

ISSUE

The issue is whether appellant met his burden of proof to establish total disability from work for the period January 20 to March 29, 2015, causally related to a November 18, 2014 employment injury.

FACTUAL HISTORY

On November 18, 2014 appellant, then a 59-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that he sustained injuries to his face, neck, shoulder, and back as a result of a work-related motor vehicle accident (MVA).⁴

Appellant was treated on November 18, 2014 at an urgent care facility (PrimeCare) for complaints of left ear pain and neck pain radiating to the top of his left shoulder. Dr. Ellen Rodriguez, an emergency medicine specialist, diagnosed cervical sprain and left shoulder sprain. Appellant was restricted from driving for one day, and advised to avoid overtime and excessive lifting (greater than 20 pounds), pulling, and carrying. A November 18, 2014 left shoulder x-ray revealed degenerative arthropathy of the glenohumeral and acromioclavicular (AC) joints, without evidence of acute fracture or dislocation. A November 18, 2014 cervical spine x-ray revealed advance degenerative disc disease at C5-6 and C6-7, with slight retrolisthesis and reversal of the normal cervical lordosis.

In a November 20, 2014 urgent care follow-up report, appellant was noted to complain of back spasms, mostly on the right side. A November 20, 2014 lumbar spine x-ray revealed multi-level degenerative disc disease without acute abnormality. Dr. Rodriguez provided an additional diagnosis of lumbar sprain. She also noted that appellant's shoulder pain/sprain had resolved. Appellant received renewed work restrictions based on his low back and neck complaints.⁵

Appellant saw Dr. Rodriguez again on December 4, 2014 with "no change" in the prior work restrictions. Dr. Rodriguez advised him to follow-up in another two weeks. When appellant returned on December 17, 2015, he complained of intense neck pressure, shooting pain down the upper and mid-back, and right arm pain, with shaking and loss of strength. He reported dropping items. Appellant received a referral for cervical and lumbar magnetic resonance imaging (MRI) scans, with a recommendation that he transfer care to an orthopedic specialist. His work restrictions remained unchanged.

A December 23, 2014 cervical MRI scan revealed moderate degenerative disc disease and a mild left-sided disc bulge at C3-4, without cord impingement or direct nerve root compression.

⁴ Appellant was delivering mail in an employing establishment long life vehicle (LLV) when a car backed out of a long driveway and slammed into the LLV's right side driver's door. He indicated that glass shattered all over the place and he had to jump out the window to exit the LLV.

⁵ Appellant was precluded from kneeling and any lifting from floor to waist. His weight restriction with respect to pushing and pulling was 40 pounds. Additionally, he could sit, stand, and walk for less than 40 minutes without a break.

On January 6, 2015 OWCP accepted appellant's claim for neck sprain and left shoulder AC joint sprain. It later expanded the claim to include lumbar sprain.

Beginning March 3, 2015, appellant submitted the first of a series of Form CA-7 claims for compensation for temporary total disability from work covering the period January 20 to March 29, 2015, and beyond.⁶

In a March 16, 2015 claim development letter, OWCP acknowledged receipt of appellant's claim for compensation beginning January 20, 2015, and advised that additional evidence was needed to establish disability from work during the entire claimed period. It afforded him 30 days to submit the requested medical evidence.

In an April 8, 2015 letter, Lisa Lehman, a practice manager at PrimeCare Urgent Care Center, described the treatment appellant received from Dr. Rodriguez beginning November 18, 2014. She also noted his initial work restrictions, as well as the modifications on November 20, 2014. Ms. Lehman also described appellant's follow-up examination findings from December 4 and 17, 2014, and noted that his work restrictions remained unchanged at the time. In closing, she advised that there was "no report of disability ... prior to transfer of care on [December 17, 2014]."

In two separate decisions dated May 21, 2015, OWCP denied appellant's claim for compensation for the periods January 20 through March 3, 2015 and March 4 through 29, 2015. It acknowledged receipt of Ms. Lehman's March 16, 2015 letter, but explained that compensation for the claimed period(s) of disability could not be authorized because the evidence submitted was not signed by a physician.

Counsel timely requested a hearing, which was held before an OWCP hearing representative on February 24, 2016. During the hearing, appellant testified that the employing establishment could not accommodate his work restrictions. He also indicated that he did not receive any medical treatment from late December 2014 until May 28, 2015.

Counsel submitted another copy of Ms. Lehman's April 8, 2015 letter; however, this copy was countersigned by Dr. John B. Canalizo, a Board-certified family practitioner, who specializes in emergency medicine.

