



## **FACTUAL HISTORY**

On June 23, 2017 appellant, then a 57-year-old paralegal specialist, filed a traumatic injury claim (Form CA-1) alleging that on June 22, 2017 she twisted and pulled the left side of her lower back when lifting a box of paper while in the performance of duty. A supervisor noted that appellant had not stopped work.

On August 2, 2017 OWCP accepted the claim for radiculopathy of the lumbosacral region, aggravation of lumbar spondylolysis, and sprain of the ligaments of the lumbar spine. It subsequently received a report dated July 19, 2019, wherein Dr. Shadana Hill, a chiropractor, described examination findings and a treatment plan.<sup>3</sup>

A July 19, 2017 functional capacity evaluation report indicated that appellant was unable to bend, squat, or lift at waist or floor level due to decreased range of motion or strength of the lower back.

In a report dated July 31, 2017, Dr. Edward F. Wolski, a physician who practices physical medicine and rehabilitation, noted physical examination findings and his review of appellant's MRI scan. He determined that she was totally disabled due to her work-related, accepted conditions. Dr. Wolski explained that appellant was unable to drive or operate heavy machinery, that she was taking sedating medication for pain, that appellant was undergoing active treatment and rehabilitation, and that she had significant limitations on daily living activities as a result of the employment injury. He noted that she would be totally disabled from work during the period July 31 through August 14, 2017. In an August 14, 2017 report, Dr. Wolski made similar findings to his prior report and determined that appellant's total disability would continue from August 14 through September 14, 2017 due to her sedating medication, need to undergo active treatment and rehabilitation, and significant limitations on daily living activities including driving.

On September 13, 2017 Dr. Wolski examined appellant for complaints of lower back pain. He observed appellant's slow antalgic gait and found that she had back pain with reduced range of motion on extension and flexion, and pain in the lower extremities. Dr. Wolski diagnosed lumbar spondylosis, lumbosacral radiculopathy, and lumbar spine sprain/strain. He recommended that appellant continue physical therapy he explained was medically necessary to reduce pain as well as increase strength and endurance, functional capacity, and physical demand level, all while reducing muscle spasms and inflammation. Dr. Wolski concluded that she should remain off work for four weeks until further evaluation.

In a separate note dated September 13, 2017, Dr. Wolski opined that appellant was totally disabled from her paralegal duties due to her accepted employment-related conditions. He described appellant's July 14, 2017 lumbar MRI scan findings and advised that her total disability was expected to last through October 13, 2017.

On September 25, 2017 Dr. Albert Vu, an osteopath Board-certified in pain medicine and physical medicine and rehabilitation, examined appellant. He noted appellant's chief complaint of lower back pain that began on June 22, 2017 after lifting boxes at work. Examination of the back demonstrated decreased flexion and extension and pain with facet loading bilaterally. Dr. Vu found no evidence of laxity or instability, but increased paraspinal muscle tone and diffuse lower

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<sup>3</sup> The record contains a number of physical therapy and rehabilitation treatment notes with illegible signatures.

paraspinal tenderness. He diagnosed lumbosacral radiculopathy and sprain of the ligaments of the lumbar spine.

On October 24, 2017 appellant filed wage-loss compensation claims (Form CA-7) for total disability covering the periods August 28 through September 29, 2017 and October 2 through 13, 2017. These claims indicated that appellant had received continuation of pay from July 17 to August 26, 2017.

OWCP subsequently received a report dated October 9, 2017, wherein Dr. Wolski repeated his September 13, 2017 findings. Dr. Wolski indicated that appellant's total disability was expected to last through November 6, 2017.

In a development letter dated November 2, 2017, OWCP informed appellant that the factual and medical evidence of record was insufficient to establish her claim for disability compensation. It advised her of the type of evidence necessary to establish her claim and afforded her 30 days to submit the necessary evidence.

In a report dated November 6, 2017, Dr. Wolski indicated that appellant's electromyogram and nerve conduction velocity study demonstrated bilateral L5 and S1 nerve radiculopathy. He advised that appellant's total disability was expected to last through December 6, 2017.

By decision dated December 14, 2017, OWCP denied appellant's claims for wage-loss compensation commencing August 28, 2017 and continuing finding that the medical evidence submitted was insufficient to establish that she was totally disabled due to the accepted conditions.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.<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 his or her federal employment, but who nonetheless has the capacity to earn the wages that she was receiving at the

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> *See L.S.*, Docket No. 18-0264 (issued January 28, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>6</sup> *Id.*

<sup>7</sup> *S.L.*, Docket No. 19-0603 (issued January 28, 2020).

<sup>8</sup> *Id.*

<sup>9</sup> *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.<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 employment, the employee is entitled to compensation for any loss of wages.<sup>11</sup>

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has met her burden of proof to establish total disability from work for the periods August 28 through September 29, and October 2 through 13, 2017 causally related to her accepted June 22, 2017 employment injury.

In a report dated August 14, 2017, Dr. Wolski explained that appellant sustained a work-related injury on June 22, 2017 when she lifted several boxes and began to experience low back and left lower extremity pain. He noted that appellant was totally disabled from work because she was unable to drive or operate heavy machinery, was taking sedating medications for pain, was undergoing active treatment and rehabilitation, and had significant disability and limitations regarding activities of daily living. Dr. Wolski concluded that appellant's total disability was expected to last through October 13, 2017 and he explained that his opinion regarding appellant's disability status was based upon her MRI scan findings, as well as her physical examination.

OWCP continued to receive reports from Dr. Wolski in which he diagnosed lumbosacral radiculopathy, lumbar spondylosis, and lumbar ligament sprain on September 13, October 9, and November 6, 2017. In each of these reports, Dr. Wolski continued to provide appellant's medical findings and certify continuing dates of disability through December 6, 2017.

Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.<sup>13</sup> Dr. Wolski supported his opinion regarding appellant's periods of disability with objective medical findings and he addressed the specific dates of disability from work for which appellant claimed compensation, from August 28 through September 29 and October 2 through 13, 2017.<sup>14</sup>

Thus, the Board finds that appellant has met her burden of proof to establish total disability from work for the periods August 28 through September 19, and October 2 through 13, 2017.

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<sup>10</sup> *G.R.*, Docket No. 19-0940 (issued December 20, 2019).

<sup>11</sup> *See S.L.*, *supra* note 7.

<sup>12</sup> *Id.*

<sup>13</sup> *V.H.*, Docket No. 18-1282 (issued April 2, 2019).

<sup>14</sup> *Id.*

Upon return of the case record, OWCP shall authorize payment of appropriate wage-loss compensation for these periods of disability.

**CONCLUSION**

The Board finds that appellant has met her burden of proof to establish total disability from work for the periods August 28 through September 29 and October 2 through 13, 2017 causally related to her accepted June 22, 2017 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 14, 2017 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 29, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board