

ISSUE

The issue is whether appellant has met his burden of proof to establish disability on or after October 31, 2016 causally related to his accepted September 15, 2016 employment injury.

FACTUAL HISTORY

On September 19, 2016 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 15, 2016 he sustained a back condition when delivering mail while in the performance of duty. He stopped work on September 16, 2016.

In an authorization for examination and/or treatment form (Form CA-16) completed on October 12, 2016, Dr. Nadia M. Sadek, a Board-certified family practitioner, indicated that appellant reported experiencing low back pain while delivering mail. She noted findings of spinal stenosis and lumbar disc bulge. On November 1, 2016 Dr. Sadek diagnosed disc bulges at L3-4 and L4-5, with spinal stenosis at L3-4, related to the September 15, 2016 employment injury.

OWCP accepted appellant's claim for spinal stenosis of the lumbar region at L3-4 and intervertebral disc disorders of the lumbar region with myelopathy at L3-4 and L4-5. Appellant received continuation of pay for the period September 16 to October 30, 2016.

On November 16, 2016 appellant filed a claim for compensation (Form CA-7) claiming wage-loss compensation for the period October 31 to November 11, 2016 due to his September 15, 2016 employment injury.⁴ He later filed Forms CA-7 claiming employment-related disability for periods commencing after November 11, 2016.

In a November 22, 2016 development letter, OWCP requested that appellant submit additional evidence, including a rationalized medical opinion explaining how and why the accepted September 15, 2016 employment injury precluded him from working on or after October 31, 2016.

In response, appellant submitted a December 5, 2016 excuse slip from Dr. Sadek who indicated that appellant should be off work for four weeks. In a December 5, 2016 duty status report (Form CA-17), she listed the date of injury as September 15, 2016 and the diagnoses "due to injury" as spinal stenosis and degenerative disc disease. Dr. Sadek determined that appellant could not perform his regular work.

In a December 9, 2016 "initial evaluation" report, Dr. Robert R. Reppy, an osteopath and Board-certified family practitioner, noted that appellant reported that, while delivering mail on September 15, 2016, he experienced sudden severe low back pain and was unable to move after he bent down low to place mail in a mail receptacle. He indicated that this bending action resulted in hyperflexion of appellant's lumbar spine. Appellant further reported that he presently had lumbar pain which radiated bilaterally to points just distal to his knees (right greater than left), and that he had leg pain and weakness which limited his walking to 100 feet at a time and caused his legs to buckle several times a week. Dr. Reppy diagnosed lumbar stenosis and degenerative lumbar disc disease, especially at L3-4 and L4-5.

⁴ Appellant had received continuation of pay for his time off work from September 16 to October 30, 2016.

In a December 9, 2016 Form CA-17, Dr. Reppy listed the date of injury as September 15, 2016 and the diagnosis “due to injury” as spinal stenosis. He found that appellant could not work for four weeks.

By decision dated December 23, 2016, OWCP denied appellant’s claim because he had not submitted medical evidence sufficient to establish disability on or after October 31, 2016 causally related to his accepted September 15, 2016 employment injury. It found that the reports of Dr. Sadek and Dr. Reppy did not contain a rationalized medical opinion regarding the claimed period of employment-related disability.

On April 21, 2017 appellant, through counsel, requested reconsideration of the December 23, 2016 decision.

Appellant submitted an undated report from Dr. Sadek who noted that appellant reported that on September 15, 2016 he reached down to put mail in a box and felt excruciating low back pain when attempting to return to an upright position.⁵ She diagnosed medical conditions found in a September 28, 2016 magnetic resonance imaging (MRI) scan, including a broad-based intervertebral disc bulge at L3-4 with mild spinal stenosis, disc desiccation/narrowing, and mild bilateral neural foraminal narrowing, as well as an intervertebral disc bulge at L4-5 with superimposed small central protrusion, moderate spinal stenosis, annular fissure, bilateral lateral recesses narrowing, and mild bilateral neural foraminal narrowing.⁶ Dr. Sadek opined that appellant’s work activities contributed to these “disabling medical conditions.” She noted that, based on her physical examination of appellant and her review of the medical records, it was more probable than not that the September 15, 2016 employment incident contributed to the “disabling diagnoses, impairments, and disabilities” identified in her report.⁷ Dr. Sadek indicated that OWCP had already accepted appellant’s claim for disabling medical conditions that prevented him from performing his regularly and specially assigned job duties and she noted, “Based on the MRI, and the clinical examinations that I personally performed of [appellant], the medications that he was prescribed by various physicians and the medical reports that I reviewed (including the emergency room report the day of the injury), it is my medical opinion that [appellant] has been totally disabled from all work from the date of injury to the present.”⁸

