

FACTUAL HISTORY

On May 15, 2020 appellant, then a 51-year-old rural carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on May 13, 2020 he fractured his right great toe and felt pain in his lower back when he fell while carrying a box while in the performance of duty. He stopped work on the date of injury.

In a report dated May 27, 2020, Dr. Rishi Bhatnagar, a Board-certified orthopedic surgeon, noted that appellant related complaints of right foot and lower back pain radiating to both lower extremities, which he attributed to an injury at work on May 13, 2020. He performed a physical examination, which revealed tenderness and reduced strength of the paraspinal muscles from L2 through S1 and tenderness at the third metatarsal of the right foot. Dr. Bhatnagar diagnosed right foot sprain and lumbar sprain secondary to the May 13, 2020 employment injury.

Appellant began physical therapy for his low back, right ankle, and right foot on May 28, 2020.

In a follow-up report dated June 10, 2020, Dr. Bhatnagar indicated that appellant's condition was unchanged. He diagnosed lumbar strain and lumbar radiculopathy and recommended magnetic resonance imaging (MRI) scan of the lumbar spine.

A report of MRI scan of the lumbar spine dated June 15, 2020 revealed eccentric left disc protrusions at L3-4 and L4-5 causing moderate left foraminal stenosis and abutment of the existing left L3 and L4 nerve roots and a posterior disc protrusion at L5-S1 causing mild central stenosis.

On June 24, 2020 Dr. Bhatnagar reviewed the June 15, 2020 MRI scan and results and referred appellant to pain management.

In a report dated August 6, 2020, Dr. Jason Litt, Board-certified in anesthesiology, noted that appellant related complaints of left lower back pain with lower extremity pain, which he attributed to a fall at work on May 13, 2020. He reviewed the MRI scan and performed a physical examination and documented positive straight leg raise on the left and tenderness and limited range of motion of the paraspinal muscles from L2 through S1. Dr. Litt diagnosed lumbar radiculopathy and recommended lumbar epidural steroid injections.

In a report dated July 22, 2020, Dr. Bhatnagar noted that appellant related his symptoms were worsening. He performed a physical examination and recommended medication, physical therapy, pain management, and activity modification. Dr. Bhatnagar opined that appellant was unable to work.

On December 10, 2020 OWCP referred appellant, a statement of accepted facts (SOAF) and the medical evidence of record, and a series of questions to Dr. John C. Barry, Board-certified in orthopedic surgery, for a second opinion examination.

In a report dated February 10, 2021, Dr. Barry noted appellant's history of an injury on May 13, 2020 and reviewed medical reports and diagnostic testing. He performed a physical examination of the low back and right foot, which revealed diffuse tenderness throughout the lumbosacral region to light touch but was otherwise normal. Dr. Barry diagnosed a lumbar sprain

and a temporary aggravation of preexisting lumbar disc disease as a result of the May 13, 2020 employment incident. He opined that appellant could return to work without restrictions.

On April 22, 2021 OWCP accepted the claim for lumbar strain and temporary aggravation of lumbar degenerative disc disease.

On May 20, 2021 appellant filed a claim for compensation (Form CA-7) for leave without pay (LWOP) for the period June 28, 2020 through May 18, 2021.

In a compensation claim development letter dated May 28, 2021, OWCP informed appellant that the evidence submitted was insufficient to establish entitlement to compensation for the period June 28, 2020 through May 18, 2021. It requested that he submit medical evidence from his physician explaining how his employment-related conditions caused or contributed to his inability to work during the claimed period.

OWCP thereafter received a note by an unknown medical provider dated May 13, 2020 and notes by Dr. Bhatnagar dated June 24, July 22, August 19, and September 23, 2020, which indicated that appellant should remain out of work.

Between August 4 and October 6, 2020, Dr. Litt evaluated appellant and administered a series of three interlaminar lumbar epidural steroid injections at L4-5. He then performed bilateral medial branch blocks on December 8, 2020, radiofrequency ablation on the left on December 14, 2020, and radiofrequency ablation on the right on December 18, 2020. In follow-up visits on February 2 and March 23, 2021, Dr. Litt noted that appellant reported 75 percent pain relief following radiofrequency ablation. He opined that he was unable to work throughout this period, commencing August 4, 2020.

In a report dated May 25, 2021, Dr. Litt recommended that appellant continued to remain out of work and seek a less physically demanding job.

In a report dated August 4, 2021, Dr. Bhatnagar noted that appellant related worsening low back pain. He performed a physical examination, which revealed positive straight leg raise, limited range of motion, and tenderness from L2 through S1. Dr. Bhatnagar diagnosed lumbar radiculopathy and low back pain and recommended medication and an updated MRI scan.

By decision dated August 25, 2021, OWCP denied appellant's claim for compensation, finding that he had not submitted sufficient medical evidence to establish disability from work during the claimed period due to the accepted conditions.

