

FACTUAL HISTORY

On January 9, 1992 appellant, then a 37-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury to his lower back (tailbone) that day as a result of hitting a pothole in the road while driving in the performance of duty. OWCP accepted the conditions of contusion of the lower back, lumbar strain, and lumbar intervertebral disc displacement without myelopathy as work related. Appellant returned to modified duty and missed work intermittently.³ OWCP adjudicated this claim under File No. xxxxxx592.

In June 2016 appellant filed wage-loss compensation claims (Form CA-7) for intermittent periods of disability commencing May 27, 2016.

In development letters dated June 17 and 30, 2016, OWCP informed appellant that the evidence of record was insufficient to establish his wage-loss claims. It advised him of the type of evidence needed and afforded him 30 days to submit the requested information.

OWCP subsequently received reports from Dr. Sergio B. Pacheco, a neurosurgeon, dated beginning May 31, 2016 including a duty status report (Form CA-17) in which he noted radiculitis and L5-S1 sciatic pain, and opined that appellant could not work. In a June 2, 2016 report, he advised that, despite current treatment, appellant had been unable to work since May 26, 2016 due to recurrent and progressive low back and leg pain. Dr. Pacheco described physical examination findings and recommended a lumbosacral block. Additional Form CA-17 reports and treatment notes indicated that appellant could not work due to acute, recurrent low back and leg pain. In a report dated July 19, 2016, Dr. Pacheco indicated that appellant had an exacerbation of his chronic, residual, post-traumatic mechanical-type of lumbosacral pain with radiating S1 sciatic pain. He noted that appellant's back condition was also associated with lumbosacral degenerative disc disease and lumbosacral degeneration of the articular facet with facet arthrosis and spondylosis without lysis.⁴

Under File No. xxxxxx858, in a May 23, 2016 report, Dr. Richard S. Westbrook, a Board-certified orthopedic surgeon, noted seeing appellant for increasing, intermittent left knee pain. He indicated that x-ray showed developing post-traumatic arthritic changes and diagnosed medial meniscus tear and traumatic arthropathy of the left knee. On a Form CA-17 report also dated May 23, 2016, Dr. Westbrook advised that appellant could perform the duties listed on a full-time basis.⁵

³ Appellant had subsequent injury claims accepted by OWCP. In a claim adjudicated by OWCP under File No. xxxxxx858, OWCP accepted a December 3, 2009 occupational disease claim (Form CA-2) for left knee tear of medial meniscus and left chondromalacia patellae. In a claim adjudicated by OWCP under File No. xxxxxx131, OWCP accepted appellant's July 13, 2012 traumatic injury claim for sprain of right shoulder and upper arm, unspecified site. It administratively combined the claims on September 29, 2017, which was after OWCP's August 31, 2017 decision, but prior to appellant's appeal to the Board.

⁴ Dr. Oscar Vega, Board-certified in anesthesiology and pain medicine, performed lumbar epidural injections at L5-S1 on June 23 and July 25 2016.

⁵ The report indicated that physical requirements were lifting up to 70 pounds, one to three hours daily, standing two to three hours daily, fine manipulation six to eight- hours daily, and driving two to six hours daily.

By decision dated August 10, 2016, OWCP denied appellant's wage-loss compensation claim for the period commencing May 27, 2016, finding that the medical evidence of record was insufficient to establish total disability due to the lumbar conditions accepted under File No. xxxxxx592.

On September 29, 2016 appellant requested reconsideration.

Evidence submitted subsequent to the August 10, 2016 decision included reports from Dr. Westbrook under File No. xxxxxx858. On August 11, 2016 Dr. Westbrook indicated that appellant's left knee injury had become worse. He described examination findings and repeated his diagnoses. Dr. Westbrook advised that appellant could not work due to the arthritic changes in his knee that were directly related to the employment-related meniscal injury.

Under File No. xxxxxx858, OWCP commenced paying appellant compensation on the supplemental rolls, effective August 11, 2016. On September 18, 2016 it placed him on the periodic rolls. Appellant continues to receive periodic compensation to date under File No. xxxxxx858.

In Form CA-17 reports dated August 18 to December 1, 2016, Dr. Pacheco reiterated that appellant could not work due to an acute exacerbation/aggravation of chronic S1 pain.

