

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from employment for the intermittent dates beginning January 19, 2019 causally related to his November 26, 2010 employment injury.

FACTUAL HISTORY

On November 26, 2010 appellant, then a 42-year-old window clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 26, 2010 he injured his middle and lower back when he was hit by a door being opened by a coworker while in the performance of duty. He stopped work on November 27, 2010.

OWCP denied appellant's traumatic injury claim in decisions dated 2011 through 2019.

OWCP previously accepted that appellant sustained low back strain and groin strain due to an October 28, 1997 employment injury, assigned OWCP File No. xxxxxx151 and lumbar strain due to an August 17, 2003 employment injury, assigned OWCP File No. xxxxxx985.

In a report dated May 11, 2018, Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon and OWCP referral physician, reviewed appellant's history of injuries and diagnosed thoracic spondylosis at multiple levels, a focal deformity of the spinal cord at T4-5, resolving groin strain bilaterally, and a resolved soft tissue injury of the lumbar spine. He noted that OWCP had only accepted a lumbar strain and a groin strain as employment related. Dr. Obianwu opined that the November 26, 2010 employment had caused a temporary aggravation of thoracic spondylosis. He found that appellant could continue working as a window clerk, but could not work as a distribution clerk due to his restrictions on repetitive bending and twisting. In a work capacity evaluation (OWCP-5c) of even date, Dr. Obianwu found that he could push, pull, and lift no more than 30 pounds for eight hours per day.

In a report dated February 15, 2020, Dr. David Barnes, an osteopath, reviewed the history of the November 26, 2010 employment injury and diagnosed disc disorder with radiculopathy and thoracic radiculopathy. He opined that appellant had sustained an injury on November 26, 2010 to his thoracic spine and right shoulder blade.

On June 3, 2020 OWCP accepted appellant's claim for a permanent aggravation of spondylosis without myelopathy or radiculopathy at the thoracic region.⁴

On June 28, 2020 appellant filed claims for compensation for intermittent dates from April 26 through June 22, 2020. In accompanying time analysis (Form CA-7a), he requested wage-loss compensation for eight hours on April 25, May 6-9, 12-13, 15-16, and 19-23, and 27-29, and June 3-5, 2020. Appellant further requested periods of partial disability for additional dates during this period.

⁴ By decision dated June 5, 2020, OWCP vacated its September 24, 2019 decision, finding that the reports from Dr. Obianwu and Dr. Barnes were sufficient to establish that he sustained an employment-related permanent aggravation of spondylosis of the thoracic spine.

On July 8, 2020 appellant filed CA-7 forms requesting wage-loss compensation due to disability from employment on intermittent dates from February 29 to March 20, 2020 and April 18 to 24, 2020.⁵ In accompanying CA-7a forms, he requested compensation for eight hours on March 11-12, 2020 and for partial disability on additional dates.

OWCP paid appellant wage-loss compensation for 12.11 hours during the period July 14 to 17, 2020, 1.1 hours from April 21 to 23, 2020, 4.45 hours on May 14, 2020, 2.38 hours on March 14, 2020, 9.64 hours for the period May 26 through June 2, 2020, 5.46 hours from January 14 through 17, 2020, 3.99 hours from April 29 to May 2, 2020, and 3.85 hours from January 22 through 24, 2020.

In a development letter dated July 24, 2020, OWCP noted that appellant had not provided any medical evidence in support of his claim for eight hours of compensation due to disability from employment on March 11 and 12, April 24, May 5-9, 12-13, 15-16, 19-23, and 27-29, June 3-5, 9-10, 18-20, 24, and 26, and July 11, 2020. It requested that he submit a comprehensive report from his attending physician addressing disability for the claimed periods and whether it was causally related to his accepted employment injury. OWCP afforded appellant 30 days to provide the requested evidence.

Thereafter, OWCP received a July 11, 2020 magnetic resonance imaging (MRI) scan of the thoracic spine showing evidence of cord atrophy and slightly increased intramedullary signal abnormality from T3-4 and T5-6.

On July 31, 2020 Dr. Michael Thibodeau, a Board-certified internist, advised that appellant should not work from July 31 to August 14, 2020 “due to his accepted work[-]related back injury.”

On August 4, 2020 appellant filed a CA-7 form requesting intermittent wage-loss compensation due to disability from employment from July 18 to 31, 2020.⁶ In a Form CA-7a, he requested compensation for partial disability on various dates and for total disability from July 22-24, 2020.

