



## ISSUE

The issue is whether appellant has met her burden of proof to establish disability for the period commencing November 21, 2017 causally related to her accepted May 29, 2015 employment injury.

## FACTUAL HISTORY

On May 29, 2015 appellant, then a 53-year-old occupational health nurse, filed a traumatic injury claim (Form CA-1) alleging that, on the same date, she sustained a back injury while in the performance of duty. She maintained that as she was moving a file cabinet she made a sudden jerking movement in an attempt to catch some files falling off the cabinet and pulled muscles in her back. Appellant stopped work on May 30, 2015.<sup>3</sup>

OWCP accepted appellant's claim for a lumbar sprain. It paid her wage-loss compensation for work stoppages related to medical appointments and recovery from steroid injections.<sup>4</sup>

Appellant stopped work on November 21, 2017 and, on December 12, 2017, she filed a claim for compensation (Form CA-7) alleging disability for the period November 21 to December 8, 2017 causally related to her accepted May 29, 2015 employment injury. She later filed additional Forms CA-7 alleging disability for the period December 9, 2017 and continuing causally related to her accepted May 29, 2015 employment injury.<sup>5</sup>

In disability notes dated between November 27 and December 11, 2017, Dr. Chandur Piryani, a Board-certified anesthesiologist, advised that appellant should be off work from November 27 through December 25, 2017. In the November 27, 2017 note, he diagnosed lumbosacral radiculopathy and indicated that appellant reported experiencing increased pain due to a change in her medication.

In a December 15, 2017 development letter, OWCP requested that appellant submit additional medical evidence in support of her claim for disability commencing November 21, 2017.

In response, appellant submitted a November 20, 2017 report from Dr. Piryani who diagnosed intervertebral lumbar disc degeneration, lumbar spondylosis without myelopathy or radiculopathy, intervertebral lumbar disc disorders with radiculopathy, lumbar spinal stenosis, sacrococcygeal disorders, and chronic pain syndrome. Dr. Piryani noted that he provided appellant

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<sup>3</sup> OWCP assigned the claim OWCP File No. xxxxxx867.

<sup>4</sup> Appellant previously filed traumatic injury claims under separate file numbers, including a claim for a September 19, 2001 injury which was accepted by OWCP for lumbar strain (OWCP File No. xxxxxx968), and a claim for a December 17, 2003 injury which it accepted for aggravation of lumbar degenerative disc disease at L5-S1, contusions of the back and left shoulder, and sprains of the wrist, left shoulder/upper arm, and lumbar spine (OWCP File No. xxxxxx469). OWCP has not administratively combined the current claim, OWCP File No. xxxxxx867, with these claims.

<sup>5</sup> Appellant returned to limited-duty work on February 27, 2018 for six hours per day and she began to claim wage-loss compensation for two hours per day.

an off-work excuse starting that day and advised her that she could return to work on November 27, 2017. In a January 8, 2018 report, he discussed appellant's reported low back/lower extremity symptoms and opined that her medical condition and accompanying disability were related to her May 29, 2015 employment injury.<sup>6</sup>

In February 2018 OWCP referred appellant to Dr. David S. Haskell, a Board-certified orthopedic surgeon, for a second opinion examination and requested that he provide an opinion regarding whether she had disability commencing November 21, 2017 causally related to her accepted May 29, 2015 employment injury.

In a March 14, 2018 report, Dr. Haskell discussed appellant's factual and medical history and noted that his physical examination showed restricted forward flexion of the back, but no sensory/motor loss of the back or lower extremities. He indicated that, as evidenced by MRI scans, appellant had longstanding degenerative disc disease at L5-S1 prior to suffering the May 29, 2015 employment injury. Dr. Haskell opined that the May 29, 2015 employment injury only temporarily aggravated appellant's preexisting condition and that she had no residuals of that employment injury. He recommended that she undergo a lumbar laminectomy at L5-S1 to treat her preexisting degenerative disc disease.<sup>7</sup>

In April 2018, OWCP declared a conflict in the medical opinion evidence between Dr. Piryani and Dr. Haskell regarding whether appellant had disability for the period commencing November 21, 2017 causally related to her accepted May 29, 2015 employment injury. It referred appellant to Dr. Richard Karr, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion regarding this issue.

