

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability commencing December 13, 2014, causally related to a February 22, 2012 employment injury.

FACTUAL HISTORY

On February 23, 2012 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she had injured her back on February 22, 2012 when she crawled into an over-the-road container to retrieve a package that was at the bottom. She stopped work on February 24, 2012. OWCP assigned the claim File No. xxxxxx003 and accepted it for closed dislocation lumbar vertebra and closed dislocation thoracic vertebra. Appellant accepted a modified job on March 5, 2012 and worked full time with restrictions. OWCP paid benefits for wage loss due to medical care or when modified work was unavailable.

Under File No. xxxxxx699, date of injury November 13, 2012, appellant reported that she had injured her left knee, both arms, both shoulders, and her upper back when she fell off a wet porch while delivering a package. By decision dated February 9, 2015, the Board modified OWCP's July 21, 2014 decision to reflect that the November 13, 2012 incident had occurred at the time, place, and in the manner alleged, but denied the claim as she had not established that she had sustained an injury on November 13, 2012 in the performance of duty.⁴

Under File No. xxxxxx491, appellant claimed that she had injured her back on December 7, 2013 when she fell while delivering a package. She stopped work on December 14, 2013. OWCP accepted the claim for lumbar sprain, resolved and contusions of multiple sites, resolved. File Nos. xxxxxx699 and xxxxxx491 have been administratively combined with the present case, File No. xxxxxx003, with File No. xxxxxx003 serving as the master file.

Relevant medical evidence of record shows that Dr. Frederick John Gunningham, Board-certified in family medicine, examined appellant on December 10, 2013, three days after her December 7, 2013 work injury. In his December 10, 2013 report, he noted that she was working at light-duty capacity and opined that she could continue to work light duty with her mechanical low back pain. Dr. Gunningham noted that appellant's lumbar strain had improved and that she did not need surgery for her bilateral sciatica.

On December 15, 2013 appellant was treated at the emergency room for back pain that began eight days prior. Her work duties for the employment establishment were noted. X-rays showed no acute finding, but degenerative changes were noted. Appellant was advised not to work for two days or until she felt better.

In a December 19, 2013 report, Dr. Gunningham reported that appellant had collapsed at work last Friday and that she had gone to the emergency room on Sunday. He noted that she had experienced episodes of urinary incontinence. Dr. Gunningham also noted that appellant

⁴ Docket No. 14-1816 (issued February 9, 2015).

reported having been asked to do more than her recommended limits during the Christmas rush, and consequently she had a setback. He diagnosed bilateral sciatica and took her off work.

In a January 7, 2014 report, Dr. Gunningham noted that appellant requested that he open a new claim for injuries sustained on December 7, 2013. He diagnosed new conditions of left shoulder strain and right foot strain. Dr. Gunningham indicated that appellant's lumbar strain had deteriorated and opined that the December 7, 2013 employment injury had exacerbated her condition.

In a January 27, 2014 report, Dr. Gunningham noted that appellant's chronic pain syndrome was evolving into failed back syndrome. He continued to treat her for chronic pain.

In a November 8, 2014 report, Dr. Aleksandar Curcin, a Board-certified orthopedic surgeon and OWCP referral physician, noted appellant's December 7, 2013 history of injury and reviewed the medical record. He opined that, taking her report of the injury on a factual basis, the December 7, 2013 work injury resulted in lumbar sprain/strain and multiple contusions -- resolved. Dr. Gunningham noted that there appeared to be a discrepancy in that the emergency room records from December 15, 2013 made no mention of the reported trauma. He found that there were no objective findings of the effects of the work injuries and opined that appellant was not restricted from work based on her work injuries.

In a March 14, 2015 report, Dr. Gunningham noted that the December 7, 2013 fall was not mentioned in his December 10, 2013 report because appellant had not mentioned it to him. He noted that she went to the emergency room on December 15, 2013 and reported the injury then. On December 19, 2013 appellant had reported to Dr. Gunningham that she had collapsed at work on December 7, 2013. Dr. Gunningham opined that her condition had progressed from a strain to fibromyalgia. He also opined that appellant had residuals of her work injuries because of her chronic pain.

