

ISSUE

The issue is whether appellant has met her burden of proof to establish disability for intermittent periods beginning January 17, 2017 due to her January 27, 2016 employment injury.

FACTUAL HISTORY

On February 1, 2016 appellant, then a 48-year-old occupational therapist, filed a traumatic injury claim (Form CA-1) alleging that she sustained injury to her back and legs at work on January 27, 2016. She asserted that she was injured while lowering a patient to the floor of a shower in order to prevent him or her from falling, and then helping that patient sit on a shower bench. Appellant stopped work on March 18, 2016.

OWCP accepted appellant's claim for muscle, fascia, and tendon strain of her low back and paid her disability compensation on the daily rolls beginning March 18, 2016 and on the periodic rolls beginning May 1, 2016.

In September 2016, OWCP referred appellant for a second opinion examination to Dr. Simon Finger, a Board-certified orthopedic surgeon, in order to evaluate her medical condition and ability to work.

In an October 11, 2016 report, Dr. Finger detailed the findings of the physical examination he conducted, noting that appellant had full range of motion of her back and lower extremities and that she was able to heel walk, toe walk, and squat. Appellant had subjective complaints of pain traveling from her back down her left leg, but the straight leg raise testing yielded negative results. Dr. Finger indicated that the January 27, 2016 employment injury had not resolved, but he also noted that "there are no medical conditions indicating that the condition is still active" given the negative straight leg raise testing, lack of lower extremity atrophy, and the ability to heel and toe walk. He advised that appellant was able to perform limited-duty work.

A December 22, 2016 note with an illegible signature indicated that appellant could return to full-duty work.

On January 9, 2017 appellant returned to her regular work on a full-time basis without restrictions.

Appellant stopped work again on January 17, 2017 and beginning January 18, 2017, she filed claims for compensation (Form CA-7) claiming employment-related disability for the period January 17 to February 9, 2017.³

³ In a January 26, 2017 letter, appellant indicated that she did a great deal of walking, standing, and sitting, and experienced pain in her low back, groin, and left hip after her January 9, 2017 return to work. On January 16, 2017 the employing establishment controverted her claim for employment-related disability beginning January 17, 2017, noting that there was no evidence that her work stoppage was related to her employment duties.

In support of her disability claim, appellant submitted a January 17, 2017 note from Dr. Candace Worsham, an attending Board-certified family practitioner, who indicated that appellant could only return to work after being evaluated by an orthopedic specialist.

In a January 18, 2017 report, Dr. Brent Dilts, an attending Board-certified anesthesiologist, indicated that appellant presented for follow-up of coccydynia and pelvic pain. Appellant reported that she had pain relief for a month and a half due to a nerve block injection, but that her pain, mostly around her perineum, had started to return.⁴ Dr. Dilts detailed physical examination findings, noting that she had normal range of motion of her back, negative bilateral straight leg raising, and normal sensation and 5/5 strength in her lower extremities. He diagnosed lumbar spondylosis without myelopathy/radiculopathy per a March 23, 2016 magnetic resonance imaging scan and noted, “[Appellant] with lumbosacral back pain secondary to L5/S1 annular tear as well as coccydynia that started after a patient fell in [January 2016].”

In a January 20, 2017 note, Dr. Joel Tucker, an attending Board-certified orthopedic surgeon, indicated that appellant had been seen on January 18, 2017 “for evaluation and treatment of a work-related injury/condition.” He advised that she was unable to work from January 18, 2017 until her next scheduled follow-up appointment on an unspecified date.

In a February 2, 2017 note, Katherine Jackson, an attending registered nurse, indicated that appellant was excused from work from February 2 to 9, 2017 in order to rest after undergoing an injection procedure.

On February 9, 2017 appellant returned to her regular work on a full-time basis without restrictions.

In February 16, 2017 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim for employment-related disability for intermittent periods beginning January 17, 2017. It requested that she submit a physician’s opinion supported by a medical explanation regarding causal relationship between her claimed periods of disability and the accepted January 27, 2016 employment injury. OWCP afforded appellant 30 days to submit the requested evidence.

