United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 18-1391**
	)	**Issued: February 1, 2019**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, Lordsburg, NM, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 9, 2018 appellant filed a timely appeal from a June 14, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish entitlement to wage-loss compensation for the period May 26 through July 22, 2017 causally related to his May 1, 2017 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 16, 2017 appellant, then a 19-year-old border patrol agent trainee, filed a traumatic injury claim (Form CA-1) alleging that, on May 1, 2017, he injured his low back and right rib during training when he fell while climbing a high rope in the performance of duty. He did not stop work. OWCP accepted the claim for cervical sprain, lumbar sprain, headache, and dizziness.

In a June 9, 2017 report, Dr. Keith R. Johnson, a Board-certified orthopedic surgeon, obtained a history of appellant injuring his ribs, cervical spine, and lumbar spine on May 1, 2017 when he fell from a rope during training at the employing establishment. Appellant complained of back pain with weakness, tingling, and reduced motion, right upper extremity weakness, and cervical pain radiating into the bilateral shoulders and causing headaches. Dr. Johnson found that appellant had sustained a concussion with loss of consciousness, an incomplete lesion at an unspecified level of the cervical cord, and a sprain of the ligaments of the lumbar spine. He diagnosed cervical and lumbar sprains, headaches, and dizziness. Dr. Johnson referred appellant for a lumbar magnetic resonance imaging (MRI) scan and opined that he should limit activities that increased his discomfort.

By development letter dated June 15, 2017, OWCP advised appellant that his claim originally appeared to be for an uncontroverted, minor injury that had resulted in minimal or no lost time from work and thus it had paid a limited amount of medical expenses. It notified him that it was now formally adjudicating his claim as he had requested authorization for a lumbar spine MRI scan study. OWCP informed appellant of the type of factual and medical evidence necessary to establish his claim and afforded him 30 days to submit the necessary evidence.

OWCP thereafter received a May 1, 2017 memorandum to the employing establishment's physical training instructor from the staff of its health unit indicating that appellant could "participate fully in all training programs." In a May 1, 2017 clinic note, a nurse with the employing establishment discussed his history of upper back pain after falling from a rope. The nurse indicated that appellant was in moderate distress, diagnosed a left upper back injury, and found that he had no restrictions.

In a clinic note dated May 5, 2017, a nurse noted that appellant had experienced pain in his right rib after hanging from a rope. The nurse diagnosed rib pain on the right side and found that he had no restrictions. The health unit staff advised the physical training instructor that appellant could participate in all training programs.

The employing establishment, on May 17, 2017, informed appellant that it had withdrawn him from training as a result of his excessive absences. It instructed him to report to an operations officer on May 17, 2017.

Dr. Johnson, in a duty status report (Form CA-17) dated June 7, 2017, diagnosed a sprain of the ligaments of the lumbar spine and checked a box marked "yes" that the history provided by appellant corresponded to that on the form of him falling from a high rope on a training course. He opined that appellant was totally disabled from work.

In a June 8, 2017 attending physician's report (Form CA-20), Dr. Johnson diagnosed a sprain of the ligaments of the lumbar spine and again checked a box marked "yes" that the condition was caused or aggravated by the described employment activity of appellant falling from a rope during training. He advised that he was totally disabled from June 7 to 28, 2017.

On July 5, 2017 Dr. Johnson noted that appellant's insurance carrier had denied authorization for a lumbar MRI scan study. He discussed his symptoms of low back pain radiating into his right knee and improving rib pain. Dr. Johnson again requested authorization for the lumbar MRI scan study, noting that information regarding whether the injury was related to work "should be within their own system."

The requested MRI scan study of the lumbar spine, obtained on July 27, 2017, revealed a left paracentral/subarticular protrusion of 9 to 10 millimeters with a "markedly narrowed left subarticular recess and encroaching on the traversing left L5 nerve root." It further revealed a protrusion at L5-S1 with no canal stenosis or neuroforaminal narrowing and a protrusion at L3-4 with mild narrowing of the subarticular recesses.

On July 28, 2018 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation due to disability from May 26 to July 22, 2017.

OWCP, by letter dated August 8, 2017, requested that the employing establishment clarify whether it had terminated appellant due to performance issues.

Dr. Johnson, on August 15, 2017, reviewed the results of the MRI scan study and diagnosed low back pain with radiculopathy of the left lower extremity. In a work capacity evaluation (OWCP-5c) of even date, he found that appellant was unable to work pending further evaluation.