In an August 31, 2018 report, Dr. Karr discussed appellant's factual and medical history, and provided an extensive summary of the medical evidence in the case record. He detailed the findings of his physical examination and noted that appellant exhibited nonorganic give-way weakness upon bilateral big toe extension and right hip flexion, as well as with respect to her right quadriceps. Dr. Karr reported that there were no cutaneous signs of active disease involving appellant's thoracolumbar midline or sacroiliac areas, and that lumbar rhythm was difficult to assess given the voluntary limited range of motion of her back. Straight leg raise testing was negative to 90 degrees bilaterally. Dr. Karr indicated that the May 29, 2015 employment injury caused a minor low back strain with no structural spinal or neurological damage. He maintained that appellant's preexisting degenerative lumbar spondylosis and chronic low back pain/sciatica difficulties were not aggravated by the injury on May 29, 2015. Dr. Karr opined that the minor May 29, 2015 injury resolved by no later than August 29, 2015 without continuing disability or alteration in her working capability. He indicated that appellant's seeking of treatment and disability from work after that date was not related to the May 29, 2015 employment injury.

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<sup>6</sup> In a February 26, 2018 report, Dr. Piryani provided similar diagnoses and indicated that appellant could work with restrictions, including no frequent bending/twisting and no lifting more than 20 pounds. Appellant also submitted the findings of a November 6, 2017 magnetic resonance imaging (MRI) scan of the lumbar spine which contained an impression of moderate degenerative disc disease at L5-S1 and mild degenerative disc disease at L3-4 and L4-5.

<sup>7</sup> In a March 28, 2018 work capacity evaluation form (OWCP-5c), Dr. Haskell indicated that appellant could work with restrictions due to her underlying degenerative disc condition.

Dr. Karr advised that appellant could return to full-time work under the restrictions that were assigned to her in 2008 with respect to her accepted December 17, 2003 employment injury.

In a September 10, 2018 OWCP-5c form, Dr. Karr indicated that appellant had no work restrictions attributable to her May 29, 2015 employment injury and could perform her usual work with respect to that injury. He noted that appellant had been assigned a permanent restriction of lifting no more than 25 pounds, but explicitly indicated the restriction was assigned due to her December 17, 2003 employment injury.

By decision dated September 18, 2018, OWCP determined that appellant had not met her burden of proof to establish her claim for disability for the period commencing November 21, 2017 causally related to her accepted May 29, 2015 employment injury. It found that the special weight of the medical opinion evidence rested with the well-rationalized August 31, 2018 report of Dr. Karr, the impartial medical specialist.

On September 27, 2018 appellant, through counsel, requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review. Appellant submitted September 21 and 27, and November 21, 2018 reports from Dr. Piryani who diagnosed left lumbar radiculopathy and several low back conditions, and indicated that appellant could work with restrictions including no bending/twisting and no lifting more than 20 pounds.

During the hearing, held on January 30, 2019, appellant testified that the pain from her May 29, 2015 back injury caused her to stop work in November 2017.

By decision dated March 8, 2019, OWCP's hearing representative affirmed the September 18, 2018 decision.<sup>8</sup>

### **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 and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>9</sup> In general the term disability under FECA means incapacity

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<sup>8</sup> The hearing representative inadvertently indicated that appellant claimed disability commencing November 25, 2017 rather than the actual date of November 21, 2017. The hearing representative recommended that the files for appellant's previous claims (OWCP File Nos. xxxxxx968 and xxxxxx469) be administratively combined with the file for the present claim (OWCP File No. xxxxxx867), but the analysis of the March 8, 2019 decision was limited to consideration of whether appellant met her burden of proof to establish disability for the period commencing November 21, 2017 causally related to her May 29, 2015 employment injury.