Appellant stopped work again on February 27, 2017 and she filed a claim for compensation claiming employment-related disability for the period February 27 to March 9, 2017.⁵

Appellant continued to submit medical evidence relating to her medical condition since her January 17, 2017 work stoppage, including a January 17, 2017 report from Dr. Vanessa Duncombe, an attending Board-certified family practitioner, who noted that appellant reported that

⁴ Dr. Dilts noted that appellant had reported at a previous visit that she started having back pain at work in January 2016 after a patient fell on her.

⁵ On March 8, 2017 appellant also filed a notice of recurrence (Form CA-2a) claiming a recurrence of disability beginning January 17, 2017 due to her January 27, 2016 employment injury. There is no indication in the case record that appellant returned to work after her February 27, 2017 work stoppage.

she was hurt in January 2016 when a patient fell on her. Dr. Duncombe diagnosed appellant with acute pain and indicated that she was unable to work.

In a February 2, 2017 report, Dr. Eric Wolfson, an attending Board-certified neurosurgeon, noted that appellant presented complaining of left groin pain radiating into her left foot, which she indicated had started after her return to work on January 9, 2017. He diagnosed lumbar spondylosis without myelopathy/radiculopathy and left groin pain.

On February 23, 2017 Dr. Francisco Camero, an attending Board-certified family practitioner, diagnosed appellant with perineal and left groin pain and, in a February 27, 2017 note, he found her disabled due to a January 27, 2016 workers' compensation injury from February 27, 2017 until "released for return to work."

In a March 1, 2017 report, Dr. Camero indicated that appellant's groin pain prevented her from working until the problem was resolved. He advised that approval for additional diagnostic testing was being sought to determine whether her pain was referred from a lumbar diagnosis or some other source. In a March 2, 2017 duty status report (Form CA-17), Dr. Camero listed the history of injury as "hurting back on January 27, 2016 while preventing a patient from falling and lifting the patient into a shower chair." He provided a diagnosis due to injury of perineal, left hip, and groin pain, and indicated that appellant was unable to perform work duties.

By decision dated March 28, 2017, OWCP denied appellant's claim for employment-related disability for intermittent periods beginning January 17, 2017. It determined that she failed to submit medical evidence with sufficient medical rationale to establish causal relationship between her claimed periods of disability beginning January 17, 2017 and her January 27, 2016 employment injury.

Appellant filed additional claims for compensation claiming employment-related disability for the period March 19 to June 24, 2014.

In June 7 and July 5, 2017 reports, Dr. Dilts diagnosed lumbar spondylosis without myelopathy/radiculopathy and left groin pain and noted, "[Appellant] with lumbosacral back pain secondary to L5/S1 annular tear as well as coccydynia that started after a patient fell in [January 2016]."

In a July 11, 2017 duty status report, Dr. Camero again listed appellant's history of injury to her back on January 27, 2016 while preventing a patient from falling and lifting the patient into a shower chair. He provided a diagnosis due to injury of nerve entrapment and indicated that she was unable to resume work.⁶

⁶ Appellant also submitted a March 13, 2017 report in which Dr. Camero diagnosed pubic symphysis pain.

By decision dated August 25, 2017, OWCP denied appellant's claim for employment-related disability for the period March 19 to June 24, 2017, noting that she failed to submit medical evidence sufficient to establish her disability claim.⁷

On December 19, 2017 counsel, on behalf of appellant, requested reconsideration of OWCP's March 28, 2017 decision denying her claim for employment-related disability beginning January 17, 2017.⁸ In a December 19, 2017 letter, he argued that an attached November 29, 2017 report of Dr. Camero supported her claim for employment-related disability beginning on January 17, 2017 and continuing.⁹

In his November 29, 2017 report, Dr. Camero provided an extensive discussion of appellant's medical treatment and work history since being injured at work on January 27, 2016. He indicated that she continued to have substantial pain in her groin and pain radiating down her left leg affecting her bilateral leg adductors, hamstrings, left buttock muscles, and pubic symphysis joint, which were all related to the accepted January 27, 2016 lower back muscle, fascia, and tendon strain condition.¹⁰ Dr. Camero asserted that the residuals of the January 27, 2016 employment injury were progressive in nature and were exacerbated by the limited-duty requirements of the position she returned to on January 9, 2017. He also felt that one had to consider appellant's deconditioned work readiness state when she returned to work on January 9, 2017 and he concluded that the period after this return to work should be considered to be a failed work attempt.

