

**United States Department of Labor  
Employees' Compensation Appeals Board**

E.B., Appellant	)	
	)	
and	)	Docket Nos. 17-0875
	)	Issued: December 13, 2018
U.S. POSTAL SERVICE, POST OFFICE,	)	
Macon, GA, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 13, 2017 appellant filed a timely appeal from two February 15, 2017 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the February 15, 2017 decisions, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish total disability during the periods March 30 to May 15, 2015; October 8 to December 2, 2015; and December 21, 2015 to April 2, 2016 as causally related to her accepted February 13, 2014 employment injury.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts of the case as presented in the prior appeal are incorporated herein by reference. The relevant facts are as follows.

On February 15, 2014 appellant, then a 40-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 2014 she sustained neck, back, lumbar spine, left hip, and right knee injuries when she was involved in a motor vehicle accident while delivering mail. She stopped work on February 13, 2014 and has not returned. OWCP initially accepted the claim for 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.

In a 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 terminated her during her probationary period. It reported that she had been released to full-duty work in a medical report dated May 16, 2014.

On March 30, 2015 appellant was examined by Dr. Kathleen Warner, a Board-certified internist, who diagnosed lumbosacral, right knee, and left hip sprains and lumbar radiculopathy. She noted that appellant had been involved in a motor vehicle accident while delivering mail on February 13, 2014 and that the claim had been accepted for head contusion only. Dr. Warner provided a medical history and details of the February 13, 2014 motor vehicle accident. She noted that appellant had been disabled from work since February 13, 2014 and that the employing establishment terminated appellant's employment on March 8, 2014 based on her failure to report to work. Dr. Warner related that the mechanism of injury was consistent with the diagnosed low back conditions.

In a March 30, 2015 duty status report (Form CA-17), Dr. Warner noted a February 13, 2014 injury and provided work restrictions.

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<sup>3</sup> Docket No. 16-1838 (issued October 17, 2017). The Board notes that one of the February 15, 2017 decisions presently on appeal addressed the issue of whether appellant was disabled from work for the period May 31 to June 22, 2016. On September 16, 2016, however, the Board had acquired jurisdiction over that period of wage loss under Docket No. 16-1838. The Board and OWCP may not have concurrent jurisdiction over the same issue in a case. Thus, the Board finds that the February 15, 2017 decision is null and void with respect to the period of wage-loss claimed for the period May 31 to June 22, 2016. See *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990); see also 20 C.F.R. § 501.2 (c)(3).

On May 18, 2015 appellant filed a claim for wage-loss compensation (Form CA-7) for disability during the period March 30 to May 18 2015.

By development letter dated May 22, 2015, OWCP informed appellant that additional evidence was needed to establish disability from work during the period March 30 to May 18, 2015. It advised her of the type of medical evidence required and afforded her 30 days to provide the necessary evidence.

In a report dated June 1, 2015, Dr. Rhett Krone, an emergency medicine physician, provided examination findings. He opined that appellant's motor vehicle accident aggravated a chronic underlying lumbosacral condition as she had no pain prior to the accident. Dr. Krone observed that her symptoms were suggestive of L4-5 radiculopathy.

On July 7, 2015 OWCP denied appellant's claim for wage-loss compensation for the period March 30 to May 18, 2015.

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

On August 3, 2015 appellant requested a review of the written record of the July 7, 2015 decision by an OWCP hearing representative.

On September 16, 2015 OWCP referred appellant to Dr. Gordon S. Jones, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether she continued to have residuals or disability from the accepted February 3, 2014 employment injury.

In an October 1, 2015 report, Dr. Jones, following review of the medical records, as well as appellant's history of injury and physical examination, reported persistent knee, lumbar, and hip pain following the accepted February 13, 2014 employment injury. He noted that she had been diagnosed with right knee and left hip contusions, and lumbar spine pain. 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 her work capacity was "limited only by her own tolerance."

Appellant filed additional Form CA-7 claims for wage-loss compensation for disability during the period October 8 to December 2, 2015.

By development letters dated November 2 and December 9, 2015, OWCP advised appellant that additional evidence was needed to establish disability from work during the period October 8 to December 2, 2015. It advised her of the type of medical evidence required and afforded her 30 days to provide the requested evidence.