On March 25, 2015 appellant filed a claim for wage-loss compensation (Form CA-7) commencing December 13, 2014. As previously noted, prior to her work injury of December 7, 2013, she was working full time with restrictions.

In a March 27, 2015 letter, OWCP requested that appellant submit evidence to support that her claim for compensation, beginning December 13, 2014 and continuing, was related to her February 22, 2012 work injury and afforded her 30 days to submit such evidence. It specifically requested medical evidence from her physician establishing that her inability to work was related to the accepted conditions in this claim. OWCP noted that it had previously denied appellant's claims for compensation for the period of May 28 to October 31, 2014, in part, because she had sustained an injury on December 7, 2013 (File No. xxxxxx491) that was accepted for a resolved lumbar sprain and that she had not appealed that decision or filed any Form CA-7's under that claim. It further noted that the Board had affirmed the denial of her claim for a November 12, 2012 injury under File No. xxxxxx699. OWCP lastly noted that appellant had recently been referred for a second opinion examination to determine if there were any residuals present from her work injury of February 22, 2012.

OWCP later received several reports from Dr. Gunningham dated October 13 and December 15, 2014, and March 24, 2015, which diagnosed and advised on the status of appellant's fibromyalgia condition and chronic pain syndrome.

In an April 21, 2015 report, Dr. William Dinenberg, a Board-certified orthopedic surgeon, discussed appellant's history, the medical records, the statement of accepted facts, and presented examination findings. He concurred that the lumbar sprain had resolved, although there were objective findings of preexisting degenerative disc disease and facet disease. Dr. Dinenberg opined that the residuals presented on examination were not causally related to the February 22, 2012 work injury, but were most likely due to her fibromyalgia. However, he indicated that fibromyalgia was outside of his medical expertise. Dr. Dinenberg advised that appellant had reached maximum medical improvement for the conditions accepted in her claim.

As Dr. Dinenberg indicated that, fibromyalgia was outside of his medial expertise, OWCP referred appellant's medical file to its medical adviser to determine if a relationship existed between the accepted conditions and the diagnosed fibromyalgia. In a May 12, 2016 report, OWCP's medical adviser opined that, based on the mechanism of injury and the now resolved lumbar sprain, it was highly unlikely that the accepted conditions resulted in fibromyalgia or chronic pain syndrome.

By decision dated May 18, 2015, OWCP denied appellant's claim for wage-loss compensation for the period commencing December 13, 2014. It found that the medical evidence of record did not establish that she was disabled as a result of her accepted work-related medical conditions and that she had an intervening work injury on December 7, 2013.

On May 27, 2015 counsel requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held January 14, 2016. Appellant testified that she last worked for the employing establishment on December 13, 2013, one week after she fell. Prior to the December 7, 2013 employment injury, she had been working light duty since the February 22, 2012 employment injury. Appellant stated that, because of her work injuries, she had developed fibromyalgia and herniated discs.

Progress reports from Dr. Gunningham were received, in which he indicated that he continued to treat appellant for chronic pain syndrome. In a February 23, 2016 report, he opined that her chronic pain syndrome resulted from the industrial injuries. Dr. Gunningham additionally provided that he was not aware of any physicians who could prove the origins of a chronic pain syndrome with the available objective tests.

By decision dated March 7, 2016, OWCP terminated appellant's medical benefits effective the same date.⁵ It found that the residuals of her accepted work-related medical conditions resulting from the February 22, 2012 employment injury had ceased.

By decision dated March 30, 2016, an OWCP hearing representative affirmed the denial of appellant's claim for wage-loss compensation for the period commencing December 13, 2014. She found that the medical evidence of record did not show any objective findings related to the

⁵ See *supra* note 3.

lumbar strains and there was no rationalized medical opinion to establish that, beginning in December 2014, appellant was unable to work her modified position due to the effects of her work injuries.

