

FACTUAL HISTORY

On August 3, 2018 appellant, then a 27-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 18, 2018 she strained her back when loading packages on a mail truck while in the performance of duty. OWCP accepted the claim for sprains of the ligaments of the thoracic and lumbar areas of the spine. Appellant stopped work on August 4, 2018.

In an initial evaluation dated September 1, 2018, Dr. Rory L. Allen, an osteopath, obtained a history of the July 18, 2018 employment injury and diagnosed thoracic and lumbar sprains/strains. He found that appellant could perform limited-duty work.

In a September 13, 2018 progress report, Dr. Allen again discussed appellant's history of feeling a pop in her middle and lower back after lifting packages on July 18, 2018. He diagnosed thoracic and lumbar strain/sprain. Dr. Allen opined that appellant was temporarily totally disabled due to severe pain, muscles spasms, and reduced motion. He attributed the diagnosed conditions to her July 18, 2018 employment injury. Dr. Allen continued to submit progress reports and duty status reports (Form CA-17) finding that appellant was disabled from employment.

A magnetic resonance imaging (MRI) scan of appellant's lumbar and thoracic spine obtained on October 25, 2018 yielded normal findings.

On December 13, 2018 appellant filed claims for wage-loss compensation (Form CA-7) for disability from work for the period September 1 to November 23, 2018. The employing establishment advised that it had paid continuation of pay until September 17, 2018.

In a development letter dated December 21, 2018, OWCP indicated that the evidence showed that appellant had stopped work on October 13, 2018. It requested that she submit medical evidence supporting that she was unable to work beginning that date causally related to her accepted employment injury.

On January 15, 2019 Dr. Allen advised that appellant was off work due to employment-related residuals of her injury. He related that she had "severe myospasms of the thoracic and lumbar paraspinal regions which are aggravated by motions such as reaching, stooping, crouching, pushing, pulling, lifting, and carrying." Dr. Allen noted that these activities were required as part of appellant's work duties.³

In a report dated January 25, 2019, Dr. Francisco J. Batlle, a neurosurgeon, provided a history of appellant's July 18, 2018 employment injury and diagnosed lumbago. He recommended against surgical intervention.

In a February 25, 2019 development letter, OWCP noted that appellant had stopped work on August 6, 2018 and had not returned. It advised that it was providing Dr. Allen's January 15, 2019 report to a district medical adviser (DMA) for review.

³ Dr. Allen continued to submit progress reports and CA-17 forms finding appellant disabled from employment.

Appellant received pain management treatment from Dr. R. Jamie Spicer, a Board-certified physiatrist, beginning February 21, 2019.

On March 4, 2019 Dr. Kenechukwu Ugokwe, a Board-certified neurosurgeon serving as a DMA, reviewed the evidence of record and opined that OWCP should expand acceptance of appellant's claim to include lumbago as causally related to the accepted July 18, 2018 employment injury. However, he noted that Dr. Allen had failed to provide objective evidence supporting that she was totally disabled beginning August 6, 2018.

On March 8, 2019 OWCP requested that Dr. Allen review and detail any points of disagreement with Dr. Ugokwe's March 4, 2019 report.

Dr. Allen, in a March 27, 2019 progress report, released appellant to return to limited-duty work. He continued to submit progress reports describing his treatment of appellant.

In a report dated April 3, 2019, Dr. Allen asserted that Dr. Ugokwe had disregarded the objective findings upon which he had based his disability determination, including loss of motion and a positive straight leg raise.

OWCP determined that a conflict existed between Dr. Allen and Dr. Ugokwe regarding appellant's work capacity. On May 7, 2019 it referred her to Dr. Donald R. Smith, a Board-certified neurosurgeon, for an impartial medical examination.

In a report dated June 11, 2019, Dr. Smith discussed appellant's work duties and history of injury. He indicated that she had undergone physical therapy, chiropractic treatment, and facet injections at T5 to T8. Dr. Smith noted that appellant had not worked from the time of her injury in July 2018 until April 2019, when she resumed limited-duty work. On examination he found normal straight leg raise and reflexes with no overt spasm and some limitation in motion with pain in the mid-thoracic area. Dr. Smith diagnosed probable thoracic muscle strain with some continued spasms and limitation. He advised that there were essentially normal findings with no radiographic abnormalities and a normal physical and neurological examination. Dr. Smith found that appellant could continue with her limited-duty employment. He recommended continued therapy and exercises.

On June 21, 2019 OWCP requested that Dr. Smith clarify his opinion regarding appellant's work capacity and whether she had sustained lumbago as a consequential injury.

In an addendum dated July 30, 2019, Dr. Smith opined that the diagnosis of lumbago was interchangeable with that diagnosis of lumbosacral strain or sprain. He found that appellant had sustained a soft tissue injury without a structural abnormality. Dr. Smith related that she was not totally disabled at the time of his June 11, 2019 evaluation. He indicated that soft tissue injuries usually resolved within three or four months. Dr. Smith asserted that as he had not examined appellant previously he could not independently determine when she could have resumed work, but that he believed that she could have performed light or medium work three or four months after the injury. He found that, at the time of his examination, appellant should have been able to work full duty, noting that she did have reduced muscle tone. Dr. Smith related, "Certainly, she is capable of returning to light or medium work activities at this time, but may require some gradual progression from this point to achieve a full ability to perform her regular work...."

