



## ISSUE

The issue is whether appellant has met his burden of proof to establish intermittent disability from work for the periods January 11 to June 9, 2017 and June 28 to July 28, 2017 causally related to his accepted employment condition.

## FACTUAL HISTORY

On September 27, 2016 appellant, then a 53-year-old military analyst, filed an occupational disease claim (Form CA-2) alleging that he developed an esophagus/gastrointestinal condition as a result of factors of his employment. He explained that he had a reaction from ingesting “malaria pills” while deployed in Afghanistan. Appellant indicated that he first became aware of his condition and realized its relationship to his federal employment on February 16, 2016.

Appellant submitted several employee health reports and hospital records dated June 3 through October 28, 2016, which indicated that he was treated for dysphagia and severe cervical stenosis. He also submitted diagnostic test reports, including a July 28, 2016 cervical spine computerized tomography (CT) scan, a September 9, 2016 cervical spine CT scan, a December 13, 2016 magnetic resonance imaging (MRI) scan, a December 22, 2016 modified barium swallow test, and a December 23, 2016 cervical spine MRI scan.

In reports dated December 12, 14, and 22, 2016, Dr. Mark E. Landau, a Board-certified neurologist and neurophysiologist, recounted appellant’s complaints of stiffness and difficulty coordinating hands bilaterally. He indicated that an electromyography (EMG) and nerve conduction velocity (NCV) study was abnormal and demonstrated findings in the upper extremity consistent with chronic, acute denervation most likely a manifestation of chronic cervical spine disease. Dr. Landau reported diagnoses of dysphagia and cervical myeloradiculopathy secondary to cervical spondylosis.

In a January 3, 2017 report, Dr. Landau noted that evaluations of appellant’s gastrointestinal and speech language pathology demonstrated evidence of aspiration. He reported diagnoses of cervical myelopathy secondary to cervical spondylosis with spasticity, weakness, hyperreflexia, and dysphagia. Dr. Landau opined that, due to persistent neurological deficits, appellant would “unlikely be able to return to duty.”

In a February 9, 2017 letter, Dr. Landau explained that he had treated appellant from December 5, 2016 through January 31, 2017. He opined that appellant had two major problems that significantly interfered with his ability to work. Dr. Landau reported that appellant developed a condition called achalasia, which made it difficult to swallow and digest food. He opined that this developed while he was an employee at the employing establishment. Dr. Landau indicated that appellant also developed cervical spondylarthropathy and myeloradiculopathy, which led to neurological deficits. He recounted that appellant had undergone surgery to treat his neurological deficits, but saw no significant improvement. Dr. Landau reported that appellant currently complained of difficulty typing, lifting, and walking, which greatly interfered with any job performance.

In a March 10, 2017 report, Dr. Maresa Lugo, a neurologist, reported that appellant had been treated in the hospital since June 2016 when he was medically evacuated from Afghanistan due to severe swallowing difficulties and 40-pound weight loss. She explained that extensive evaluation revealed that appellant had achalasia and cervical stenosis leading to myeloradiculopathy. Dr. Lugo noted that appellant underwent neurosurgical intervention at the end of July 2016, but saw no significant improvement. She reported that appellant had permanent spinal cord damage (cervical myelopathy), pinched nerves in his neck (radiculopathy), and several neurological deficits. Dr. Lugo indicated that appellant had marked difficulty typing, lifting, and walking, which greatly interfered with any job performance.

By decision dated March 20, 2017, OWCP denied appellant's occupational disease claim finding that he had not established that his diagnosed medical condition was causally related to the accepted factors of his federal employment.

On March 20, 2018 appellant, through counsel, requested reconsideration. By decision dated April 24, 2018, OWCP denied modification.<sup>3</sup>

On March 26, 2019 appellant, through counsel, requested reconsideration and submitted a March 9, 2019 report by Dr. Andres Velasco, a Board-certified family medicine physician, who recounted appellant's history of injury and symptoms and opined that the conditions of dysphagia and esophageal problems were expected after taking doxycycline. He diagnosed esophageal drug-induced esophagitis.