OWCP continued to receive evidence, including a September 1, 2021 report by Dr. Bhatnagar, who noted that appellant had undergone an updated MRI scan of the lumbar spine and continued to complain of sharp, severe pain and numbness in the lower back. He performed a physical examination, diagnosed lumbar radiculopathy, and recommended that appellant remain out of work.

On September 17, 2021 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP thereafter received: a work excuse note dated May 27, 2020 by Dr. Bhatnagar for May 20 through June 27, 2020; an updated MRI scan dated August 24, 2021; and attending physician's reports (Form CA-20) dated September 1 and 10, 2021 by Drs. Bhatnagar and Litt, respectively, who diagnosed lumbar radiculopathy and opined that appellant was unable to return to work.

Dr. Litt performed further radiofrequency ablation procedures on October 8 and 14, 2021 and, on December 14, 2021, noted improvement and recommended an epidural steroid injection. He continued to opine that appellant was unable to work.

A hearing was held on January 6, 2022, during which appellant testified about his injury, symptoms, medical treatment, and inability to work.

Dr. Litt, in reports dated February 22, 2022, recommended an updated MRI scan and physical therapy, and opined that appellant was unable to work.

In a report dated March 21, 2022, Dr. Varun Patibanda, a physical medicine and rehabilitation specialist, noted that appellant had undergone an updated MRI scan on March 3, 2022, which revealed L4 vertebral body hemangioma, posterior annular fissures at L3-4, L4-5, and L5-S1 consistent with multilevel intervertebral disc degeneration, left foraminal disc protrusion without central canal stenosis or nerve compression at L3-4, mild bilateral foraminal encroachment secondary to posterior disc bulging facet arthropathy at L4-5, and bilateral facet arthropathy causing mild effacement of the bilateral foraminal perineural fat without exiting L5 nerve root compression at L5-S1. He diagnosed lumbar spondylosis and recommended right-sided medial branch radiofrequency ablation.

By decision dated March 22, 2022, an OWCP hearing representative affirmed OWCP's August 25, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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.³ 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.⁴ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁵ 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.⁶ When, however, the medical evidence establishes that

³ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁴ 20 C.F.R. § 10.5(f).

⁵ *See H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁶ *See H.B., id.; K.H.*, Docket No. 19-1635 (issued March 5, 2020).

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.⁷

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.⁸

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.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work during the period June 28, 2020 through May 18, 2021, causally related to his accepted May 13, 2020 employment injury.

In support of his claim for compensation, appellant submitted reports of Dr. Bhatnagar dated May 27, 2020 through September 1, 2021, where he described the May 13, 2020 employment injury, conducted examinations, and indicated that appellant was totally disabled from all work for the period May 20 through October 24, 2020 and from August 4 through October 1, 2021. In further support of his claim, he submitted reports of Dr. Litt dated August 6, 2020 through February 22, 2022, who described the May 13, 2020 employment injury, conducted examinations, administered various pain management procedures, and indicated that he was totally disabled from all work from August 6, 2020 through March 22, 2022. Although both physicians opined that appellant was unable to work during the claimed period of disability, neither Dr. Bhatnagar nor Dr. Litt provided medical reasoning explaining the nature of the relationship between the claimed disability and the accepted employment injuries.¹⁰ Therefore, their reports are insufficient to meet appellant's burden of proof.¹¹

Dr. Patibanda, in his March 21, 2022 report, described the May 13, 2020 employment injury, performed an examination, and diagnosed lumbar spondylosis, but did not offer an opinion as to whether appellant was disabled from work due to the accepted conditions during the claimed

⁷ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

⁸ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

⁹ *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

¹⁰ *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *R.C.*, Docket No. 17-0748 (issued July 10, 2018); *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹¹ *Supra* note 8.

period. Therefore, this report is of no probative value and is insufficient to establish appellant's claim for compensation.¹²

In his February 10, 2021 report, Dr. Barry opined that appellant could return to full, unrestricted duties as a rural letter carrier. As such, his report does not establish his claim for compensation.¹³

The remaining medical evidence of record includes an out of work note dated May 13, 2020 by an unknown medical provider and physical therapy reports. 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.¹⁴ The physical therapy reports are also of no probative value to establish appellant's wage-loss compensation claim, because physical therapists are not considered physicians as defined under FECA.¹⁵ Therefore, these reports have no probative value and are insufficient to establish the claim.

As the medical evidence of record lacks rationalized medical evidence establishing that appellant was disabled from work for the period June 28, 2020 through May 18, 2021 due to the accepted May 13, 2020 employment injury, the Board finds that he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish disability from work during the period June 28, 2020 through May 18, 2021, causally related to his accepted May 13, 2020 employment injury.

¹² *Supra* note 9; *see also* *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *Supra* note 3.

¹⁴ *T.U.*, Docket No. 19-1636 (issued October 29, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019).

¹⁵ Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *See also* *K.A.*, Docket No. 18-0999 (issued October 4, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 22, 2022
Washington, D.C.

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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