By decision dated August 13, 2019, OWCP found that appellant had not established that she was disabled from work commencing October 13, 2018 causally related to her accepted July 18, 2018 employment injury.

On October 21, 2019 Dr. Allen described appellant's employment injury and noted that she had initially attempted to work limited duty.⁴ Appellant's attempt was not successful and she was found unable to work from August 29, 2018 through January 3, 2019 based on objective functional testing. Dr. Allen reviewed Dr. Smith's report and noted that it was easier to review a case retrospectively rather than while objective studies and evaluations were pending. He diagnosed sprains of the ligaments of the lumbar and thoracic spine and indicated that appellant was currently performing modified employment. Dr. Allen related, "Due to the nature of the injury and clinical presentation, [appellant] was off of work for precautionary reasons pending additional diagnostic imaging and specialist involvement pending with objective functional capacity evaluations performed demonstrating an inability to safely return to work."

On October 25, 2019 appellant requested reconsideration. She submitted CA-17 forms and a functional capacity evaluation dated July 17, 2019.

By decision dated March 19, 2020, OWCP denied modification of its August 13, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ 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.⁷ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁸

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.⁹ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn

⁴ Dr. Allen submitted progress reports and CA-17 forms from September 2019 to March 2020. Dr. Spicer also continued to provide reports describing his pain management of appellant during this period.

⁵ *Supra* note 2.

⁶ See *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ See *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *M.C.*, Docket No. 18-0919 (issued October 18, 2018).

⁸ See *K.C.*, Docket No. 17-1612 (issued October 16, 2018).

⁹ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018).

wages.¹⁰ 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 he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹¹

Section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, OWCP shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.¹² Where a case is referred to an impartial medical examiner (IME) for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.¹³

ANALYSIS

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

OWCP properly determined that a conflict arose between Dr. Allen and Dr. Ugokwe regarding appellant's disability from employment. In order to resolve the conflict, OWCP properly referred her, pursuant to 5 U.S.C. § 8123(a), to Dr. Smith for an impartial medical examination.

When a case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹⁴

In a report dated June 11, 2019, Dr. Smith discussed appellant's history of injury and provided findings on examination. He noted that she had not worked from July 2018 until April 2019 and was currently performing modified employment. Dr. Smith diagnosed probable thoracic muscle strain with continued spasms and limitation. He found that appellant could continue in her limited-duty employment. In a July 30, 2019 addendum, Dr. Smith opined that the diagnosis of lumbago was the same as a sprain or strain of the lumbar spine. He advised that appellant was not totally disabled at the time of his July 11, 2019 evaluation. Dr. Smith asserted that soft tissue injuries usually resolved within three or four months and that she should have been able to perform light or medium work at that time. He opined that appellant could return to light or medium employment, but might need to gradually progress up to her usual work duties. Dr. Smith's finding that appellant could return to work as soft tissue injuries usually resolved within three or four months is speculative in nature. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.¹⁵ As such, the Board

¹⁰ See *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹¹ See *M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

¹² 5 U.S.C. § 8123(a); *L.S.*, Docket No. 19-1730 (issued August 26, 2020); *M.S.*, 58 ECAB 328 (2007).

¹³ 20 C.F.R. § 10.321; *T.D.*, Docket No. 17-1011 (issued January 17, 2018).

¹⁴ *Id.*

¹⁵ *J.K.*, Docket No. 20-1313 (issued May 17, 2021); *D.B.*, Docket No. 18-1359 (issued May 14, 2019).

finds that Dr. Smith did not provide adequate medical rationale to support his conclusion; therefore, his opinion is insufficient to resolve the conflict in medical evidence.¹⁶

Once OWCP undertakes development of the medical evidence, it must produce medical evidence that will resolve the relevant issues in the case.¹⁷ When it obtains an opinion from an IME for the purpose of resolving a conflict in the medical evidence and the IME's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in the original report.¹⁸ If the IME fails to respond or does not provide an adequate response, OWCP should refer appellant to a new IME for examination.¹⁹ As OWCP has already sought clarification from Dr. Smith, on remand it shall refer appellant, together with a SOAF and a list of specific questions, to another IME in the appropriate field of medicine to resolve the issue.²⁰ OWCP should also verify the dates for which appellant has claimed wage-loss compensation.²¹ Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's disability claim.

CONCLUSION

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

¹⁶ *J.K., id.*

¹⁷ *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

¹⁸ *B.J.*, Docket No. 18-1186 (issued July 9, 2019).

¹⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.11(e) (September 2010).

²⁰ *R.W.*, Docket No. 18-1457 (issued February 1, 2019).

²¹ OWCP determined that appellant had stopped work on October 13, 2018 and adjudicated her claim for wage-loss compensation after that date. She filed claims for wage-loss compensation, however, beginning September 1, 2018. The employing establishment indicated that appellant had received COP until September 17, 2018.

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 30, 2021
Washington, DC

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

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

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