Thereafter, OWCP received records from appellant’s hospitalization from July 10 to 11, 2020 for acute thoracic pain.

On August 12, 2020 Dr. Thibodeau advised that appellant was disabled from employment due to his work injury on March 4 and 11-12, June 24 and 26, and July 3, 11, and 29, 2020.

On August 14, 2020 appellant filed a CA-7 form requesting wage-loss compensation for disability from July 31 to August 14, 2020. In an attached Form CA-7a, he indicated that he was partially disabled for various dates during this period and totally disabled on July 22 to 24, 2020.

⁵ On July 14, 2020 appellant filed CA-7 forms requesting compensation due to intermittent dates of partial disability from employment from January 4 to 31, 2020. On July 18, 2020 he requested compensation for intermittent partial disability on various dates from July 11 to 17, 2020.

⁶ On July 23, 2020 OWCP paid appellant wage-loss compensation for 11.1 hours of time lost from employment due to disability from June 25 to July 2, 2020 and 27.87 hours of disability compensation from June 6 to 17, 2020.

In a development letter dated August 17, 2020, OWCP requested that appellant submit reasoned medical evidence explaining whether he was disabled for the claimed dates causally related to his accepted employment injury. In a separate letter of even date, it requested that Dr. Thibodeau provide a detailed report supported by objective findings explaining how appellant's condition worsened such that he was unable to perform his employment duties. OWCP afforded both parties 30 days to submit the requested information.

In a report dated July 31, 2020, Dr. Thibodeau evaluated appellant for increased pain of the neck and whole back. He noted that appellant worked limited hours as a clerk. Dr. Thibodeau diagnosed chronic neck and back pain and found that he should not work for two weeks.

On August 14, 2020 Dr. Thibodeau indicated that appellant was unable to work on March 4 and 11-12, June 24 and 26, July 3, 29, and 11, and August 24-28, 2020 due to his employment-related back condition.

On August 24, 2020 appellant filed CA-7 forms requesting intermittent wage-loss compensation from October 25 to December 20, 2019. In accompanying CA-7a forms, he requested wage-loss compensation for eight hours on December 13, 2019.

In a report dated August 13, 2020, Dr. Mokbel K. Chedid, a Board-certified neurosurgeon, evaluated appellant for anterior cord syndrome at T4-6, myelomalacia. He advised that he had previously found that appellant had sustained an injury at T4 to 6 directly from the blunt force trauma at work on November 26, 2010. Dr. Chedid recommended a release of the spinal cord from T4 to 6.

On August 25, 2020 counsel asserted that he did not have to establish total disability in order to receive benefits if he had work restrictions that the employing establishment was unable to accommodate.

In an unsigned report dated August 29, 2020, Dr. Thibodeau advised that he had treated appellant since 2011 and was "familiar with his work injury which occurred in 2010...." He related that appellant required work restrictions due to his employment injury, including no lifting over 10 pounds, repetitive bending or twisting, no pushing or pulling, and no extended climbing or sitting. Dr. Thibodeau advised that restricting him to four hours per day addressed the issue of aggravation or exacerbation of his condition and asserted that he would have times that "necessitated complete work avoidance for up to a week at a time due to an aggravation of the underlying condition." He related that pending surgery appellant would experience periods of disability "without definitive attribution to a specific event, but rather related to the underlying injury."

On August 28, 2020 appellant filed a CA-7 form requesting wage-loss compensation from August 15 to 28, 2020. On September 11, 2020 he filed a CA-7 form requesting compensation for intermittent disability from July 4 to 17, 2020.

In a development letter dated September 11, 2020, OWCP requested that appellant submit medical evidence supporting disability from employment for dates from October 2019 to August 2020. It afforded him 30 days to submit the requested evidence.

On September 11, 2020 OWCP paid appellant disability compensation for 23.27 hours of time lost from employment from October 26 to November 8, 2019.

On September 15, 2020 appellant filed a CA-7 form requesting intermittent wage-loss compensation from August 29 to September 11, 2020. In a CA-7a form, he requested eight hours of time lost on September 1-3, and 8-11, 2020.

On September 19, 2020 Dr. Chedid performed a laminectomy with decompression at T4-6. OWCP paid appellant wage-loss compensation for total disability beginning September 18, 2020.

By decision dated October 21, 2020, OWCP denied appellant's claim for intermittent dates of total disability beginning November 26, 2010 causally related to his accepted employment injury.