In a December 19, 2016 report, Dr. Reppy provided a description of the September 15, 2016 employment incident which was similar to that contained in his December 9, 2016 report. He noted that, on September 15, 2016, when appellant bent down to the extreme range of his back motion, this hyperflexion of his lumbar spine while bearing weight in his arms resulted in the application of sufficient compression force to cause disc protrusions at L3-4 and L4-5 in a posterior direction. Dr. Reppy indicated that the disc protrusions impinged on the nerve roots as they exited the spinal column and thereby caused pain to those areas of the lower extremities to which the

⁵ OWCP received this report on December 28, 2016.

⁶ The case record contains a report of the September 28, 2016 MRI scan which, in its conclusion section, includes the diagnoses referenced by Dr. Sadek.

⁷ Dr. Sadek inadvertently listed the date of the employment incident as June 19, 2016 in the “statement of causal connection” portion of her report, but she properly listed it as June 15, 2016 in other portions of the report.

⁸ Dr. Sadek opined that appellant would continue to be totally disabled for the immediate future until it was determined how he responded to physical therapy or, if necessary, back surgery.

nerves traveled. He maintained that the consequence of these disc protrusions was that appellant's legs grew weak even after a short distance of walking and that his symptoms forced him to cease activity after walking as short a distance as 100 feet.⁹ Dr. Reppy opined that lifting heavy objects would further the compression of appellant's involved lumbar discs, thereby making them bulge more and impinge even harder on the nerve roots. He noted that appellant's rural carrier position required him to carry up to 70 pounds and that he would not meet the minimum qualifications for this position given that he could not lift more than 20 pounds without experiencing extreme leg pain and weakness. Dr. Reppy indicated, "It is my expert medical opinion that the conditions diagnosed above are directly related to his injury of September 15, 2016 and both preclude him from the ability to perform the required tasks...."

In several CA-17 forms dated between January 6 and April 7, 2017, Dr. Reppy listed the date of injury as September 15, 2016 and the diagnosis "due to injury" as spinal stenosis, and indicated that appellant could not work for various periods. In a January 6, 2017 narrative report, he advised that appellant could not work for the next five weeks. These reports collectively identified a period of total disability from January 6 to April 21, 2017. In CA-17 forms dated May 5, June 2, and July 7, 2017, Dr. Reppy indicated that appellant could perform part-time work with restrictions. In additional narrative reports dated between February 10 and May 5, 2017, he diagnosed such conditions as stenosis of the lumbar spine, herniated disc at L5-S1 with radiculopathy of the lower extremities, and multifocal entrapment of the nerve roots at L4 and L5.¹⁰

By decision dated July 6, 2017, OWCP denied modification of its December 23, 2016 decision.

On July 5, 2018 appellant, through counsel, requested reconsideration of the July 6, 2017 decision.

Appellant submitted several narrative reports, dated between August 4, 2017 and August 10, 2018, in which Dr. Reppy reported physical examination findings and diagnosed such conditions as lumbar spinal stenosis, herniated disc at L5-S1 with radiculopathy of the lower extremities, and entrapment syndrome at the L4 and L5 nerve roots. In CA-17 forms dated between August 4, 2017 and August 10, 2018, Dr. Reppy diagnosed spinal stenosis related to the September 15, 2016 employment incident and indicated that appellant could not work for intermittent periods between August 4, 2017 and September 24, 2018.¹¹

⁹ Dr. Reppy indicated that impingement on appellant's nerves could cause his legs to spontaneously buckle and for him to fall to the floor without warning.

¹⁰ Appellant also submitted January 13 and 19, 2017 reports from Dr. Tatyana Stepanenko, Board-certified in physical medicine and rehabilitation, who diagnosed spinal stenosis of the lumbar spine, degeneration of intervertebral disc, and lumbar radiculopathy. The findings of January 18, 2017 electromyogram and nerve conduction velocity (EMG/NCV) testing showed evidence suggestive of right L4 and bilateral L5/S1 multi-focal nerve entrapment.

¹¹ In reports dated June 13, July 10, and August 14, 2018, Dr. Paul Webster, a Board-certified anesthesiologist, described his application of steroid injections in appellant's lumbar region to help alleviate his pain. He diagnosed spinal stenosis of the lumbar region, intervertebral lumbar disc disorders with radiculopathy, and other intervertebral lumbar disc displacement. The findings of July 11, 2018 EMG/NCV testing showed evidence suggestive of left L5 and bilateral S1 nerve entrapment.