Dr. Camero further noted, "The workplace exposure or physiological mechanism of the requirement of her light-strength position, in addition to her deconditioned physical state, is the natural and continuous sequence which I have determined to be capable of exacerbating the residuals contributable to her accepted work-related lower back muscle, fascia, and tendon strain." He discussed Dr. Finger's second opinion evaluation and argued that, based on the physical examination and diagnostic test findings, it was his "unequivocal opinion that within a reasonable medical certainty the residuals contributable to [appellant's] accepted work-related lower back muscle, fascia, and tendon strain and her deconditioned physical state was [sic] the only reasonable explanation for the failed work attempt." Dr. Camero found that appellant continued to be totally disabled from work.

By decision dated March 9, 2018, OWCP denied modification of its August 25, 2017 decision. It found that appellant failed to submit medical evidence sufficient to establish her claim for employment-related disability for intermittent periods beginning January 17, 2017.

⁷ OWCP inadvertently indicated that it was denying appellant's disability claim for the period May 28 and June 24, 2017 rather than the actual claimed period March 19 to June 24, 2017.

⁸ After OWCP issued its August 25, 2017 decision, appellant filed additional claims for compensation claiming employment-related disability for the period September 30 to November 24, 2017.

⁹ In a September 30, 2017 statement, appellant asserted that her January 27, 2016 low back injury had never resolved. The employing establishment continued to controvert her disability claim and argued that her work stoppages were due to nonwork-related conditions.

¹⁰ Dr. Camero did not provide any new physical examination findings.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹¹ In general, the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.¹² This meaning, for brevity, is expressed as disability from work.¹³

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁴

Whether a particular employment injury causes disability from employment and the duration of that disability are medical issues, which must be proven by a preponderance of reliable, probative, and substantial medical evidence.¹⁵

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability for intermittent periods beginning January 17, 2017 due to her January 27, 2016 employment injury.

OWCP accepted appellant's claim for muscle, fascia, and tendon strain of her low back. Appellant claimed disability for intermittent periods beginning January 17, 2017 due to her January 27, 2016 employment injury. OWCP denied her claim because she failed to submit medical evidence with sufficient medical rationale to establish causal relationship between her claimed periods of disability and her January 27, 2016 accepted employment injury.

In support of her disability claim, appellant submitted a January 17, 2017 note from Dr. Worsham who indicated that appellant could only return to work after being evaluated by an orthopedic specialist. In a January 17, 2017 report, Dr. Duncombe diagnosed appellant with acute pain and indicated that she was unable to work. In a January 20, 2017 note, Dr. Tucker indicated that appellant had been seen on January 18, 2017 "for evaluation and treatment of a work-related

¹¹ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

¹² *See* 20 C.F.R. § 10.5(f).

¹³ *Roberta L. Kaamoana*, 54 ECAB 150 (2002); *see also A.M.*, Docket No. 09-1895 (issued April 23, 2010).

¹⁴ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹⁵ *W.D.*, Docket No. 09-658 (issued October 22, 2009).

injury/condition” and advised that she was unable to work from January 18, 2017 until her next scheduled follow-up appointment. However, these reports are insufficient to establish her claim for employment-related disability beginning January 17, 2017 because none of these physicians provided any opinion on the cause of her disability. Although Dr. Tucker mentioned treatment for a “work-related injury/condition,” he did not provide an opinion that it was the cause of the specified disability. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee’s condition is of no probative value on the issue of causal relationship.¹⁶

In a January 18, 2017 report, Dr. Dilts noted that appellant had reported at a previous visit that she started having back pain at work in January 2016 after a patient fell on her. He diagnosed lumbar spondylosis without myelopathy/radiculopathy and noted, “[Appellant] with lumbosacral back pain secondary to L5/S1 annular tear as well as coccydynia that started after a patient fell in [January 2016].” Although Dr. Dilts suggested that appellant’s lumbar annular tear and coccydynia were caused by the accepted January 27, 2016 employment injury, the Board finds that his report is of no probative value regarding appellant’s disability claim because he did not provide any opinion on disability.¹⁷ The Board further notes that OWCP has not accepted that appellant sustained a lumbar annular tear and coccydynia on January 27, 2016 and Dr. Dilts has not provided a medical explanation establishing such causal relationship. In June 7 and July 5, 2017 reports, Dr. Dilts diagnosed lumbar spondylosis without myelopathy/radiculopathy and left groin pain and noted, “[Appellant] with lumbosacral back pain secondary to L5/S1 annular tear as well as coccydynia that started after a patient fell in [January 2016].” These reports are also of no probative value as they do not offer an opinion regarding the cause of appellant’s condition.¹⁸