On October 27, 2020 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

On November 30, 2020 appellant filed CA-7 forms requesting wage-loss compensation for intermittent employment-related disability from March 2 to June 22, 2019. In accompanying CA-7a forms, he requested disability compensation for partial disability on various dates and for total disability on March 2 and 9, April 18 to 20 and May 9 to 10, 2019.

OWCP paid appellant compensation for intermittent hours claimed from March 2 to November 20, 2020. It indicated that it was not paying compensation for the eight hours claimed on March 2 and 9, April 18 to 20, and May 9 to 10 2019, noting that all claims for dates of total disability had been denied in OWCP's October 21, 2020 decision.

On December 14, 2020 appellant filed CA-7 forms requesting wage-loss disability for disability from January 19 to February 1, February 2 to 15, and May 11 to 24, 2019. In attached CA-7a forms, he requested compensation for partial disability for various dates and for total disability on January 19 and May 16 to 18, 2019.

OWCP paid appellant wage-loss compensation for partial disability from February 5 to 14 and May 11 to 24, 2019. It indicated that it was not paying compensation for the eight hours claimed from May 16 to 18, 2019.

In a report dated January 27, 2021, Dr. Thibodeau described appellant's history of a November 26, 2010 employment injury and subsequent treatment, including surgery on September 18, 2020. He opined that appellant had been partially disabled since the date of injury and had sustained intermittent periods of total disability due to aggravation of his condition. Dr. Thibodeau related, "[Appellant's] time out of work during this period is not substantiated merely by his subjective pain, but his body being unable to perform all employment-related duties due directly to his underlying medical condition." He advised that his work duties and activities of daily living caused spontaneous worsening without a specific event.

On January 28, 2021 counsel asserted that OWCP had not considered whether appellant was partially disabled, noting that he had medical restrictions and had not received an appropriate limited-duty job offer.

By decision dated February 12, 2021, OWCP's hearing representative vacated the October 21, 2020 decision. The hearing representative remanded the case for OWCP to obtain a description of the appellant's job duties since the date of his injury and to determine whether the employing establishment provided work within appellant's restrictions for the eight hours claimed on intermittent dates beginning January 19, 2019. The hearing representative further instructed OWCP to consider appellant's claim for intermittent disability from October 12 to 25, November 9 to 22, November 23 to December 6, December 7 to 20, 2019, and January 19 to February 1, 2020.⁷ The hearing representative advised that OWCP should obtain a description of his job duties since the date of injury and the periods he performed limited duty.

On February 17, 2021 OWCP requested that the employing establishment provide a description of appellant's work duties since the date of his injury, a copy of all accepted job offers with a description of the duties, and the exact dates that he performed light-duty work.

In a response dated February 23, 2021, a manager with the employing establishment advised that appellant had not worked at that location from 2010 through 2013. She advised that subsequently he had worked four to six hours per day based on his medical documentation and that his restrictions changed in September 2020 after a surgical procedure. The manager provided a copy of the position description for a sales and service associate.

In a letter dated April 5, 2021, OWCP requested that the employing establishment provide the reason that appellant was unable to work for the eight hours claimed on January 19, March 2 and 9, April 18-20, May 9-10, and 16, 18, October 18, November 2, 7, 14, and 26, and December 13, 2019, March 11-12, April 25, May 6-9, 12-13, 15-16, and 19-22, June 3-5, June 9-10, 18-20, 24, and 26, August 29, September 1-2, 8-12, 15-19, and 22-25, 2020. It further requested that it explain whether it had work available on those dates.

In an e-mail response dated May 4, 2021, the employing establishment advised that there was work available on the dates but that appellant had "called in and failed to report for duty on the listed dates."

By decision dated May 10, 2021, OWCP denied appellant's claim for wage-loss compensation for eight hours per day for intermittent dates after November 26, 2010. It noted that the employing establishment had provided four to six hours of work based on his medical documentation. OWCP found that the medical reports failed to support appellant's claim for intermittent dates of total disability.

⁷ OWCP subsequently paid appellant wage-loss compensation for partial disability on various dates in this period.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁸ 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.⁹

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.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 a federal employment 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.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 in his or her employment, he or she is entitled to compensation for loss of wages.¹³

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁴

ANALYSIS

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

Appellant filed CA-7 forms requesting wage-loss compensation due to disability for intermittent dates and hours beginning January 19, 2019. OWCP paid him compensation for intermittent hours lost from work, but denied his claim for compensation for total disability for intermittent dates from January 2019 to September 2020.

Initially, the Board notes that appellant underwent back surgery on September 19, 2020. OWCP paid him wage-loss compensation for total disability effective September 18, 2020. The

⁸ *Supra* note 2.