By decisions dated April 11, 2019, OWCP vacated the March 20, 2017 decision and accepted appellant's claim for drug-induced esophagitis.

On May 29, 2019 appellant filed a claim for compensation (Form CA-7) for intermittent disability from work for the period May 26, 2016 through July 28, 2017. On the reverse side of the claim form, C.V., an injury compensation specialist for the employing establishment, noted that appellant stopped work on May 26, 2016. She also indicated that leave could not be verified at this time.

In a June 4, 2019 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish disability from work commencing May 26, 2016. It advised him of the type of additional evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary evidence.

In a July 30, 2019 letter, Dr. Dency Rivas, a Board-certified family medicine physician, indicated that he had reviewed appellant's medical file in order to provide an opinion regarding appellant's disability status from May 26, 2016 through July 28, 2017. He noted that appellant's claim was accepted for drug-induced esophageal esophagitis and provided a detailed discussion of the medical treatment that appellant received from October 28, 2015 through July 18, 2017. Dr. Rivas indicated that on July 30, 2015 appellant passed predeployment medical and physical and was prescribed to take doxycycline hyclate daily for malaria. He explained that several oral medications may cause tissue damage if they remain in contact with the lining of the esophagus

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<sup>3</sup> Appellant retired from federal employment, effective January 1, 2019.

for too long, like the case of appellant who was given doxycycline and appeared to be dehydrated. Dr. Rivas opined that appellant's esophagitis was caused by the ingestion of doxycycline. He indicated that appellant was on a percutaneous endoscopic gastrostomy (PEG) tube from approximately April 2016 through April 2017 and was severely malnourished between May 2016 and July 2017 because he was unable to swallow. Dr. Rivas reported that appellant was unable to perform the required speech or talking functions of his job, such as giving comprehensive oral presentations and briefings. He also determined that, due to appellant's weight loss, malnourishment, and depleted energy, appellant could not perform the physical demands of his job such as moving file cabinets, lifting computers and components, and wearing body armor. Dr. Rivas concluded that appellant was unable to work from May 26, 2016 through July 28, 2017 due to his drug-induced esophagitis condition.

On August 16, 2019 appellant filed additional Form CA-7 claims for compensation for intermittent disability from work during the periods October 14, 2016 through July 18, 2017. On the reverse side of the claim forms C.V. indicated that the claimed disability had been verified.<sup>4</sup>

In a letter dated August 20, 2019, OWCP informed the employing establishment that additional information was needed regarding appellant's wage-loss compensation claim. It specifically requested that the employing establishment verify appellant's pay status for the period February 16, 2016 through August 19, 2019 and provide a leave analysis or spreadsheet documenting the dates that appellant worked, was paid, or used leave.

In a letter dated October 31, 2019, OWCP informed the employing establishment that it had not received a response to its August 20, 2019 development letter. It again requested a leave analysis for appellant.

In a July 2, 2020 memorandum of telephone call (Form CA-110), the employing establishment indicated that appellant was paid his regular salary for the period of compensation claimed. It noted that appellant had an outstanding overpayment because he continued to receive hazardous duty pay even though he had left Iraq to go to the hospital in Germany. The employing establishment reported that appellant must resolve the overpayment issue before it could certify any other LWOP requests.

In a July 21, 2020 letter, appellant's attorney alleged that the employing establishment had ignored multiple requests for certification of payments made to appellant. He indicated that he was submitting appellant's disability retirement application, which noted 250 hours of annual leave, 433 hours of sick leave, 1,228 hours of LWOP, and 176 hours absent without leave (AWOL). Counsel noted that appellant's supervisor signed and certified the application on February 22, 2018. He submitted appellant's disability retirement application.