<sup>9</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

because of injury in employment to earn the wages which the employee was receiving at the time of such injury.<sup>10</sup> This meaning, for brevity, is expressed as disability for work.<sup>11</sup>

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.<sup>12</sup>

Section 8123(a) of FECA provides in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”<sup>13</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability for the period commencing November 21, 2017 causally related to her accepted May 29, 2015 employment injury.

The Board finds that OWCP properly determined that there was a conflict in the medical opinion evidence between Dr. Piryani, an attending physician, and Dr. Haskell, an OWCP referral physician, regarding whether appellant had disability for the period commencing November 21, 2017 causally related to her May 29, 2015 employment injury. In order to resolve the conflict, OWCP properly referred appellant, pursuant to section 8123(a) of FECA, to Dr. Karr for an impartial medical examination and an opinion.<sup>15</sup>

The Board finds that the special weight of the medical opinion evidence is represented by the thorough, well-rationalized opinion of Dr. Karr.<sup>16</sup> The August 31 and September 10, 2018

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<sup>10</sup> See 20 C.F.R. § 10.5(f).

<sup>11</sup> See *S.W.*, *supra* note 9. See also *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>12</sup> *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>13</sup> 5 U.S.C. § 8123(a).

<sup>14</sup> *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>15</sup> See *supra* note 13.

<sup>16</sup> See *supra* note 14.

reports of Dr. Karr establish that appellant did not have disability for the period commencing November 21, 2017 causally related to her May 29, 2015 employment injury.

In his August 31, 2018 report, Dr. Karr noted that his physical examination revealed instances of nonorganic give-way weakness in appellant's lower extremities and voluntary limited range of motion of her back. He indicated that the May 29, 2015 employment injury caused a minor low back strain with no structural spinal or neurological damage. Dr. Karr opined that the minor May 29, 2015 employment injury resolved by no later than August 29, 2015 without continuing disability or alteration in working capability. He indicated that appellant's seeking of treatment and any disability from work after that point was not related to the May 29, 2015 employment injury, but was attributable to the December 17, 2003 employment injury, which is not the subject of the current appeal. In a September 10, 2018 OWCP-5c form, Dr. Karr noted that appellant had no work restrictions attributable to her May 29, 2015 employment injury and could perform her usual work with respect to that injury.<sup>17</sup>

The Board finds that Dr. Karr's opinion has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of ongoing disability. Dr. Karr provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He provided medical rationale for his opinion by explaining that the nature of appellant's May 29, 2015 soft-tissue employment injury was such that it resolved by late-August 2017 and that she did not exhibit findings related to the injury upon examination.<sup>18</sup>

Appellant submitted September 21, 27, and November 21, 2018 reports from Dr. Piryani who indicated that she could work with restrictions including no bending/twisting and no lifting more than 20 pounds. However, these reports have no probative value regarding the underlying issue of this case because Dr. Piryani did not provide an opinion that appellant required work restrictions due to her May 29, 2015 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>19</sup> Therefore, these reports are insufficient to establish appellant's claim.<sup>20</sup>

As appellant has not submitted rationalized medical evidence establishing disability commencing November 21, 2017 causally related her accepted May 29, 2015 employment injury, she has not met her burden of proof.

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<sup>17</sup> Dr. Karr noted that appellant had been assigned a permanent restriction of lifting no more than 25 pounds, but he explicitly indicated the restriction was assigned due to her December 17, 2003 injury. The Board notes that appellant's December 17, 2003 injury is not the subject of the present appeal.

<sup>18</sup> See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *Melvina Jackson*, 38 ECAB 443 (1987) (regarding the importance, when assessing medical evidence, of such factors as a physician's knowledge of the facts and medical history, and the care of analysis manifested and the medical rationale expressed in support of the physician's opinion).

<sup>19</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>20</sup> *Id.*

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 disability for the period November 21, 2017 causally related to her accepted May 29, 2015 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 8, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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