⁹ *A.R.*, Docket No. 20-0583 (issued May 21, 2021); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994).

¹⁰ 20 C.F.R. § 10.5(f); *see J.M.*, Docket No. 18-0763 (issued April 29, 2020); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹¹ *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹² *See M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

¹³ *See A.R.*, *supra* note 9; *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹⁴ *See M.J.*, Docket No. 19-1287 (issued January 13, 2020); *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *William A. Archer*, 55 ECAB 674 (2004).

issue is thus whether he is entitled to compensation for the rest of the dates claimed due to either total or partial disability from employment prior to September 18, 2020.

By decision dated February 12, 2021, OWCP's hearing representative instructed OWCP to obtain a description from the employing establishment of appellant's job duties and whether he was provided work within his restrictions. On February 23, 2021 the employing establishment advised that he had worked four to six hours per day based on his medical documentation and provided a description for the position of a sales and service associate.

The Board finds that appellant has not established that he was totally disabled for the claimed dates. In a report dated January 27, 2021, Dr. Thibodeau reviewed appellant's history of a November 26, 2010 employment injury and subsequent medical treatment received. He noted that appellant experienced intermittent periods of total disability due to an aggravation of his condition due to subjective pain and the inability to perform his work duties. Dr. Thibodeau further opined that he had been partially disabled since the date of injury. He did not, however, address specific periods of disability. As previously noted, the Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.¹⁵ Therefore, Dr. Thibodeau's report is insufficient to meet appellant's burden of proof.

In a report dated July 31, 2020, Dr. Thibodeau evaluated appellant for increased pain in his neck and spine. He noted that he worked reduced hours as a clerk. Dr. Thibodeau diagnosed chronic neck and back pain and asserted that appellant should remain off work for two weeks. He did not, however, attribute the disability to appellant's accepted employment. Consequently, Dr. Thibodeau's opinion is insufficient to meet appellant's burden of proof.¹⁶

On August 12 and 14, 2020 Dr. Thibodeau found that appellant was unable to work due to his employment injury on various dates in 2019 and 2020. He did not, however, provide findings on examination supporting his disability determination or provide any rationale for his opinion. Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work.¹⁷ The Board has held that an opinion is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/period of disability has an employment-related cause.¹⁸

The record contains an unsigned report from Dr. Thibodeau dated August 29, 2020. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.¹⁹ Accordingly, this report is also insufficient to establish appellant's claim.

¹⁵ *Id.*

¹⁶ *E.F.*, Docket No. 20-1680 (issued November 20, 2021); *M.A.*, Docket No. 20-0033 (issued May 11, 2020).

¹⁷ *T.S.*, Docket Nos. 20-1177, 20-1296 (issued May 28, 2021); *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹⁸ *L.M.*, Docket No. 21-0063 (issued November 8, 2021); *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

¹⁹ *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

The Board finds, however, that OWCP failed to adjudicate whether appellant was partially disabled for the dates claimed. As noted, the employing establishment advised that it had provided him with four to six hours per day of work in the position of a sales and service associate. OWCP regulations provides that disability is the incapacity to earn the wages the employee was receiving at the time of injury.²⁰ The disability may be partial or total.²¹

In a report dated January 27, 2021, Dr. Thibodeau advised that appellant had been partially disabled since the date of injury. As previously discussed, the employing establishment indicated that he was working four to six hours per day during the time period claimed. OWCP denied appellant's claim after finding that the medical evidence did not show that he was totally disabled from employment for the period in question. It, however, did not determine whether the medical evidence established that he was partially disabled due to his employment injury such that he was unable to perform his position as a sales and service associate full time or that full-time work was not provided within his restrictions by the employing establishment.²²

Accordingly, the Board will remand the case for OWCP to properly adjudicate appellant's claim for wage-loss compensation beginning January 19, 2019 causally related to his November 26, 2010 employment injury.

CONCLUSION

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

²⁰ 20 C.F.R. 10.5(f); *Hubert Jones, Jr.*, 57 ECAB 467 (2006); *Judith A. Cardiddo*, 55 ECAB 348 (2004).

²¹ *Id.*

²² *Id.*; see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.9015a(2) (February 2013).

ORDER

IT IS HEREBY ORDERED THAT the May 10, 2021 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 29, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

A handwritten signature in cursive script, appearing to read "J. D. McGinley". The signature is written in black ink and is positioned above the printed name of the signatory.

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board