

FACTUAL HISTORY

OWCP accepted that on March 5, 2015 appellant, then a 37-year-old letter carrier, suffered a neck sprain, thoracic sprain, lumbar sprain, lumbosacral radiculitis, and a displaced lumbar disc when stepping out of his delivery vehicle while lifting a package. Appellant received continuation of pay from March 6 to April 19, 2015.

Dr. J. Arden Blough, an attending Board-certified family practitioner, provided reports from March 6 to April 6, 2015 describing the history of injury and diagnosed acute thoracic and lumbar strains, lumbar radiculopathy, and displacement of a lumbar disc. He held appellant off work. Dr. Blough ordered an April 1, 2015 lumbar imaging study which demonstrated disc protrusions at L1-2 and L4-5, and annular disc bulges at L2-3 and L3-4.

Dr. Troy W. Jackson, a chiropractor, diagnosed multiple cervical, thoracic, and lumbar subluxations based on April 6, 2015 x-rays. He provided manual manipulation therapy through May 7, 2015.

An April 15, 2015 MRI scan study of the cervical spine demonstrated C5-6 and C6-7 disc protrusions, foraminal stenosis at C3-4 and C7-T1, and loss of cervical lordosis consistent the paraspinal muscle spasm.

Following continuation of pay, OWCP paid compensation for intermittent work absences from April 20 to July 24, 2015. Appellant worked light duty for four hours a day during this period.

Appellant was followed by Dr. Christopher Shane Hume, an attending Board-certified orthopedic surgeon, who provided reports from April 21 to July 29, 2015 diagnosing a lumbosacral strain, C6-7 disc herniation, cervical stenosis, cervical radicular syndrome, and lumbar radiculopathy. Dr. Hume released appellant to full duty as of July 29, 2015.

Appellant was also followed from May 18, 2015 to August 25, 2016 by Dr. Jeffrey P. Meyer, an attending Board-certified anesthesiologist, who diagnosed cervical radiculopathy, cervical degenerative disc disease, brachial neuritis, and lumbosacral disc degeneration. Dr. Meyer performed a series of epidural steroid injections, and prescribed medication and physical therapy.³

OWCP paid wage-loss compensation from November 17 to 21, 2015. Appellant returned to full duty on November 23, 2015.⁴

On April 21, 2016 Dr. Michael Reed, Jr., an attending osteopathic physician Board-certified in family practice, diagnosed cervical degenerative disc disease, cervical radiculopathy, and cervical neuritis.

³ Appellant participated in physical therapy from April to June 2015.

⁴ On June 12, 2015 appellant filed a claim for a schedule award (Form CA-7). By decision dated December 11, 2015, OWCP denied appellant's schedule award claim, finding that the medical evidence did not establish a permanent impairment of a scheduled member.

Appellant sought pain management from Dr. Terrell Phillips, an attending osteopathic physician Board-certified in anesthesiology, who submitted an April 27, 2016 drug screening policy and November 21, 2016 laboratory reports.

On December 6, 2016 appellant filed a claim for compensation (Form CA-7) for the period November 28 to December 9, 2016, while working six hours a day with restrictions, and absences on December 1, 7, and 9, 2016.

In a December 14, 2016 letter, OWCP notified appellant of the additional evidence needed to establish his claim, including a report from his attending physician explaining how and why the accepted conditions would disable him from work from November 28, 2016 onward. It afforded appellant 30 days to submit such evidence.

In response, appellant provided a November 21, 2016 report from Erin Rowland-Brooks, a physician assistant. He also submitted a November 24, 2016 report from Dr. Phillips, restricting him to working limited duty for six hours a day “until released.”

Appellant worked six hours a day from December 1 to 9 and December 20, 2016, December 27, 2016 to January 6, 2017, and two hours a day from January 9 to 13, 2017. He continued to file claims for compensation (Form CA-7) for work absences.

By decision dated January 2, 2017, OWCP denied appellant’s claim for wage-loss compensation for total disability beginning November 28, 2016. It found that he submitted no medical evidence directly addressing total or partial disability for the claimed period. OWCP noted that the November 21, 2016 report from the physician assistant was not medical evidence as physician assistants are not considered physicians under FECA.

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 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

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).

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.⁹

ANALYSIS

OWCP accepted a neck sprain, thoracic sprain, lumbar sprain, lumbosacral radiculitis, and a displaced lumbar disc due to the March 5, 2015 injury. Appellant received wage-loss compensation for intermittent work periods through November 21, 2015. He remained under medical care.

Appellant filed claims for compensation (Form CA-7) for the period November 28, 2016 and continuing. He has the burden of establishing, by the weight of the substantial, reliable, and probative evidence, that he was disabled for work for the claimed period due to the accepted injuries.¹⁰

In support of his claim, appellant submitted a November 21, 2016 report from a physician assistant. Physician assistants are not considered physicians as defined by section 8101(2) of FECA.¹¹ Therefore, this report is of no probative value for the purposes of this case.¹²

Appellant also provided a November 24, 2016 report from Dr. Phillips, an attending Board-certified anesthesiologist, restricting appellant to working no more than six hours a day limited duty for an indefinite period of time. Dr. Phillips did not specify if these restrictions were still in effect as of November 28, 2016. As Dr. Phillips did not opine that the accepted injuries disabled appellant from work beginning on November 28, 2016, his opinion is insufficient to meet appellant's burden of proof.¹³

The Board notes that OWCP advised appellant by December 14, 2016 letter of the type of evidence needed to establish his claim, including a physician's well-reasoned explanation of how the accepted injuries disabled him for work for the dates claimed. However, appellant failed to submit such evidence. Therefore, the Board finds that appellant failed to meet his burden of proof to establish total disability from November 28, 2016 forward due to his accepted employment injury.

On appeal appellant contends that OWCP wrongfully denied compensation for work absences mandated by his physician. He notes that he remains under medical treatment for

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

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

¹¹ 5 U.S.C. § 8101(2).

¹² *J.M.*, 58 ECAB 303 (2007). See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA).

¹³ *Supra* note 9.

cervical spine conditions. As noted above, appellant failed to submit sufficient rationalized evidence to establish disability for the claimed period due to his accepted conditions.

Appellant may submit additional 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 total disability for the period November 28, 2016 and continuing, causally related to his accepted March 5, 2015 injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 27, 2017 is affirmed.

Issued: October 10, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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