In June 8 and 29, 2018 narrative reports, Dr. Reppy discussed the progression of appellant's lumbar condition since the September 15, 2016 employment injury. He indicated that, for a period in 2017, he had placed appellant on part-time work restrictions in order to see if his employment-related lumbar conditions would improve with rest. Dr. Reppy noted that, after appellant's employment-related lumbar condition did not improve with conservative care, he presented all signs of being a back surgery candidate and he advised that "due to this he was placed on no work status."

By decision dated September 26, 2018, OWCP denied modification of its July 6, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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.¹² 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.¹³ This meaning, for brevity, is expressed as disability for work.¹⁴

The medical evidence required to establish a 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.¹⁵

ANALYSIS

The Board finds that the case is not in posture for decision.

Appellant submitted an undated report from Dr. Sadek, received by OWCP on December 28, 2016, in which she discussed appellant's September 15, 2016 employment incident and diagnosed intervertebral disc bulge at L3-4 with mild spinal stenosis and disc bulge at L4-5 with superimposed small central protrusion and moderate spinal stenosis. She opined that, based on her physical examination of appellant and her review of the medical records, it was more probable than not that the September 15, 2016 employment injury contributed to these disabling

¹² *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

¹³ *See* 20 C.F.R. § 10.5(f).

¹⁴ *See S.W.*, *supra* note 12. *See also A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Roberta L. Kaumoana*, 54 ECAB 150 (2002).

¹⁵ *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

diagnoses that caused him to be totally disabled from all work from September 15, 2016 to the present.¹⁶

In a December 19, 2016 report, Dr. Reppy provided a description of the September 15, 2016 employment incident and discussed appellant's back pain and leg pain/weakness related to the September 15, 2016 employment injury. He diagnosed degenerative disc disease of the lumbar spine at L3-4 and L4-5, and lumbar spinal stenosis. Dr. Reppy noted that appellant's rural carrier position required him to carry up to 70 pounds and that he would not meet the minimum qualifications for this position given that he could not lift more than 20 pounds without experiencing extreme leg pain and weakness. He opined that the diagnosed conditions of lumbar spinal stenosis and degenerative lumbar disc disease at L3-4 and L4-5 were directly related to appellant's September 15, 2016 employment injury and that both of these diagnosed conditions precluded him from performing his required work tasks.¹⁷

The Board notes that, in several of their reports, Dr. Sadek and Dr. Reppy related appellant's disability commencing in late-2016 to two conditions: degenerative lumbar disc disease and lumbar spinal stenosis. While the former condition has not been accepted as related to the September 15, 2016 employment injury, the latter condition has, in fact, been accepted as related to that injury. Therefore, Dr. Sadek's and Dr. Reppy's reports contain a clear opinion that an employment-related condition at least partially contributed to appellant's disability during the claimed period.¹⁸

Proceedings under FECA are not adversarial in nature, and OWCP is not a disinterested arbiter.¹⁹ The Board finds that while Dr. Sadek's and Reppy's reports are insufficient to meet appellant's burden of proof, they raise an uncontroverted inference of causal relation between his claimed disability from work commencing October 31, 2016 and the accepted September 15, 2016 employment injury. Further development of appellant's claim is therefore required.²⁰

On remand OWCP shall prepare a statement of accepted facts and refer appellant to an appropriate Board-certified specialist for a second opinion examination and an evaluation regarding whether he had disability from work on or after October 31, 2016 causally related to his

¹⁶ In a December 5, 2016 Form CA-17, Dr. Sadek listed the date of injury as September 15, 2016 and the diagnoses "due to injury" as spinal stenosis and degenerative disc disease. She determined that appellant could not perform his regular work.

¹⁷ In Forms CA-17 dated between late 2016 and mid-2018, Dr. Reppy listed the date of injury as September 15, 2016 and the diagnosis "due to injury" as spinal stenosis, and determined that appellant was either partially or totally disabled for various periods commencing in December 2016. In June 8 and 29, 2018 narrative reports, Dr. Reppy further discussed his opinion that appellant had periods of partial and total disability commencing in late 2016 due to his accepted September 15, 2016 employment injury.

¹⁸ See *G.B.*, Docket No. 10-0878 (issued December 17, 2010) (discussing coverage under FECA when there is only partial contribution by a given employment factor/condition).

¹⁹ See *B.B.*, Docket No. 18-1321 (issued April 5, 2019).

²⁰ See *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

accepted September 15, 2016 employment injury. Following any necessary further development, OWCP shall issue a *de novo* decision.²¹

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: October 23, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²¹ The record contains a Form CA-16 that was completed on October 12, 2016 by Dr. Sadek. Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).