

FACTUAL HISTORY

OWCP accepted that on October 30, 2014 appellant, then a 55-year-old nurse, slipped and fell backward on a wet floor, causing thoracic and lumbar sprains.² She remained under medical treatment. Following a period of intermittent work absences, appellant returned to work in a modified-duty position on June 29, 2015, working four hours a day. OWCP paid her wage-loss compensation for the remaining four hours a day, as well as intermittent absences for medical appointments, from July 27, 2015 to April 15, 2016.

On May 4, 2016 appellant submitted claims for compensation (Form CA-7) for three hours of work absence to attend physical therapy appointments on each of the following dates: April 19, 20, 21, 26, 27, 29, and May 2, 4, 10, and 11, 2016. She also claimed eight hours of compensation for April 28, 2016, asserting that she was medically unable to work.

In May 13 and 23, 2016 letters, OWCP advised appellant of the type of evidence needed to establish her claim for wage-loss compensation, including a statement from her attending physician explaining how and why the accepted thoracic and lumbar sprains disabled her from work on the dates claimed. It afforded her 30 days to submit such evidence.³

In response, appellant submitted July 31 and September 17, 2016 letters, contending that she suffered psychological trauma due to the accepted injuries. She requested that OWCP refer her for an impairment rating of the lower extremities. Appellant also submitted additional medical evidence.

In an April 27, 2016 report, Dr. Louise Lamarre, an attending family practitioner, reviewed appellant's history of injury. She diagnosed lumbar and thoracic sprains, an L5-S1 disc displacement, and lumbar radiculopathy. Dr. Lamarre noted that appellant's condition had improved.

Dr. Raymond Gibbons, an attending Board-certified general surgeon, provided a June 2, 2016 report diagnosing lumbar and thoracic sprains. He recommended continued duty restrictions. Dr. Ranil Ninala, an attending Board-certified physiatrist, provided reports from June 30 to September 1, 2016 diagnosing a lumbosacral sprain-strain with radiculopathy.⁴

By decision dated September 19, 2016, OWCP denied appellant's claim for compensation for disability from work on April 28, May 10, and 16, 2016, finding that she had submitted no medical evidence demonstrating that she was disabled from work on the dates

² The employing establishment issued an authorization for medical treatment (Form CA-16) on November 5, 2014.

³ In a May 17, 2016 decision, OWCP denied appellant's claim for intermittent wage-loss compensation for December 18, 2015 through January 18, 2016; January 25, 29, March 9, and 21 through 31, 2016. Appellant did not appeal this decision.

⁴ Appellant underwent a functional capacity evaluation on July 18, 2016. She participated in physical therapy and a counseling program in August 2016.

claimed. In its decision, OWCP did not adjudicate whether appellant established entitlement to compensation for the remainder of the dates claimed.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁵ Under FECA, the term “disability” is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.⁶

For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁷ Whether a particular injury causes an employee to become disabled from work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁸ 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 her disability and entitlement to compensation.⁹

ANALYSIS

Appellant claimed that accepted thoracic and lumbar sprains disabled her from work for three hours on April 28, May 10, and 16, 2016. She has the burden of establishing by the weight of the substantial, reliable, and probative evidence that she was totally disabled for work for the claimed period due to the accepted injuries.¹⁰

In support of her claim, appellant provided her July 31 and September 17, 2016 letters explaining why she believed her disability was due to the accepted conditions. As these documents are not medical evidence, they are insufficient to meet appellant’s burden of proof.¹¹

Appellant also submitted an April 27, 2016 report from Dr. Lamarre, an attending family practitioner, a June 2, 2016 report from Dr. Gibbons, an attending Board-certified general surgeon, and reports from June 30 to September 1, 2016 by Dr. Ninala, an attending Board-certified physiatrist. However, none of these reports offer an opinion on appellant’s condition on

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁰ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

¹¹ *See James A. Long*, 40 ECAB 538 (1989); *Susan M. Biles*, 40 ECAB 420 (1988).

April 28, May 10, or 16, 2016. The physicians did not find appellant disabled for work for any portion of those dates. Therefore, their reports are insufficient to meet appellant's burden of proof.¹²

The Board notes that OWCP advised appellant by May 13 and 23, 2016 letters of the type of evidence needed to establish her claim, including her physician's well-reasoned explanation of how the accepted conditions disabled her for work for the dates claimed. However, appellant did not submit such evidence. Therefore, OWCP's September 19, 2016 decision denying appellant's claim for compensation on April 28, May 10, and 16, 2016 is proper under the law and facts of the case.

On appeal, appellant asserts that she attended physical therapy on May 10 and 11, 2016, but was unable to obtain the notes for those visits. She also contends that Dr. Lamarre's April 27, 2016 report is sufficient to establish that she was also disabled for work on April 28, 2016. However, as found, Dr. Lamarre's April 27, 2016 opinion did not indicate that appellant was disabled for work on any date. She did not hold appellant off work on April 28, 2016.

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

The Board finds that appellant failed to meet her burden of proof to establish that she was totally disabled for work on April 28, May 10, and 16, 2016, causally related to accepted lumbar and thoracic sprains.

¹² *Supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 19, 2016 is affirmed.

Issued: February 24, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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