By decision dated July 21, 2020, OWCP denied appellant's claim for compensation for intermittent disability from work for the period October 14, 2016 through July 18, 2017. It noted that the medical evidence of record was insufficient to establish that appellant was unable to work

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<sup>4</sup> In an attached time analysis (Form CA-7a), appellant claimed: 4.7 hours on October 14, 2016; 4 hours on December 1, 2016; 8 hours on December 2, 2016; 4 hours on January 10, 2017; and 4 hours on June 27, 2017 for a total of 24.7 hours of leave without pay (LWOP). He indicated that his reason for leave use was "doctor visit."

during the claimed period due to the accepted condition(s). OWCP also indicated that it was unable to process appellant's Form CA-7 claims until the employing establishment had verified appellant's leave and certified his wage-loss compensation claim.

On October 27, 2020 appellant, through counsel, requested reconsideration.

Counsel submitted an undated and unsigned spreadsheet that included dates and hours of leave used and whether payment was issued a timeline of his correspondence with C.V., copies of e-mails with C.V. regarding the status of OWCP's request for a leave analysis, and a signed affidavit from appellant.

By decision dated December 7, 2020, OWCP found that "the decision dated July 21, 2020 is hereby modified and, thus, vacated in part, but also affirmed in part. As noted above, the dates of October 14, 2016; December 1, 2016; December 2, 2016; January 10, 2017; [and] June 27, 2017 are vacated from further development which will be undertaken under separate cover. The period of January 11, 2017 to June 9, 2017 and June 28, 2017 to July 28, 2017 remain denied as discussed above."

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> 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.<sup>6</sup> The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.<sup>7</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>8</sup>

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty,

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>8</sup> *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>9</sup> *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

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 employee.<sup>10</sup>

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.<sup>11</sup>

### ANALYSIS

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

The record contains conflicting evidence from the employing establishment as to whether appellant was paid during the claimed period of disability or whether he was in an LWOP status. In a Form CA-7 dated May 29, 2019, the employing establishment indicated that leave could not be verified at this time. In CA-7 claim forms dated August 16, 2019, the employing establishment noted that LWOP had been verified. In a July 2, 2020 Form CA-110, an injury compensation specialist for the employing establishment advised OWCP that appellant was paid his regular salary for the period of compensation claimed. However, the evidence of record also contains a disability retirement application dated February 22, 2018 and certified by the employing establishment, which appears to indicate that appellant used 250 hours of annual leave, 433 hours of sick leave, 1,228 hours of LWOP, and was AWOL for 176 hours. Counsel also provided an undated and unsigned spreadsheet that included dates and hours of leave used and whether payment was issued.

OWCP's procedures provide that the factual evidence must establish that the claimant actually lost time from work on the dates claimed and that clear verification of dates and hours lost should be provided by the employing establishment on the Form CA-7, Form CA-7a, and/or any other supporting documentation.<sup>12</sup> It further notes that, if the employing establishment did not verify the claimed dates or if the verification is ambiguous, clarification is necessary.<sup>13</sup> Accordingly, the evidence of record must be fully developed so that it contains accurate information regarding appellant's claim in order to determine whether he was disabled from work for the period May 26, 2016 through July 28, 2017.<sup>14</sup>

On remand OWCP shall request that a knowledgeable employing establishment official furnish documentation, such as earnings and leave statements, clarifying if appellant was in an LWOP status, used sick or annual leave, or was AWOL during the claimed period of disability. It

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<sup>10</sup> V.A., Docket No. 19-1123 (issued October 29, 2019); C.B., Docket No. 18-0633 (issued November 16, 2018).

<sup>11</sup> See S.G., Docket No. 18-1076 (issued April 11, 2019); William A. Archer, 55 ECAB 674 (2004); Fereidoon Kharabi, 52 ECAB 291 (2001).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.5 (February 2013).

<sup>13</sup> *Id.*

<sup>14</sup> See *Order Remanding Case, M.E.*, Docket No. 19-1890 (issued December 23, 2020).

shall also note whether appellant received any salary during the claimed period of disability. OWCP shall further advise the employing establishment of its responsibility for submitting all relative and probative factual evidence. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 7, 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: June 23, 2022  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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