On February 23, 2017 Dr. Camero diagnosed appellant with perineal and left groin pain and, in a February 27, 2017 note, he found her disabled due to a January 27, 2016 workers’ compensation injury from February 27, 2017 until “released for return to work.” In a March 1, 2017 report, he indicated that her groin pain prevented her from working until the problem was resolved. In a March 2, 2017 duty status report, Dr. Camero listed the history of injury as hurting back on January 27, 2016 while preventing a patient from falling and lifting the patient into a shower chair. He provided a diagnosis due to injury of perineal, left hip, and groin pain, and indicated that appellant was unable to perform work duties. In a July 11, 2017 duty status report, Dr. Camero listed the same history of injury, provided a diagnosis due to injury of nerve entrapment, and indicated that appellant was unable to resume work.

Although Dr. Camero found employment-related disability in some of these reports, they are of limited probative value in establishing appellant’s claim for employment-related disability beginning January 17, 2017 because he failed to provide adequate medical rationale in support of his opinion on causal relationship. He did not describe the January 27, 2016 employment injury in any detail or provide medical rationale explaining how such a soft-tissue injury could have caused disability a year later. Moreover, Dr. Camero diagnosed conditions in some of his findings

¹⁶ See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹⁷ *Id.*

¹⁸ *Id.*

which have not been accepted as related to the January 27, 2016 employment injury, such as nerve entrapment, and he has not provided a medical explanation establishing a causal relationship between these conditions and the January 27, 2016 employment injury.

In a November 29, 2017 report, Dr. Camero indicated that appellant continued to have substantial pain in her groin and pain radiating down her left leg affecting her bilateral leg adductors, hamstrings, left buttock muscles, and pubic symphysis joint, which were all related to the accepted January 27, 2016 lower back muscle, fascia, and tendon strain condition. He asserted that the residuals of the January 27, 2016 employment injury were progressive in nature and were exacerbated by the limited-duty requirements of the position returned to on January 9, 2017. Dr. Camero indicated that appellant was deconditioned when she returned to work and he concluded that the period after this return to work should be considered to be a failed work attempt. He further noted, “The workplace exposure or physiological mechanism of the requirement of [appellant’s] light strength position, in addition to her deconditioned physical state, is the natural and continuous sequence which I have determined to be capable of exacerbating the residuals contributable to her accepted work-related lower back muscle, fascia, and tendon strain.” Dr. Camero discussed Dr. Finger’s October 11, 2016 second opinion evaluation and argued that, based on the physical examination and diagnostic test findings, it was his “unequivocal opinion that within a reasonable medical certainty the residuals contributable to [appellant’s] accepted work-related lower back muscle, fascia, and tendon strain and her deconditioned physical state was [sic] the only reasonable explanation for the failed work attempt.” He found that appellant continued to be totally disabled from work.

The Board finds that Dr. Camero’s November 29, 2017 report is of limited probative value in establishing appellant’s claim for employment-related disability beginning January 17, 2017 because he failed to provide adequate medical rationale in support of his opinion on causal relationship. Dr. Camero did not explain the medical process through which the January 27, 2016 low back strain could have caused disabling conditions that were primarily located in the pelvic area rather than the low back. Moreover, he did not present specific findings of physical examination and diagnostic testing which supported his opinion on causal relationship. Dr. Camero did not provide any new physical examination findings from around the time he provided his November 29, 2017 report. Although he discussed Dr. Finger’s October 11, 2016 examination, this would be of limited relevance to the underlying issue of the case because the examination occurred before appellant’s claimed period of employment-related disability beginning January 17, 2017. Dr. Camero also suggested that she sustained a new injury due to her work duties after she returned to work on January 9, 2017, but he failed to provide a rationalized-medical opinion supporting this opinion. As noted above, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹⁹

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.

¹⁹ See *supra* note 16.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability for intermittent periods beginning January 17, 2017 due to her January 27, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 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