

ISSUE

The issue is whether appellant has met his burden of proof to establish disability during the period July 31 to August 3, 2018 causally related to his accepted January 17, 2018 employment injury.

FACTUAL HISTORY

On January 19, 2018 appellant, then a 52-year-old postal police officer, filed a traumatic injury claim (Form CA-1) alleging that, on January 17, 2018, he slipped and fell on icy pavement and sustained a contusion of his left hip while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that he stopped work on January 17, 2018 and returned to work on January 18, 2018. The record indicates that the claim has been accepted for lower back strain of muscle, fascia and tendon, as well as left hip contusion.³

In a report dated January 19, 2018, Dr. Gregory D. Dabov, a Board-certified orthopedic surgeon, examined appellant and diagnosed left hip contusion and low back strain after reviewing diagnostic images of appellant's lumbar spine and pelvis. He opined that appellant should be off work and would follow up in two weeks. Dr. Dabov completed a duty status report (Form CA-17) on the same date, noting the aforementioned diagnoses and return to work status.

In a report dated February 2, 2018, Dr. Dabov again diagnosed left hip contusion and low back strain. He related that appellant could resume sedentary work. Dr. Dabov completed a duty status report (Form CA-17) on the same date noting the aforementioned diagnoses and return to work status.

In a report dated February 20, 2018, Dr. Dabov diagnosed left hip contusion. In a duty status report (Form CA-17) of the same date, he indicated that appellant could return to regular work, full time without restrictions. Dr. Dabov continued to submit progress notes in March and April 2018, indicating that appellant could continue regular work duties.

In reports dated April 27 and June 8, 2018, Dr. Dabov diagnosed left psoas tendon strain based on the magnetic resonance imaging (MRI) scan report dated April 24, 2018. He indicated that appellant could continue his regular work duties.

In a report dated July 30, 2018, Dr. Dabov diagnosed unrelenting low back strain. He indicated that appellant had a history of low back pain, but it was worse than it was on his previous visit. Dr. Dabov related that appellant was not to return to work. He completed a duty status report (Form CA-17) of even date, noting the aforementioned diagnosis and return to work status.

On August 10, 2018 appellant filed a claim for compensation (Form CA-7) for leave without pay for the period July 31 to August 3, 2018.

In development letters dated August 29 and September 12, 2018, OWCP informed appellant that it had not received evidence to support his claim for disability for the period July 31

³ An acceptance letter is not of record.

to August 3, 2018. It advised him of the type of evidence needed to establish his disability claim and afforded him 30 days to submit the necessary evidence.

In a lumbar spine MRI scan report dated August 8, 2018, Dr. Andy Ellzey, a Board-certified diagnostic radiologist, noted impressions of mild foraminal narrowing at L3-L4 and L4-L5, mild facet arthropathy without canal stenosis at L3-L4, disc bulge and facet arthropathy without significant canal stenosis at L4-L5, and a small right intraforaminal disc protrusion with mild right foraminal stenosis at L5-S1.

In a work release note dated September 12, 2018, Dr. Dabov indicated that appellant was able to return to work on August 17, 2018, after being unable to work from July 30 to August 17, 2018 due to a flare up of a low back injury.

OWCP continued to receive medical evidence relative to appellant's disability status after August 3, 2018.

By decision dated October 12, 2018, OWCP denied appellant's claim for compensation for the period "July 23, 2018 to August 3, 2018."⁴

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden proof to establish the essential elements of his or her claim by the weight of the evidence.⁶ 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.⁷ Whether a particular injury caused an employee to become disabled from 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

The claimant must submit medical evidence showing that the condition claimed is disabling.⁹ The evidence submitted must be reliable, probative, and substantial.¹⁰ The physician's opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty, and must include objective findings in

⁴ In its October 12, 2018 decision, OWCP indicated that appellant's claim for compensation was for the period July 23 to August 3, 2018, as opposed to the actual period claimed of July 31 to August 3, 2018. The Board attributes this discrepancy to harmless error and thus has no bearing on the outcome of the case.

⁵ *Supra* note 1.

⁶ *M.D.*, Docket No. 18-0474 (issued October 3, 2018); *see Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

⁷ *Id.*

⁸ *M.D.*, *supra* note 6; *see Edward H. Horton*, 41 ECAB 301 (1989).

⁹ 20 C.F.R. § 10.115(f).

¹⁰ *Id.* at § 10.115.

support of its conclusions.¹¹ Subjective complaints of pain are insufficient, in and of themselves, to support payment of continuing compensation.¹² Likewise, medical limitations based solely on the fear of a possible future injury are also insufficient to support payment of continuing compensation.¹³

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁴ Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment injury. 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.¹⁵ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁶

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 or her disability and entitlement to compensation.¹⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability for the period July 31 to August 3, 2018 causally related to his accepted January 17, 2018 employment injury.

In support of his claim, appellant submitted multiple medical reports and duty status reports from Dr. Dabov who initially diagnosed back and hip strains. Dr. Dabov noted that appellant was to remain off of work from January 19 to February 2, 2018 after his initial injury dated January 17, 2019, and then from July 31 to August 3, 2018 after a flare up of his original injury. In each duty status report, he reported back and hip strains. However, neither the medical reports nor the duty status reports contained medical rationale which explained how or why the worsening of appellant's accepted conditions caused his disability. Subjective complaints of pain are

¹¹ *Id.* at § 10.501(a)(2).

¹² *Id.*

¹³ *Id.*

¹⁴ *C.P.*, Docket No. 18-1645 (issued March 8, 2019); see *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁵ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); see *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁶ *C.P.*, *supra* note 14; see *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁷ *V.B.*, Docket No. 18-1273 (issued March 4, 2019); see *William A. Archer*, 55 ECAB 674 (2004); see also *Fereidoon Kharabi*, 52 ECAB 291 (2001).

insufficient, in and of themselves, to support payment of compensation.¹⁸ Specifically, Dr. Dabov did not provide objective findings to demonstrate how appellant's accepted injuries had worsened to the point of disability. Rather, he merely attributed his inability to work to subjective complaints of pain. When a physician's statements regarding an employee's ability to work consist only of recitation of the employee's complaints that he or she was in too much pain to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability.¹⁹ A mere conclusion without the necessary rationale is insufficient to meet a claimant's burden of proof.²⁰ Without medical rationale supporting disability, Dr. Dabov's reports are insufficient to meet appellant's burden of proof.²¹ His reports, therefore, do not establish that appellant was disabled from work during the claimed period due to his back and hip conditions.

None of the other medical evidence of record, including the diagnostic studies, address appellant's claimed disability during the period in question.²²

As the medical evidence of record is insufficient to establish that appellant was disabled from work for the period July 31 to August 3, 2018 due to his accepted back and hip conditions, the Board finds that appellant has not met his burden of proof.

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 his burden of proof to establish disability during the period July 31 to August 3, 2018 causally related to his accepted January 17, 2018 employment injury.

¹⁸ See *supra* note 12.

¹⁹ *P.D.*, Docket No. 14-0744 (issued August 6, 2014); *G.T.*, 59 ECAB 447 (2008).

²⁰ See *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

²¹ *S.H.*, Docket No. 18-1398 (issued March 12, 2019).

²² *Supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the October 12, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 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