



## **FACTUAL HISTORY**

On November 2, 2016 appellant, then a 41-year-old lead transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that, on October 10, 2016, she sustained a strain of her lower back when she picked up a bag from a conveyer belt while in the performance of duty. She did not stop work, but worked in a limited-duty position without wage loss. OWCP accepted appellant's claim for strain of the muscle, fascia, and tendon of the lower back.

Appellant received treatment for her back condition from Dr. Patrick Kunkler, a Board-certified family practitioner, who noted in October 11 and 18, 2016 reports that she could perform modified-duty work with restrictions including lifting, pushing, and pulling no more than 10 pounds. On December 6, 2016 Dr. Kunkler advised that she could return to regular-duty work on that date and she returned to her regular job shortly thereafter.

On October 10, 2017 Dr. Bradley Mullen, a Board-certified neurosurgeon, diagnosed left-sided sciatica and advised that appellant could work with restrictions, including lifting no more than 10 pounds. On January 31, 2018 he noted that appellant reported that she continued to have back and lower extremity pain and he advised that a December 18, 2017 magnetic resonance imaging (MRI) scan of the lower back demonstrated a small disc protrusion at the L3-4 level.<sup>3</sup>

In a May 25, 2018 report, Dr. David Sower, Board-certified in emergency medicine, noted that appellant reported an October 10, 2016 lifting incident and he diagnosed low back pain, L3-4 disc desiccation with annular fissure, and "work-related injury October 10, 2016."<sup>4</sup> He maintained that the MRI scan findings failed to provide a good explanation for her pain complaints and opined that her back strain with associated pain should have resolved within months with medication and physical therapy. In another May 25, 2018 report, Dr. Sower advised that appellant could work with restrictions, including lifting, pushing, and pulling no more than five pounds. On August 24, 2018 he indicated that she could return to limited-duty work in an administrative or clerical capacity with restrictions of lifting, pushing, and pulling no more than five pounds, and no kneeling, stooping, bending, squatting, or twisting. Dr. Sower noted that appellant needed to be able to "frequently/freely sit and walk" until September 24, 2018.<sup>5</sup>

On September 13, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) due to work-related disability from work for the period September 10 through 15, 2018.<sup>6</sup>

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<sup>3</sup> The case record contains a copy of the December 18, 2017 MRI scan which includes an impression of L4-5 disc bulge with small annular tear.

<sup>4</sup> Upon physical examination, Dr. Sower found tenderness in the lower back and bilateral paraspinal muscles, slightly positive left straight leg test, 5/5 strength of the hips/lower extremities, and normal range of motion of the hips.

<sup>5</sup> Dr. Sower also produced another August 24, 2018 report in which he reported the findings of his physical examination on that date, noting that appellant had a normal heel-toe gait with no weakness exhibited.

<sup>6</sup> Appellant later filed a notice of recurrence (Form CA-2a) alleging that she sustained a recurrence of disability on September 10, 2018. The employing establishment submitted a September 10, 2018 memorandum in which it noted that it could not approve appellant's request for extended limited-duty work based on the restrictions identified in Dr. Sower's August 24, 2018 report. Appellant also filed additional CA-7 forms claiming wage-loss compensation for the cumulative period September 16 through October 13, 2018.

In a development letter dated September 17, 2018, OWCP requested that appellant submit a well-reasoned medical report from her attending physician detailing whether objective findings related to the accepted October 10, 2016 employment injury restricted her from performing full-duty work. It afforded her 30 days to submit the requested evidence.

OWCP subsequently received a September 13, 2018 report from Dr. James Caviness, Board-certified in occupational medicine, who advised that the employing establishment had arranged for him to review appellant's medical file as part of its case management program. Dr. Caviness noted that he had not examined her and indicated under the heading "work status" that she had been off work since September 11, 2018 as a limited-duty assignment was no longer available. He noted that, if physical therapy were not approved, the timeline of a return to full-duty work in four to six weeks "from the date of the last note on file" would not be accurate. Dr. Caviness advised that appellant's treating physician had diagnosed a condition which was not accepted as work related.

In a September 26, 2018 report, Dr. Sower advised that appellant could return to limited-duty work on September 27, 2018 in an administrative or clerical capacity with restrictions of lifting, pushing, and pulling no more than five pounds, and no kneeling, stooping, bending, squatting, or twisting. He noted that she needed to be able to "frequently/freely sit and walk" until October 26, 2018. In another September 26, 2018 report, Dr. Sower reported that, upon physical examination, appellant had no tenderness to palpation over the cervical, thoracic, or lumbar spine, good range of motion in the hips, and good strength in the lower extremities. He indicated that she continued to complain of pain in the left paraspinal muscles and left low back. Dr. Sower diagnosed low back pain, L3-4 disc desiccation with annular fissure, and "work-related injury October 10, 2016." He advised that he did not think he would be able to release appellant to unrestricted full-duty work without a "more objective study," given her personal sense of her inability to perform her normal work duties.