By letter dated September 13, 2017, OWCP requested that appellant provide additional factual information, including whether the employing establishment had terminated his employment, or only withdrawn him from training. It also requested that he provide the reason for any termination.

On September 14, 2017 Dr. Hector O. Pacheco, a Board-certified orthopedic surgeon, evaluated appellant for low back pain and noted that he had sustained an injury on May 1, 2017 at work. He found that a lumbar MRI scan study showed degenerative disc disease with protrusions worse at L3-4 than L2-3 and L4-5. Dr. Pacheco diagnosed lumbago with sciatica.

Appellant, in a September 21, 2017 statement, related that, on May 17, 2017, the employing establishment had dropped his enrollment in its training academy as a result of absences that he had sustained due to his employment injury. After his injury, the employing establishment had transferred him from the academy to another position where he worked limited duty from May 17 to 19, 2017. It subsequently had transferred appellant to another location from May 22 to 26, 2017. On May 26, 2017 appellant received a letter from the employing establishment indicating that he had been terminated "due to absences while at the academy." He asserted that the absences occurred due to his injury work. Appellant described absences in April and May 2017, noting that in each instance he received treatment in the medical unit.

In a report dated October 20, 2017, Dr. Pacheco discussed appellant's symptoms of low back pain that began on May 1, 2017 after an injury.[2] He diagnosed lumbago with sciatica and found that he could not work.

Dr. Tifani Gleeson, who specializes in occupational medicine, reviewed the medical evidence on November 1, 2017 at the request of the employing establishment. She recommended a second opinion examination before returning appellant to a training program or other placement in order to determine his current condition and any periods of disability. Dr. Gleeson noted that the medical reports did not include "a comprehensive examination of the lumbar spine" or objective findings.

By decision dated January 8, 2018, OWCP denied appellant's claim for wage-loss compensation for the period May 26 through July 22, 2017. It determined that the medical evidence was insufficient to show that he was disabled from work due to his employment injury during the claimed period.

On January 23, 2018 appellant requested reconsideration. In a statement dated January 17, 2018, he advised that he had stopped contacting the employing establishment after it removed him from employment. Appellant indicated that he had continued to receive medical treatment as a result of his injury and remained totally disabled from work.

In a report dated January 29, 2018, Dr. Eduardo G. Vazquez, a Board-certified anesthesiologist, discussed appellant's history of a May 2017 injury when he fell from a rope and landed on his back and head, passing out. He went to the medical unit and "was told he was fine." Dr. Vazquez found significant tenderness to palpation of the lumbar spine without spasm. He diagnosed a lumbar sprain, lumbar radiculopathy, cervical sprain, myalgia, chronic pain syndrome, and headache. Dr. Vazquez recommended steroid injections.[3]

On March 29, 2018 Dr. Helson Pacheco-Serrant, a neurosurgeon, evaluated appellant for low back pain radiating into the left lower extremity. He noted that his symptoms began after he fell 20 feet from a rope at work. Dr. Pacheco-Serrant reviewed the results of diagnostic testing and diagnosed lumbosacral pain, a lumbar herniated disc, and chronic lumbar radiculopathy.

By decision dated June 14, 2018, OWCP denied modification of its January 8, 2018 decision. It found that appellant had not established he stopped work due to his accepted employment injury rather than the termination of his employment.

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.[4] For each period of disability claimed, the employee has the burden of establishing that he or she was disabled from work as a

[2] Dr. Pacheco provided a progress report on November 10, 2017.

[3] Dr. Vazquez provided a February 27, 2018 progress report.

[4] *T.A.*, Docket No. 18-0431 (issued November 7, 2018).

result of the accepted employment injury.[5] 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.[6]

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.[7] Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.[8] 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.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish entitlement to wage-loss compensation for the period May 26 through July 22, 2017 causally related to his accepted May 1, 2017 employment injury.

On June 7, 2017 Dr. Johnson noted that appellant had injured his ribs, cervical spine, and lumbar spine on May 1, 2017 when he fell from a rope on a training course. He diagnosed cervical and lumbar sprains, headaches, and dizziness. Dr. Johnson advised that appellant should refrain from activities that increased his discomfort. He did not, however, specifically find that he was disabled as a result of his work injury. The Board finds that Dr. Johnson did not offer a specific medical opinion addressing whether appellant's disability from work during the claimed period was causally related to the accepted work injuries.[10] Thus, Dr. Johnson's reports are insufficient to establish the claim.

