

ISSUES

The issue is whether appellant met her burden of proof to establish total disability for the period May 31 to June 22, 2016 causally related to her accepted February 13, 2014 employment injury.

FACTUAL HISTORY

On February 15, 2014 appellant, then a 40-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that she sustained neck, back, lumbar spine, left hip, and right knee injuries when she was involved in a motor vehicle accident while delivering mail on February 13, 2014. Appellant stopped work on the date of injury and did not return. OWCP accepted the claim for a head contusion. The record indicates that appellant was paid wage-loss compensation on the supplemental rolls for the period February 14 to May 16, 2014.

By letter dated March 19, 2014, the employing establishment advised OWCP that it had terminated appellant's employment, effective March 8, 2014.

In an August 26, 2014 memorandum to file, OWCP reported that appellant had been employed less than one year and that the employing establishment had terminated her employment during her probationary period. It reported that she had been released to full-duty work pursuant to a medical report dated May 16, 2014.

By decisions dated July 29 and August 7, 2015, OWCP advised appellant that her claim had been expanded to include the acceptance of the conditions of right lateral collateral knee ligament sprain, hip and thigh sprain, and lumbar sprain.

On September 16, 2015 OWCP referred appellant to Dr. Gordon S. Jones, a Board-certified orthopedic surgeon and urologist, for a second opinion evaluation to determine whether appellant continued to have residuals from the accepted February 13, 2014 employment injury and to determine her work capacity. An attached statement of accepted facts (SOAF) noted that appellant's claim had been accepted for head contusion (contusion face, scalp, and neck except eyes), right lateral collateral knee ligament sprain, hip and thigh sprain, and lumbar sprain; that she had been involved in a motor vehicle accident on February 23, 2014 while on duty; that she stopped work the date of injury; and that the employing establishment terminated her employment on March 8, 2014.

In an October 1, 2015 report, Dr. Jones, following review of the medical records, appellant's history of injury, and a physical examination reported persistent knee, lumbar, and hip pain following the accepted February 13, 2014 employment injury. He noted that appellant had been diagnosed with right knee and left hip contusions, and lumbar spine disc bulge. A physical examination revealed pain with full range of motion, lower back tenderness and pain, left hip pain with full range of motion and internal rotation, 1+ right knee effusion, and right knee full range of motion with some diffuse tenderness. Dr. Jones reviewed x-ray interpretations of the lumbar spine and knee, which he reported were negative. He determined that appellant had no residuals from her accepted employment injury and was capable of performing her date-

of-injury position. Dr. Jones observed that appellant's work capacity was limited only by her own tolerance.

In a February 8, 2016 supplemental report, Dr. Jones reviewed lumbar and knee MRI scans, which were unavailable at the time of his prior report. After reviewing the MRI scans, Dr. Jones concluded that there was no objective evidence of any lumbar or right knee residuals causally related to the accepted February 13, 2014 employment injury.

In letters dated March 30 and April 2, 2016, appellant requested that OWCP expand her claim to include consequential conditions of left greater trochanteric bursa and sciatica and facet arthropathy. In letters dated April 15 and 18, 2016, she requested that OWCP accept lumbar radiculopathy as causally related to her accepted February 13, 2014 employment injury. Appellant subsequently requested a formal decision regarding expansion of her claim.

In a May 31, 2016 attending physician's report (Form CA-20), Dr. Michael Winkelmann, a treating Board-certified physiatrist, diagnosed left sciatica and lumbar disc disorder and checked a boxed marked "yes" in response to the question of whether the diagnosed conditions were caused or aggravated by the accepted February 13, 2014 employment injury. In support of this conclusion, he explained that appellant had been driving a vehicle for the employing establishment at the time of injury. Dr. Winkelmann concluded that appellant was totally disabled from work for the period February 13, 2014 through May 31, 2016 and was discharged from medical care on May 31, 2016.

In a June 8, 2016 report, Dr. Jeffrey T. Summers, Board-certified in pain medicine and anesthesiology, diagnosed lumbar spondylosis, hip pain, and resolved lumbar radiculopathy. He provided examination findings and recommended L5-S1 facet injections.

On June 22, 2016 appellant filed a Form CA-7 claim for compensation for disability from work during the period May 31 to June 22, 2016. In a letter dated June 27, 2016, OWCP noted that the evidence received was insufficient and advised her of the type of factual and medical evidence needed to support her claim. It afforded appellant 30 days to provide the requested information.

In a letter dated June 28, 2016, appellant requested that OWCP expand acceptance of her claim to include left sciatica, lumbar disc disorder, L4-5 facet arthropathy, and left greater trochanteric bursa pain as causally related to the accepted February 13, 2014 employment injury. She also requested that it issue a formal decision regarding this request.

In a separate June 28, 2016 letter, appellant contended that a February 28, 2014 report by Dr. James Medlin established that she was disabled from work, that the employing establishment erred in its termination of her employment, and that she was entitled to wage-loss compensation. In support of her claim for disability from work for the period May 31 to June 22, 2016, she submitted a June 8, 2016 report from Dr. Winkelmann. Dr. Winkelmann found that appellant had no significant new problems, but reported that appellant related having persistent pain in the left greater trochanteric bursa distribution. He prescribed physical therapy for appellant's lower back pain.