By decision dated January 19, 2016, an OWCP hearing representative affirmed the July 7, 2015 decision denying appellant's claim for wage-loss compensation for the period March 30 to May 15, 2015.<sup>4</sup>

By decision dated January 29, 2016, OWCP denied appellant's claims for wage-loss compensation for the period October 8 to December 2, 2015.

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, he 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 a March 2, 2016 report, Dr. Jeffrey T. Summers, Board-certified in pain medicine and anesthesiology, noted that appellant was seen for injuries sustained as the result of a motor vehicle accident in February 2014. Physical examination findings were provided and he diagnosed hip pain and lumbar spondylosis.

On March 26, 2016 OWCP received a January 12, 2016 report from Dr. Michael Winkelmann, a treating Board-certified physiatrist. Dr. Winkelmann noted appellant's employment and injury histories, provided physical examination findings. He noted an MRI scan showed no abnormalities. Dr. Winkelmann reported that appellant had been diagnosed with scalp contusion, right hip contusion, lumbar strain, and left-side sciatica, which he attributed to the work motor vehicle accident. In a March 23, 2016 progress report, he noted that she was given a facet injection for pain relief.

On April 2, 2016 OWCP received a December 21, 2015 report from Dr. Philip Lee, a Board-certified internist. Dr. Lee indicated that appellant had been seen for low back pain. He reported that she had been involved in a motor vehicle accident approximately one year prior. Dr. Lee diagnosed lumbar strain, scalp and right hip contusions, and left-side sciatica.

On April 4, 2016 appellant filed a Form CA-7 claim for wage-loss compensation during the period December 21, 2015 to April 2, 2016.

In a development letter dated April 11, 2016, OWCP informed appellant that the medical evidence did not establish that she was disabled from work for the period claimed in the CA-7 form received on April 4, 2016. It advised her as to the type of medical evidence required and afforded her 30 days to provide the necessary evidence.

Dr. Summers, in reports dated April 6 and May 4, 2016, diagnosed lumbar spondylosis and lumbar radiculopathy. He noted that appellant continued to have pain radiating down her back into her left lower extremity. Physical examination findings were provided and Dr. Summers recommended bilateral L4-5 facet injection.

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<sup>4</sup> The Board notes that the CA-7 form filed by appellant requested compensation commencing March 30, 2015 and ending May 18, 2015.

By decision dated May 25, 2016, OWCP denied appellant's claim for wage-loss compensation for the period December 21, 2015 to April 2, 2016. It found that none of the medical reports submitted addressed her ability to work. OWCP noted that the medical reports of record lacked work restrictions and medical opinion regarding appellant's work capacity.

On June 14, 2016 appellant requested reconsideration of the January 19, 2016 decision denying her claim for wage-loss compensation from March 30 to May 15, 2015.<sup>5</sup> On November 10, 2016 she requested reconsideration of the January 29, 2016 decision denying her claim for wage-loss compensation for the period October 8 to December 2, 2015 and the May 25, 2016 decision denying her claim for wage-loss compensation for the period December 21, 2015 to April 2, 2016.

By decision dated December 16, 2016, OWCP denied modification of the January 19, 2016 decision. It found that the evidence of record was insufficient to establish total disability for the period March 30 to May 15, 2015. Appellant requested reconsideration on January 4, 2017 and, by decision dated February 15, 2017, OWCP denied modification of its December 16, 2016 decision denying her claim for wage-loss compensation for the period March 30 to May 15, 2015.

By separate decision also dated February 15, 2017, OWCP denied modification of its January 29 and May 25, 2016 decisions, which denied appellant's claims for wage-loss compensation for the periods October 8 to December 2, 2015 and December 21, 2015 through April 2, 2016.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>7</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>8</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>9</sup>

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.<sup>10</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn

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<sup>5</sup> See *id.* The Board notes that OWCP has not adjudicated total disability for the period May 16 to 18, 2015.

<sup>6</sup> *Supra* note 1.

<sup>7</sup> See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel A. Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

<sup>8</sup> See *Amelia S. Jefferson, id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

<sup>9</sup> See *Edward H. Horton*, 41 ECAB 301 (1989).

<sup>10</sup> *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).

wages.<sup>11</sup> 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.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not established total disability during the periods March 30 to May 15, 2015; October 8 to December 2, 2015; and December 21, 2015 to April 2, 2016.

The Board finds initially that appellant has not established total disability during the period March 30 to May 15, 2015.

