

FACTUAL HISTORY

On November 19, 2014 appellant, then a 50-year-old telecommunications specialist, filed a traumatic injury claim (Form CA-1) alleging that on October 29, 2014 he sustained a middle/lower back injury when a magnet on a 250-pound manhole lid broke during removal of the lid. He stopped work on November 3, 2014 and accepted a temporary light-duty job on May 11, 2015. OWCP accepted the claim for lumbar sprain, which was subsequently expanded to include exacerbation of preexisting nonwork-related lumbosacral radiculopathy and exacerbation of preexisting nonwork-related lumbar intervertebral disc displacement. Appellant received intermittent wage-loss compensation and medical benefits on the supplemental rolls commencing December 19, 2014.

On January 6, 2016 Dr. Dev Sen, a treating Board-certified physiatrist and pain medicine physician, indicated that appellant was disabled from work from January 4 to 11, 2016 and could return to light-duty work from January 11 to February 11, 2016.

The record contains medical reports/office notes dated January 6 and February 9, 2016 from Mid-Atlantic Spine and Rehabilitation Associates. The reports provided medical histories, examination findings, and diagnoses of lumbar degenerative disc disease, chronic back pain, and lumbar spondylosis and acute exacerbation of the diagnosed conditions. These reports noted that appellant was disabled from work until January 11, 2016 and he could resume light-duty work after that date. The January 6, 2016 report was signed by Dr. Dev Sen, Board-certified in pain, physical and rehabilitation medicine. The February 9, 2016 report was signed by Steve Fox, a certified physician assistant.

The record also contains physical therapy notes covering treatment for the various dates relevant to the claimed period of disability from January 11 to February 5, 2016. The physical therapist³ noted the treatment provided and that appellant reported a decrease in his back pain.

On February 25, 2016 Dr. Thomas Janus, a treating Board-certified family practitioner, noted that appellant had been in his care for the period February 22 to 28, 2016 and released him to return to work on February 29, 2016.

On April 4, 2016 OWCP received progress notes dated January 28, 2016 by Dr. Janus diagnosing back pain and lumbosacral radiculopathy. Dr. Janus noted appellant's medical history and physical examination findings.

On April 25, 2016 OWCP received claims for wage-loss compensation (Form CA-7) for the period January 11 to February 5, 2016.⁴

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⁴ On April 25, 2016 OWCP also received CA-7 forms claiming wage-loss compensation for the periods February 8 to 19, 2016 and February 22 to April 15, 2016. Wage-loss compensation was paid for the periods February 8 to 19, 2016 and February 22 to April 14, 2016.

On April 26, 2016 OWCP received a certificate dated January 21, 2016 from Dr. Janus noting that appellant was disabled from work for the period January 25 to 31, 2016 and that he had been released to return to work with no restrictions on February 1, 2016.

On April 26, 2016 OWCP also received an April 1, 2016 note from Dr. Janus releasing appellant to work four hours per day until his reevaluation on April 24, 2016. Dr. Janus reported that appellant had an exacerbation of his lumbosacral radiculopathy and sciatic nerve pain, which resulted in total disability for the period March 21 to April 1, 2016.

In a letter dated May 4, 2016, OWCP acknowledged receipt of CA-7 forms claiming wage-loss compensation for the period January 11 to April 15, 2016. It advised appellant that payment had been authorized for 60 hours for the period February 8 to 19, 2016 and 39 days for the period February 22 to April 14, 2016. OWCP also informed him that the evidence was insufficient to establish entitlement to compensation for January 11 to 22 and January 25 to February 5, 2016. It advised appellant to submit medical evidence explaining why he was disabled from performing his job for the dates in question and afforded him 30 days to provide this information.

On May 9, 2016 OWCP received a Form CA-7 claiming wage-loss compensation for the period April 18 to 29, 2016. It also received an April 25, 2016 disability note from Mr. Fox indicating that appellant was disabled from work from April 25 to May 4, 2016.

On May 11, 2016 OWCP referred appellant for a second opinion evaluation with Dr. D. Burke Haskins, a Board-certified orthopedic surgeon, for an evaluation of appellant's condition.

