 (issued December 12, 2013).

total disability for intermittent dates during the claimed period November 6 to December 1, 2014.

While counsel submitted a report from Dr. Tamlyn dated April 3, 2016, which he claimed established disability during all of appellant's alleged dates of disability, the Board notes that this report actually never addressed any specific date of disability during the relevant period. As previously noted, the Board will not require that OWCP pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.<sup>13</sup> Therefore, this report is also of limited probative value.

The Board finds, however, that the case is not in posture for a decision regarding appellant's wage-loss compensation for intermittent disability during the period December 2, 2014 to January 9, 2015. In disability slips dated December 1 and 15, 2014, Dr. Tamlyn indicated that appellant could continue working light duty. The Board notes, however, that the October 31, 2014 light-duty job offer was effective from November 1 to December 1, 2014. The evidence of record does not establish that the employing establishment was able to accommodate appellant's work restrictions after December 2, 2014. OWCP regulations provide that an employee is not entitled to compensation for any wage loss to the extent that evidence establishes that an employee had medical restrictions in place, that light duty within those work restrictions was available, and that the employee was previously notified in writing that such duty was available.<sup>14</sup> While the employing establishment related in a letter dated February 6, 2015 that it was attaching a light-duty job offer which established that light-duty work was available at all relevant times, the job offer attached pertained to work after January 26, 2015.

In this case, the medical evidence of record demonstrates that appellant was authorized to work with restrictions. The current record before the Board, however, does not clearly establish that she was offered an appropriate light-duty position in writing in accordance with OWCP's regulations, such that her claim for wage-loss compensation should be denied.<sup>15</sup>

On remand OWCP must develop the case and make factual findings on the status of whether work was available for appellant within her restrictions during the period December 2, 2014 to January 9, 2015. It is a well-established principle that it must make findings of fact and offer a statement of reasons in its final decision.<sup>16</sup> As this evidence is of the character normally obtained by the employing establishment, it is more readily accessible to OWCP than to appellant. Once factual findings are made, OWCP should evaluate the evidence to determine whether a period of intermittent disability was established from December 2, 2014 to January 9, 2015.

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<sup>13</sup> *Supra* note 10.

<sup>14</sup> 20 C.F.R. § 10.500(a).

<sup>15</sup> *See J.T.*, Docket No. 15-1133 (issued December 21, 2015).

<sup>16</sup> 20 C.F.R. § 10.126.

## **CONCLUSION**

The Board finds that appellant has not established intermittent periods of total disability from November 6 to December 1, 2014 causally related to her accepted employment injury. The Board finds, however, that the case is not in posture for decision and must be remanded for additional development of the factual evidence from the employing establishment regarding her claim for intermittent disability from December 2, 2014 to January 9, 2015.

## **ORDER**

**IT IS HEREBY ORDERED THAT** the August 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside and remanded in part for further development consistent with this decision of the Board.<sup>17</sup>

Issued: December 20, 2017  
Washington, DC

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>17</sup> Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.