By correspondence dated July 2 and 17, 2016, appellant argued that she was entitled to wage-loss compensation due to her accepted February 13, 2014 employment injury. She further argued that the medical evidence submitted supported an expansion of her claim and continuing disability and that OWCP improperly terminated her compensation benefits based on the opinion of Melissa Copper, a nurse practitioner.

By decision dated August 26, 2016, OWCP denied appellant's claim for total disability for the period May 31 to June 22, 2016. It found that the evidence of record was insufficient to establish that she was totally disabled from work during the claimed period due to her accepted February 13, 2014 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁵ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled from work as a result of the accepted employment injury.⁶ 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.⁷

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.⁸ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁹ 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 her employment, she is entitled to compensation for any loss of wages.¹⁰

ANALYSIS

OWCP initially accepted appellant's claim for head contusion and left hip, right knee, and lumbar sprains. Appellant received compensation for total disability through May 16, 2014. She thereafter filed claims for compensation (Form CA-7) for wage-loss compensation benefits, including her claim for total disability for the period May 31 to June 22, 2016.

⁴ *Supra* note 2.

⁵ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel A. Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁶ See *Amelia S. Jefferson, id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

⁷ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁸ *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).

⁹ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹⁰ *Merle J. Marceau*, 53 ECAB 197 (2001).

By decision dated August 26, 2016, OWCP denied appellant's claim for total disability from May 31 to June 22, 2016, finding that appellant failed to submit medical evidence sufficient to establish disability from work causally related to the accepted February 13, 2014 employment injury.

In support of her claim for total disability for the period in question, appellant submitted reports from Drs. Summers and Winkelmann. In his June 8, 2016 report, Dr. Dr. Summers diagnosed lumbar spondylosis, hip pain, and resolved lumbar radiculopathy. He provided examination findings and recommended L5-S1 facet injections. Similarly, Dr. Winkelmann, in his June 8, 2016 report, determined that appellant had no significant new problems, although appellant had complained of persistent pain in the left greater trochanteric bursa distribution. Dr. Winkelmann prescribed physical therapy for appellant's lower back pain. Neither of these reports submitted in support of appellant's claim for compensation opine that appellant was disabled from work during the period May 31 to June 22, 2016 causally related to the accepted February 13, 2014 employment injury. As previously noted, 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 employees to self-certify their disability and entitlement to compensation.¹¹

The May 31, 2016 Form CA-20 report from Dr. Winkelmann is the only report of record which addresses disability from work during the claimed period. Dr. Winkelmann diagnosed left sciatica and lumbar disc disorder, which he attributed to the February 13, 2014 employment injury and opined that appellant was totally disabled for the period February 13, 2015 to May 31, 2016. However, Dr. Winkelmann did not explain whether appellant's disability on May 31, 2016 was causally related to the accepted employment conditions of head contusion and left hip, right knee, and lumbar sprains, nor did he otherwise provide medical reasoning explaining why any current condition or disability was due to the accepted employment injury.¹² Dr. Winkelmann merely correlated in general terms that appellant's conditions were caused by the work-related injury. The Board has held that generalized statements do not establish causal relationship because they are unsupported by adequate medical rationale explaining how the specific physical activity actually caused the diagnosed conditions.¹³ For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relationship, not OWCP's burden to disprove such a relationship.¹⁴ Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹⁵ Dr. Winkelmann provided no opinion on whether appellant continued to be disabled through June 22, 2016, noting only that he discharged appellant from his medical care on May 31, 2016. As noted above, the Board will not

¹¹ *Supra* note 8.

¹² *See C.L.*, Docket No. 16-0004 (issued June 14, 2016).

¹³ *L.M.*, Docket No. 16-0188 (issued March 24, 2016); *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹⁴ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

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.¹⁶

As there is no rationalized medical evidence establishing that appellant was totally disabled from work during the period May 31 to June 22, 2016 due to the accepted employment conditions, the Board finds that appellant has failed to meet her burden of proof. The relevant medical reports of record are insufficient to establish total disability for the claimed period due to the accepted employment injury.¹⁷

On appeal appellant contends that OWCP failed to meet its burden of proof to terminate her compensation as it based her release to work on a report from a nurse practitioner. Appellant also contends that OWCP used an incorrect legal standard in its decisions, failed to give her a chance to timely exercise her appeal rights, and improperly denied continuation of pay. Contrary to appellant's contentions, the record contains no decision from OWCP terminating her benefits. The record also contains no evidence that appellant was placed on the periodic rolls for temporary total disability. Thus, it was appellant's burden of proof to establish entitlement to wage-loss compensation. As explained above, the medical evidence of record is insufficient to meet appellant's burden of proof.

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 her burden of proof to establish total disability for the period May 31 to June 22, 2016 causally related to her accepted February 13, 2014 employment injury.

¹⁶ *Supra* note 8.

¹⁷ Although appellant was referred to Dr. Jones for a second opinion, his October 1, 2015 report predates the period of disability at issue in this case and is therefore not relevant to the issue presented.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 26, 2016 is affirmed.

Issued: October 17, 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