Appellant submitted physical therapy notes dated January 28, May 3, 5, 10, 12, 17, and 26, 2016 regarding treatment provided and complaints of increased back pain.

In a letter dated May 17, 2016, OWCP noted that appellant stopped work on April 18, 2016 and had not returned. It advised that the evidence was insufficient to establish his claim for wage-loss compensation for the period April 18, 2016 and continuing. Appellant was advised regarding the medical evidence required and afforded 30 days to provide the requested information.

In response to OWCP's request, appellant submitted medical report/office visit notes dated April 25 and May 9, 2016 electronically signed by Mr. Fox for an evaluation of appellant's chronic pain. Mr. Fox provided physical examination findings, and diagnosed lumbar degenerative disc disease, lumbar radiculopathy, low back pain, and lumbar spondylosis. On April 25, 2016 he wrote that appellant was to remain off work and that he might be a candidate for a functional capacity evaluation (FCE). In the May 9, 2016 note, Mr. Fox indicated that appellant was off work until light-duty work was available.

Appellant subsequently filed CA-7 forms claiming wage-loss compensation for the periods May 2 to 13, 16 to 27, and 30 to June 10, 12 to 25, and 26 to July 9, 2016

In a letter dated June 9, 2016, OWCP noted receipt of his CA-7 forms claiming wage-loss compensation for May 2, 2016 and continuing. It informed appellant that the evidence submitted

was insufficient to support his claim for wage-loss compensation for the period April 18, 2016 and continuing. OWCP advised appellant regarding the medical evidence required and afforded him 30 days to submit the requested information. It also informed appellant that certified physician assistants, nurses, and nurse practitioners are not considered physicians under FECA.

In response to OWCP's request, appellant submitted additional medical evidence.

In a January 28, 2016 progress note, Dr. Janus indicated that appellant was seen for low back pain and right leg paresthesias. A physical examination revealed normal spinal range of motion, no subluxations or spinal tenderness, and normal bilateral extremity strength. Dr. Janus diagnosed back pain and lumbosacral radiculopathy.

Dr. Janus, in an April 8, 2016 disability certificate, reported that appellant had been under his care from April 4 to 22, 2016 and could return to work on April 25, 2016 with no restrictions. He attributed appellant's disability for April 4 to 22, 2016 to an exacerbation of lumbosacral and sciatic nerve radiculopathy.

In a May 9, 2016 disability note, Mr. Fox indicated that appellant was disabled from work for the period May 9 to June 13, 2016.

In a June 13, 2016 report, Dr. Sen diagnosed low back pain, most likely myofascial. Under history, he attributed appellant's low back pain to an old injury, which he opined should have healed. Appellant's past medical history included diagnoses of right knee osteoarthritis, lumbosacral spondylosis without myelopathy, low back pain, lumbago, lower limb benign neoplasm, lumbosacral and lumbar intervertebral disc degeneration, joint pain, medial meniscus derangement, lumbar degenerative disc disease, myofascial myalgia/myositis, lumbar radiculopathy, and lumbar spondylosis. A physical examination revealed diffuse lumbosacral region tenderness; increased low back pain, pressure over the shoulders; and exaggerated responses. Dr. Sen noted inconsistent findings, exaggerated responses, and recommended an FCE to determine a permanent job description.

In a letter dated June 21, 2016, OWCP noted receipt of CA-7 forms for the period May 30, 2016 and continuing and that the evidence received was insufficient to support appellant's claim. It afforded him 30 days to submit evidence supporting his claim for wage-loss compensation.

Subsequent to it June 21, 2016 letter OWCP received additional evidence including a report from Dr. Haskins, OWCP's second opinion physician.