OWCP also received a May 28, 2015 narrative report from Dr. John A. Ortolani, a Board-certified neurologist specializing in pain medicine. Dr. Ortolani noted that appellant was involved in a November 18, 2014 work-related automobile accident when "[appellant] was T-boned." He indicated that appellant injured his neck and low back, and had not returned to work since the November 2014 accident. Dr. Ortolani also noted that appellant's cervical MRI scan showed a degenerative disc bulge at C3-4, and degenerative changes at C3 through C6. Appellant complained of low back pain with radicular pain down the right leg. He also reported right arm radicular pain. Dr. Ortolani provided findings on physical examination and diagnosed cervical and lumbar disc disease, as well as neck sprain/strain. He characterized appellant's injury as "moderately severe," and noted that in his current condition he could not return to

⁶ Appellant received continuation of pay from November 19, 2014 through January 3, 2015.

work. Dr. Ortolani recommended stretching exercises, an upper extremity electromyography and nerve conduction velocity (EMG/NCV) study, and a lumbar MRI scan.

A June 8, 2015 EMG/NCV study revealed cervical radiculopathy at C5-6 on the right with acute changes.

In a June 22, 2015 report, Dr. Ortolani indicated that he reviewed the recent EMG/NCV test-results, as well as appellant's December 23, 2014 cervical MRI scan, and believed that the reported disc bulge (C3-4) and cervical radiculopathy (C5-6) were causally related to appellant's November 18, 2014 employment-related MVA. OWCP also received additional follow-up treatment records from Dr. Ortolani dated June 25 and July 23, 2015.

On August 4, 2015 OWCP paid appellant wage-loss compensation for temporary total disability beginning March 30, 2015.⁷

OWCP received additional follow-up treatment records from Dr. Ortolani covering the period August 24, 2015 through March 15, 2016, which included a September 23, 2015 lumbar MRI scan that revealed multi-level degenerative disc disease, most significant at L3-4.

In an April 8, 2016 decision, an OWCP hearing representative affirmed the May 21, 2015 decisions.

LEGAL PRECEDENT

A claimant has the burden of proof to establish the essential elements of his or her claim, including that the medical condition for which compensation is claimed is causally related to the employment injury.⁸ Compensation for wage loss due to disability from work is available for periods during which a work-related medical condition prevents a claimant from earning the wages earned before the work-related injury.⁹ The claimant must submit medical evidence showing that the condition claimed is disabling.¹⁰ The evidence submitted must be reliable, probative and substantial.¹¹

The physician's opinion must be based on the facts of the case and the complete medical background of the claimant, must be one of reasonable medical certainty and must include objective findings in support of its conclusions.¹² Subjective complaints of pain are not

⁷ OWCP placed him on the periodic compensation rolls effective August 23, 2015.

⁸ 20 C.F.R. § 10.115(e); *see Tammy L. Medley*, 55 ECAB 182, 184 (2003). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *Id.* at § 10.500(a).

¹⁰ *Id.* at § 10.115(f).

¹¹ *Id.* § 10.115.

¹² *Id.* at § 10.501(a)(2).

sufficient, in and of themselves, to support payment of compensation.¹³ Likewise, medical limitations based solely on the fear of a possible future injury are also insufficient to support payment of compensation.¹⁴

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.¹⁵ To do so, would essentially allow a claimant to self-certify his or her disability and entitlement to compensation.¹⁶

ANALYSIS

The Board finds that appellant has not established total disability from work for the period January 20 through March 29, 2015 due to the accepted injury. Appellant represented that he had not received any medical treatment from late-December 2014 until May 28, 2015, when Dr. Ortolani first examined him. Consequently, there is no contemporaneous medical evidence from a physician demonstrating that appellant was disabled from all work during the claimed period. Dr. Rodriguez and Dr. Canalizo previously found that appellant was capable of working with restrictions. However, those treatment records only covered the period November 18 through December 17, 2014 and, while appellant claimed that the employing establishment was unable to accommodate his work restrictions, there is no evidence to substantiate his allegation that light- or limited-duty work was unavailable during the period January 20 to March 29, 2015.

Appellant has failed to submit rationalized medical evidence establishing that he was disabled during the period of January 20 through March 29, 2015 due to the accepted injury. As noted, OWCP is not required to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.¹⁷ To do so, would essentially allow a claimant to self-certify his or her disability and entitlement to compensation.¹⁸

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.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See William A. Archer*, 55 ECAB 674, 679 (2004).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish total disability from January 20 to March 29, 2015, causally related to the November 18, 2014 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board