In support of this period of disability, OWCP received reports from Dr. Warner and Dr. Krone. Dr. Warner diagnosed lumbosacral, right knee and hip strains, as well as lumbar radiculopathy. She also related that appellant had been disabled from work since February 13, 2014. Dr. Warner, however, did not explain why appellant was disabled during this time period due to objective medical findings. To establish a period of disability the medical evidence must provide a discussion of how objective medical findings attributable to the accepted conditions support a finding that appellant could not perform her job duties.<sup>13</sup>

Dr. Krone provided examination findings and opined that the accepted employment incident aggravated a chronic underlying lumbosacral condition, however, he offered no opinion regarding appellant's disability status. 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.<sup>14</sup>

The Board, therefore, finds that appellant has not established total disability during the period March 30 to May 15, 2015 causally related to her accepted February 13, 2014 employment injury.

The Board also finds that appellant has not met her burden of proof to establish total disability for the periods October 8 to December 2, 2015 and December 21, 2015 through April 2, 2016 causally related to her accepted February 13, 2014 employment injury.

In support of her claims for wage-loss compensation for the periods in question, appellant submitted reports from Drs. Lee, Summers, and Winkelmann. Dr. Lee noted that appellant had been involved in a motor vehicle accident the prior year, provided physical examination findings, and diagnosed scalp and right hip contusion, left sciatica, and lumbar strain. Dr. Summers

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<sup>11</sup> *Roberta L. Kaamoana*, 54 ECAB 150 (2002).

<sup>12</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>13</sup> *See W.E.*, Docket No. 17-0451 (issued November 20, 2017).

<sup>14</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

provided examination findings and diagnoses including hip pain, lumbar spondylosis and lumbar radiculopathy. None of the reports from Drs. Lee or Summers addressed any specific dates of disability. 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.<sup>15</sup>

The May 31, 2016 Form CA-20 report from Dr. Winkelmann is the only report addressing a period of disability. He 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 relate her disability to the accepted conditions. As noted above, OWCP only accepted the conditions of face, scalp, and neck contusions, right knee, hip, thigh and lumbar sprains. Appellant has the burden of proof to establish causal relationship between the conditions not accepted by OWCP and the February 13, 2014 employment injury.<sup>16</sup>

Dr. Winkelmann did not specifically explain whether appellant's disability between October 8 to December 2, 2015, and from December 21, 2015 and April 2, 2016 was causally related to the accepted employment conditions or otherwise provide medical reasoning explaining why any current condition or disability was due to the employment injury.<sup>17</sup> He failed to address how the February 13, 2014 employment injury caused the currently diagnosed conditions of left sciatica and lumbar disc disorder. Rather, Dr. Winkelmann correlated in general terms that appellant's conditions were caused by accepted work injury. Generalized statements do not establish causal relationship because they are unsupported by adequate medical rationale.<sup>18</sup> For conditions not accepted by OWCP as being employment related, it is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden of proof to disprove such a relationship.<sup>19</sup> Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>20</sup>

Dr. Jones, OWCP's second opinion physician, completed a report on October 1, 2015 describing appellant's history of injury as well as his examination findings. He opined that she no longer had residuals or disability due to her accepted employment injuries. Dr. Jones also opined that appellant was capable of performing her date-of-injury job. In a February 8, 2016

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<sup>15</sup> *Supra* note 12.

<sup>16</sup> *Michael S. Mina*, 57 ECAB 379 (2006); *Kimper Lee*, 45 ECAB 565 (1994); *Thomas D. Petrylak*, 39 ECAB 276 (1987).

<sup>17</sup> *See C.L.*, Docket No. 16-0004 (issued June 14, 2016).

<sup>18</sup> *L.M.*, Docket No. 16-0188 (issued March 24, 2016); *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

<sup>19</sup> *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>20</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

supplemental report, he reviewed lumbar and knee MRI scans and found no objective evidence of any condition causally related to the accepted February 13, 2014 employment injury.

The relevant medical reports do not support appellant's allegations of periods of total disability due to her accepted employment injury for the periods October 8 to December 2, 2015, December 21, 2015 to April 2, 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 has not met her burden of proof to establish total disability during the periods March 30 to May 15, 2015; October 8 to December 2, 2015; and December 21, 2015 to April 2, 2016.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 15, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 13, 2018  
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