In a June 7, 2016 report, Dr. Haskins noted appellant's history of injury as well as his medical history. He related that appellant was involved in a nonwork-related motor vehicle accident in 2008 at which time he sustained a back injury. Appellant was able to return to normal activities in 2010. Dr. Haskins diagnosed aggravation of lumbar degenerative disc and probable peripheral neuropathy. He related that he could not determine whether the aggravation was temporary or permanent and required medical records from 2008 to 2014 for that determination. Appellant's examination findings included negative bilateral straight leg raising testing when sitting, negative Fabere sign with full bilateral hip range of motion, depressed knee reflexes, normal ankle reflexes, negative flip and Lasegue tests, pain in pelvic region and lower

midline lumbar spine, full extension, 20 degrees flexion, and inability to bilaterally heel and toe stand. Dr. Haskins explained that he had not examined appellant prior to June 7, 2016, therefore, he was unable to provide an opinion on periods of disability due to the accepted employment conditions except that as of June 7, 2016 appellant was not disabled. In an attached June 7, 2016 work capacity evaluation form (Form OWCP-5c), he provided work restrictions and recommended a sedentary position.

In prescription notes dated June 13, 2016, Dr. Sen prescribed an FCE and indicated that appellant was out of work until July 11, 2016.

On June 28, 2016 Dr. Sen saw appellant for a follow-up visit for back pain complaints. He diagnosed lumbar radiculopathy, lumbar degenerative disc disease, lumbar spondylosis, and chronic low back pain. Dr. Sen related that appellant's physical examination revealed decreased lumbar range of motion and diffuse tenderness on palpation.

Dr. Sen, in office visit notes dated July 5 and 12, 2016, reported that appellant was seen for employment-related chronic low back pain. In the July 5, 2016 note, he reported that in April 2016 he determined that appellant was totally disabled due to an acute exacerbation of his symptoms and was to remain out of work pending an FCE.

An FCE was performed on July 6, 2016 which showed appellant was capable of performing light work for four hours per day or may be able to perform sedentary work for eight hours per day. The report noted a diagnosis of myofascial pain, lumbar radiculopathy, low back pain/lumbago, thoracic and lumbar sprains/strains, and lumbar back pain/S1 facet syndrome.

On July 12, 2016 Dr. Sen released appellant to return to four hours of light-duty work on July 18, 2016 based on the FCE.

In a July 12, 2016 disability note, Mr. Fox indicated that appellant was disabled from work for the period July 12 to 18, 2016 and could return to light-duty work on July 18, 2016.

In an OWCP-5c form and attending physician's report (Form CA-20) dated July 12, 2016, Dr. Sen indicated that appellant was capable of working four hours per day with restrictions based on an FCE. On the Form CA-20 he diagnosed lumbar degenerative disc disease, lower back pain, and lumbar spondylosis. Dr. Sen noted that appellant was totally disabled from work for the period April 18 to July 18, 2016 and partially disabled from July 18, 2016 onward.

By decision dated August 4, 2016, OWCP denied appellant's claim for wage-loss compensation for the period January 11 through February 5, 2016.

In a separate decision dated August 4, 2016, OWCP denied appellant's claim for wage-loss compensation for the period April 18, 2016 and continuing.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 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 When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence to show that he or she cannot perform the limited-duty position. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty requirements.¹⁰

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 their disability and entitlement to compensation.¹¹

ANALYSIS

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish total disability during the periods January 11 through February 5, and April 18, 2016 and continuing due to the accepted October 29, 2014 employment injury. None of the physicians of record provided a clear, medically-reasoned explanation as to why appellant could not work full time in his light-duty job for the specific claimed periods because of the accepted October 29, 2014 work injury.¹²

⁵ *Supra* note 2.

⁶ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel A. Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁷ See *Amelia S. Jefferson, id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

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

⁹ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

¹⁰ See *D.K.*, Docket No. 15-665 (issued August 10, 2015).

¹¹ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹² *Id.*

OWCP accepted that appellant sustained lumbar sprain, exacerbation of preexisting nonwork related lumbosacral radiculopathy, and exacerbation of preexisting nonwork-related lumbar intervertebral disc displacement due to the accepted October 29, 2014 work injury. Appellant returned to a light-duty job on May 11, 2015.