In a June 7, 2017 CA-17 form, Dr. Johnson diagnosed lumbar sprain and checked a box marked "yes" that the history provided corresponded to that on the form of appellant falling from a high rope on a training course. He found that he was totally disabled from employment. In a CA-20 form, Dr. Johnson diagnosed a sprain of the ligaments of the lumbar spine and checked a box marked "yes" that the condition was caused or aggravated by the described employment activity of appellant falling from a rope during training. He determined that appellant was totally disabled from June 7 to 28, 2017. The Board has held, however, that an opinion on causal

[5] *D.R.*, Docket No. 18-0232 (issued October 2, 2018).

[6] *Id.*

[7] *See B.K.*, Docket No. 18-0386 (issued September 14, 2018); 20 C.F.R. § 10.5(f).

[8] *See B.A.*, Docket No. 17-1471 (issued July 27, 2018).

[9] *Supra* note 7.

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

relationship which consists only of a physician checking a box marked "yes" in response to a medical form report question regarding whether the claimant's condition or disability was related to the history given is of limited probative value.[11] Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[12] Dr. Johnson did not provide any rationale for his opinion, and thus his report is of diminished probative value.[13]

On July 5, 2017 Dr. Johnson again requested authorization for a lumbar MRI scan study, noting that information regarding whether the injury was related to work should be available within the employing establishment's system. As Dr. Johnson did not address the relevant issue of whether appellant was disabled from employment during the claimed period due to his accepted employment injury, his opinion is of no probative value.[14]

On an OWCP-5c form dated August 15, 2017, Dr. Johnson reported that appellant was unable to work pending further evaluation. He did not, however, provide rationale for his opinion. A medical report must include rationale explaining how the physician reached his conclusion regarding disability.[15] The Board has found that medical opinions unsupported by rationale regarding the period of disability claimed are of limited probative value.[16]

Dr. Pacheco, on September 14, 2017, discussed appellant's history of low back pain after a May 1, 2017 employment injury. He related that a lumbar MRI scan study revealed degenerative disc disease with protrusions worse at L3-4 than at L2-3 and L4-5. Dr. Pacheco diagnosed lumbago with sciatica. His report is of no probative value as he failed to address whether appellant was disabled from work during the claimed period due to his accepted employment injury.[17]

In a report dated October 20, 3017, Dr. Pacheco discussed appellant's symptoms of low back pain that had begun on May 1, 2017 after an injury. He diagnosed lumbago with sciatica and found that he could not work. Dr. Pacheco, however, did not explain how or why appellant's accepted employment injury caused a period of disability, and thus his opinion is insufficient to meet appellant's burden of proof.[18]

On January 29, 2018 Dr. Vazquez obtained a history of appellant sustaining an injury at work in May 2017 when he fell from a rope. On examination he found tenderness to palpation of the lumbar spine without spasm. Dr. Vazquez diagnosed a lumbar sprain, lumbar radiculopathy,

[11] *M.R.*, Docket No. 17-1388 (issued November 2, 2017).

[12] *J.R.*, Docket No. 18-0801 (issued November 26, 2018).

[13] *M.C.*, Docket No. 18-0361 (issued August 15, 2018).

[14] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *C.H.*, Docket No. 17-1239 (issued November 20, 2017).

[15] *T.J.*, Docket No. 18-0619 (issued October 22, 2018).

[16] *C.R.*, Docket No. 17-0648 (issued August 15, 2018).

[17] *Supra* note 16.

[18] *P.M.*, Docket No. 17-1131 (issued January 29, 2018).

cervical sprain, myalgia, chronic pain syndrome, and headache. As he did not address appellant's disability status during the claimed period, his report is of no probative value.[19]

Dr. Pacheco-Serrant, in a report dated March 29, 2018, evaluated appellant for low back pain with left radiculopathy that began after he fell from a rope at work. He diagnosed lumbosacral pain, a lumbar herniated disc, and chronic lumbar radiculopathy. Dr. Pacheco-Serrant, however, did not discuss appellant's work status or whether he was disabled from his employment, and thus his opinion is of no probative value and insufficient to meet appellant's burden of proof.[20]

The issue of whether a claimant's disability from work is related to an accepted condition must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to the employment injury and supports that conclusion with sound medical reasoning.[21] Appellant failed to submit such evidence and thus has not met his burden of proof.[22]

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 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 entitlement to wage-loss compensation for the period May 26 through July 22, 2017 causally related to his May 1, 2017 employment injury.

[19] *Supra* note 16.

[20] *T.C.*, Docket No. 18-0435 (issued July 10, 2018).

[21] *Supra* note 16.

[22] *See K.A.*, Docket No. 17-1718 (issued February 12, 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2019
Washington, DC

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

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

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