On September 26, 2016 Dr. Pacheco opined that appellant had been totally disabled from work since May 22, 2016. He wrote that it was important to note that appellant's condition had been treated by multiple doctors since 1992 and that he had been treated surgically for his knees and shoulder by his orthopedic surgeon, Dr. Westbrook. Dr. Pacheco concluded that appellant remained symptomatic in all the above-mentioned areas, especially his chronic post-traumatic low back pain syndrome and radicular sciatic pains that began in 1992. He also reported that appellant's right leg was causing problems.

Appellant additionally submitted an August 26, 2016 x-ray of the lumbar spine that demonstrated a mild disc bulge at L3-5 and a mild posterior disc osteophyte at L5-S1. An August 26, 2016 magnetic resonance imaging scan of the lumbar spine revealed mild degenerative joint disease and degenerative disc disease, most notable at L5-S1, and multilevel degenerative changes of the lumbar spine.

Appellant retired from the employing establishment on November 30, 2016. He elected FECA compensation benefits, effective that date.

By decision dated December 21, 2015, OWCP denied modification of its August 10, 2016 decision.

On June 6, 2017 appellant again requested reconsideration.

Appellant continued to submit reports in which Dr. Pacheco described appellant's lumbar condition. On March 2, 2017 Dr. Pacheco advised that appellant was placed off work on May 26, 2016 because he had an acute exacerbation of chronic low back pain syndrome. He noted that Dr. Vega was treating appellant for pain, that Dr. Westbrook had also placed him off work due to knee problems, and that appellant officially retired on November 30, 2016.

By decision dated August 31, 2017, OWCP denied modification of its prior decisions. It found that the medical evidence of record did not include a well-reasoned opinion with objective findings that supported how appellant's work injury worsened and rendered him totally disabled from work beginning May 27, 2016.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁷ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled for work as a result of the accepted employment injury.⁸ 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.⁹

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.¹⁰ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.¹¹ 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 time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.¹² 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.¹³

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.¹⁴

FECA does not provide for dual payment of compensation for temporary total disability for separate injuries covering the same period.¹⁵ Compensation for disability, as distinguished

⁶ *Supra* note 1.

⁷ *See S.L.*, Docket No. 18-0264 (issued January 28, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁸ *Id.*

⁹ *S.L.*, Docket No. 19-0603 (issued January 28, 2020).

¹⁰ *Id.*

¹¹ *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

¹² *G.R.*, Docket No. 19-0940 (issued December 20, 2019).

¹³ *See S.L.*, *supra* note 9.

¹⁴ *Id.*

¹⁵ *Lorann Wise-Dent*, Docket No. 03-1707 (issued May 19, 2004); *Carolyn M. Leek*, 47 ECAB 374 (1996).

from compensation under a schedule award, is paid under FECA to reimburse a claimant for an employment-related loss of wage-earning capacity, that is, an inability to earn wages. An employee cannot have more than 100 percent loss of wage-earning capacity, and a claimant receiving compensation for temporary total disability is not entitled to additional compensation benefits for disability.¹⁶

ANALYSIS

The Board finds this case is not in posture for decision.

OWCP accepted contusion of the lower back, lumbar strain, and lumbar intervertebral disc displacement as work-related conditions under File No. xxxxxx592. It accepted a left knee medial meniscus tear and chondromalacia patellae, left, as work-related conditions under File No. xxxxxcx858, and sprain of right shoulder and upper arm, unspecified site, as work-related conditions under File No. xxxxxx131.

Following OWCP's August 31, 2017 decision, but before the present appeal was filed with the Board on September 29, 2017, OWCP administratively combined File Nos. xxxxxx592, xxxxxx558, and xxxxxx131. File No. xxxxxx592 was designated the master file.

As the August 31, 2017 decision was rendered before the files were combined, for a full and proper adjudication of appellant's disability claim, the Board finds that the August 31, 2017 decision should be set aside and the case remanded to OWCP for consideration of the evidence in the combined files and for such further development as may be deemed necessary, to be followed by a *de novo* decision regarding his disability, if any, for the period May 27 to August 11, 2018.

CONCLUSION

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

¹⁶ *Lorann Wise-Dent, id.; see Burnice Gish, 33 ECAB 376 (1981).*

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 24, 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