The record contains disability notes and reports from Dr. Sen. On January 6, 2016 Dr. Sen opined that appellant was disabled from work for the period January 4 to 11, 2016 and released him to return to light-duty work from January 11 to February 11, 2016. In reports dated June 13 and 28, 2016, he noted a medical history and provided examination finding. Dr. Sen's diagnoses included chronic low back pain, lumbar degenerative disc disease, lumbar spondylosis, and lumbar radiculopathy. In a June 13, 2016 prescription note, he indicated that appellant was disabled from work until July 11, 2016. In an office visit note dated July 5, 2016, Dr. Sen reported that appellant was totally disabled from work beginning in April 2016 due to an aggravation of his symptoms. He released appellant to return to four hours of light-duty work in a July 12, 2016 office visit note. In a July 12, 2016 Form CA-20, Dr. Sen diagnosed lumbar degenerative disc disease, lumbar spondylosis, and lower back pain. He noted a period of total disability from April 18 to July 18, 2016 and partial disability from July 18, 2016 and continuing. However, none of the medical evidence provided a medical opinion, supported by rationale and objective findings, that appellant could not work due to objective worsening of the accepted conditions.¹³ Thus, these reports from Dr. Sen are insufficient to establish appellant's claim.

Appellant also submitted reports and disability notes from Dr. Janus. Dr. Janus, in a January 21, 2016 disability note, indicated that appellant was disabled from work from January 25 to 31, 2016 and was released to return to work with no restrictions on February 1, 2016. In progress notes dated January 28, 2016, he provided examination findings, noted the history of injury, and diagnosed back pain and lumbosacral radiculopathy. On February 25, 2016 Dr. Janus released appellant to return to work on February 29, 2016. On April 1, 2016 he released appellant to return to working four hours per day. In an April 8, 2016 disability certificate, Dr. Janus opined that appellant was totally disabled for the period April 4 to 22, 2016 due to an aggravation of his lumbosacral radiculopathy and sciatic nerve. On April 26, 2016 he opined that appellant was disabled from work from January 25 to 31, 2016. Dr. Janus also failed to submit a medical opinion, supported by rationale and objective findings, explaining how appellant's disability for the periods in question was related to the accepted conditions.¹⁴ Thus, these reports from Dr. Sen are insufficient to establish appellant's claim.

As noted, appellant must submit rationalized medical evidence supporting causal relationship between the disabling condition and the accepted injury. Furthermore, the medical evidence must directly address the specific dates of disability for work for which compensation is claimed.¹⁵ The need for medical rationale is particularly important where the record shows

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *C.S.*, Docket No. 08-2218 (issued August 7, 2009); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

that appellant has a preexisting degenerative disc disease condition.¹⁶ None of the physicians of record provided a discussion of how any objective medical findings attributable to the accepted conditions supported that appellant could not perform his job duties for the specific claimed periods or how his condition had worsened.

Appellant also submitted medical evidence from Mr. Fox, a certified physician assistant. However, certified physician assistants are not considered physicians under FECA.¹⁷ Thus, these records are of no probative medical value in establishing appellant's claim.

Appellant also submitted physical therapy reports. These reports are insufficient to establish appellant's claim because physical therapists are not considered physicians under FECA and the opinion, therefore, is of no probative value.¹⁸

Finally, the Board notes that OWCP also received a June 7, 2016 report from Dr. Haskins, an OWCP second opinion physician. Dr. Haskins opined that as of the date of his examination appellant was not totally disabled due to the accepted employment injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability for the periods January 11 through February 5, and April 18, 2016 and continuing, causally related to the accepted October 29, 2014 employment injury.

¹⁶ See *R.M.*, Docket No. 17-339 (issued March 24, 2017).

¹⁷ 5 U.S.C. § 8101(2); Section 8101(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *L.L.*, Docket No. 13-829 (issued August 20, 2013) (a physician assistant is not a physician under FECA). See 5 U.S.C. § 8101(2). This subsection defines the term physician. See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

¹⁸ See *id.*, 5 U.S.C. § 8101(2); see also *Jane A. White*, 34 ECAB 515 (1983). A physical therapist is not a physician under FECA; see also *E.W.*, Docket No. 16-1729 (issued May 12, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 4, 2016 are affirmed.

Issued: November 20, 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