By decision dated October 19, 2018, OWCP denied appellant's claim, finding that she had not established disability from work for the period September 10 through October 13, 2018 causally related to the accepted October 10, 2016 lower back strain. It found that, with respect to the claimed period of disability, "the medical evidence of file does not establish that you were disabled as a result of your accepted work-related medical condition(s)."

### **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 any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>7</sup>

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>8</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>9</sup> An employee who has a physical impairment causally related to a federal employment

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<sup>7</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>8</sup> 20 C.F.R. § 10.5(f).

<sup>9</sup> *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>10</sup> 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 loss of wages.<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 claimed disability and the specific employment factors identified by the claimant.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period September 10 through October 13, 2018 causally related to her accepted October 10, 2016 employment injury.

Appellant submitted a September 26, 2018 report from Dr. Sower who advised that she could perform limited-duty work on September 27, 2018 in an administrative or clerical capacity with restrictions of lifting, pushing, and pulling no more than five pounds, and no kneeling, stooping, bending, squatting, or twisting. Dr. Sower noted that she needed to be able to “frequently/freely sit and walk” until October 26, 2018. In another September 26, 2018 report, he diagnosed low back pain, L3-4 disc desiccation with annular fissure, and “work-related injury October 10, 2016.” Dr. Sower advised that he did not think he would be able to release appellant to unrestricted full-duty work without a “more objective study,” given appellant’s personal sense of her inability to perform her normal work duties.

However, these reports are of no probative value on the underlying issue of this case because, despite the fact that Dr. Sower mentioned an October 10, 2016 employment injury, he did not provide an opinion that appellant had disability during the claimed period (September 10 through October 13, 2018) causally related to the accepted October 10, 2016 lower back strain. 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>13</sup> With particular regard to Dr. Sower’s diagnosis of L3-4 disc desiccation with annular fissure, the Board notes that this condition has not been accepted as causally related to the October 10, 2016 employment injury. Therefore, his reports are insufficient to establish her claim.

Appellant submitted other medical reports discussing her ability to work, including October 11 and 18 and December 6, 2016 reports of Drs. Kunkler and October 10, 2017 and January 31, 2018 reports of Dr. Mullen. However, these reports are of no probative value on the

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<sup>10</sup> See *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

<sup>11</sup> See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

<sup>12</sup> *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>13</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

underlying issue of this case as they predate the claimed period of disability, *i.e.*, September 10 through October 13, 2018.<sup>14</sup> As such, these reports do not suffice to establish appellant's disability claim for the period September 10 to October 13, 2018.<sup>15</sup>

As appellant has not submitted rationalized medical opinion evidence establishing disability from work for the period September 10 through October 13, 2018 due to the accepted October 10, 2016 employment injury, she has not met her burden of proof to establish. Therefore, she is not entitled to wage-loss compensation for the period claimed.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish disability from work for the period September 10 through October 13, 2018 causally related to her accepted October 10, 2016 employment injury.

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<sup>14</sup> *See id.* Dr. Sower's May 25 and August 24, 2018 reports are of no probative value regarding appellant's disability claim for these same reasons. With regard to the December 18, 2017 MRI scan submitted by appellant, the Board has held that diagnostic studies lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions or associated disability. *See J.S.*, Docket No. 17-1039 (issued October 6, 2017). In a September 13, 2018 report, Dr. Caviness noted that appellant had been off work since September 11, 2018 and he discussed the timing of a possible return to full-duty work. However, his report is of no probative value on causal relationship because he did not provide an opinion that appellant had disability due to the October 10, 2016 employment injury. *See D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>15</sup> *See V.G.*, Docket No. 18-0936 (issued February 6, 2019). The Board notes that there is some indication in the case record that the employing establishment was unable to continue providing limited-duty work for appellant in September 2018. However, this circumstance would not establish disability because there is no indication that appellant was working in a limited-duty assignment made specifically to accommodate her limitations due to effects of the accepted October 10, 2016 lower back strain. *See* 20 C.F.R. § 10.5(x); *see J.D.*, Docket No. 18-1533 (issued February 27, 2019) (disability may be found when a limited-duty assignment made specifically to accommodate an employee's physical limitations due to a work-related injury is withdrawn or altered so that the assignment exceeds the employee's physical limitations).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 11, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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