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.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 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.⁸

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.⁹ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.¹⁰ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.¹¹ 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 his or her employment, he or she is entitled to compensation for any loss of wages.

The claimant must submit medical evidence showing that the condition claimed is disabling.¹² The evidence submitted must be reliable, probative, and substantial.¹³

The physician's opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty and must include objective findings in support of its conclusions.¹⁴ Subjective complaints of pain are not sufficient, in and of themselves, to support payment of continuing compensation.¹⁵ Likewise,

⁶ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

⁷ See *Amelia S. Jefferson*, *id.*

⁸ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁹ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

¹⁰ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹¹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹² 20 C.F.R. § 10.115(f).

¹³ *Id.* at § 10.115.

¹⁴ *Id.* at § 10.501(a)(2).

¹⁵ *Id.*

medical limitations based solely on the fear of a possible future injury are also insufficient to support payment of continuing compensation.¹⁶

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 disability and entitlement to compensation.¹⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she was disabled from work for the period commencing December 13, 2014 causally related to the February 22, 2012 employment injury.

OWCP accepted that on February 22, 2012 appellant sustained closed dislocation lumbar vertebra and closed dislocation thoracic vertebra. The condition of lumbar sprain was subsequently added. Appellant accepted a modified job on March 5, 2012 and worked full time with restrictions until she sustained an injury on December 7, 2013, which OWCP accepted under file number xxxxxx491 for a resolved lumbar strain. OWCP also denied wage-loss compensation for the period May 28 to October 31, 2014. Appellant also claimed wage-loss compensation beginning December 13, 2014 as a result of her February 22, 2012 work injury, which OWCP denied.¹⁸

In support of her claim for wage-loss compensation beginning December 13, 2014, appellant submitted medical evidence from Dr. Gunningham, who opined that the work injuries led to chronic pain. However, Dr. Gunningham has not provided a well-rationalized medical report to establish that beginning December 13, 2014 she was unable to work her modified position due to the effects of her work injuries.¹⁹ 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.²⁰

The record further reflects that Dr. Dinenberg, an OWCP-referral physician, found in his April 21, 2015 report that the lumbar sprain had resolved, although there were objective findings of preexisting degenerative disc disease and facet disease. He opined that the residuals presented on examination were not causally related to the accepted February 22, 2012 work injury, but were most likely due to appellant's fibromyalgia. As the fibromyalgia condition was outside of

¹⁶ *Id.*

¹⁷ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁸ The Board notes that, in the instant case, appellant stopped work one week after the December 7, 2013 employment injury, which OWCP accepted under File No. xxxxxx491, for a resolved lumbar strain. The record indicates that appellant has not appealed the March 7, 2016 termination decision or filed any Form CA-7 under claims for compensation, File No. xxxxxx491. Additionally, the Board upheld the denial of that claim.

¹⁹ See *Vanessa Young*, 55 ECAB 575 (2004).

²⁰ See *supra* note 17.

Dr. Dinenberg's medical expertise, an OWCP medical adviser reviewed the record and opined that, in a May 12, 2015 report, it was highly unlikely that the accepted conditions had resulted in fibromyalgia or chronic pain syndrome based on the mechanism of injury and her now resolved lumbar sprain.

Appellant failed to submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, established that she was totally disabled from work beginning December 13, 2014, and continuing due to residuals of her accepted injury. As the medical evidence of record does not establish that she was disabled as a result of her accepted work-related medical conditions for the period beginning December 13, 2014 and continuing, the Board will affirm the denial of the claim for compensation.

On appeal, counsel argues that OWCP's decision is contrary to fact and law. However, as discussed above, the medical evidence of record does not support appellant's disability claim.

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 total disability commencing December 13, 2014, causally related to her February 22, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 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