



## ISSUE

The issue is whether appellant has met his burden of proof to establish intermittent disability from work for the period September 26, 2017 through March 17, 2018 causally related to his accepted July 15, 2015 employment injury.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 21, 2017 appellant, then a 46-year-old geographic information system analyst-geographer, filed a traumatic injury claim (Form CA-1) alleging that on July 15, 2015 he sustained a tick bite on the posterior aspect of his right thigh during outdoor exercise while on a travel assignment in the performance of duty. The bite caused a bullseye rash, headaches, joint pain, and joint popping and cracking for two years. Appellant stopped work on September 25, 2017.

In an October 27, 2017 report, Dr. Mangadhara Madineedi, an internist, recounted appellant's symptoms of generalized joint pain and immobility, headaches, paresthesias in his fingers, disorientation, fatigue, and minor cognitive impairment. He diagnosed Lyme disease based on appellant's clinical presentation and positive Lyme immunoglobulin assays on August 10, 2015 and June 13, 2017.

By decision dated November 1, 2017, OWCP accepted the claim for Lyme disease.

On December 4, 2017 OWCP received a claim for compensation (Form CA-7) for intermittent periods of disability during the period September 26 through November 15, 2017. On December 7, 2017 it received additional Form CA-7 claims for intermittent disability during the period October 29 through November 24, 2017. He worked part time during these claimed periods of intermittent disability and utilized LWOP for the remaining hours.

In a development letter dated December 15, 2017, OWCP informed appellant of the deficiencies of his claim for compensation. It advised him of the type of medical evidence needed to establish his claim for compensation. OWCP afforded appellant 30 days to respond.

OWCP received additional evidence. In a December 14, 2017 report, Dr. Judith M. Strymish, Board-certified in internal medicine, opined that appellant's symptoms were likely not

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<sup>3</sup> Docket No. 19-1758 (issued March 16, 2021).

due to Lyme disease as he had a negative Immunoglobulin G (IgG) Western blot test, and his symptoms did not develop until well after antibiotics were started.<sup>4</sup>

Dr. Raymon Durso, a Board-certified neurologist, noted on December 15, 2017 that appellant's 2015 serology results were inconsistent with an active Lyme infection and that cervical spine imaging studies demonstrated disc protrusions at C5-6 and C6-7. He opined that appellant did not have an active Lyme infection or neurologic sequelae. Dr. Durso attributed appellant's subscapular pain to muscular tension secondary to anxiety.

On January 11, 2018 appellant underwent laboratory blood tests, including serology for Lyme disease, ordered by Dr. Jean J. Barry, a Board-certified internist. In a January 14, 2018 report, Dr. Barry opined that appellant's ongoing symptoms were caused by Lyme disease. He noted that the January 11, 2018 laboratory tests were indicative of a Lyme infection with immunosuppression.

On January 9, 2018 OWCP received an additional Form CA-7 for the period December 12 through 23, 2017. Appellant subsequently claimed intermittent disability for the periods January 8 through 19 and January 22 through February 3, 2018, when he worked part time and used LWOP for the remaining hours. On a January 25, 2018 Form CA-7a, appellant noted six hours LWOP used on January 11, 2018.

By decision dated February 16, 2018, OWCP denied appellant's claim for compensation for intermittent disability during the period September 26 through November 15, 2017. It found that the medical evidence of record was insufficient to establish work-related disability during the claimed period.

In a development letter dated February 16, 2018, OWCP notified appellant of the deficiencies of his compensation claim. It advised him of the additional evidence needed to establish his claims for compensation for the periods November 26 through December 9, and December 12 through 23, 2017, January 8 through 19, and January 22 through February 3, 2018. OWCP afforded him 30 days to respond.

On March 26, 2018 OWCP received an additional Form CA-7 for intermittent periods of disability from February 4 through March 17, 2018.

In a development letter dated April 9, 2018, OWCP notified appellant of the additional evidence needed to establish his claims for compensation for the period February 4 through March 17, 2018. It afforded him 30 days to respond.

By decision dated April 9, 2018, OWCP denied appellant's claims for compensation for intermittent disability during the periods November 26 through December 9 and December 12

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<sup>4</sup> Dr. Strymish previously examined appellant on August 10, 2015 and opined that he had no serologic, orthopedic, or neurologic signs of Lyme disease.

through 23, 2017, and January 3 through 19 and January 22 through February 3, 2018. It found that the medical evidence submitted did not address his work capacity.

Thereafter, OWCP received serology test results dated from December 22, 2017 through July 7, 2018. January 11, March 21, and June 26, 2018 samples were positive for immunoglobulin indicative of a possible Epstein-Barr viral infection, and negative for Bartonella and Borrelia.

On January 29, 2019 appellant, through counsel, requested and submitted additional evidence.

In a September 27, 2018 report, Dr. John W. Ellis, a Board-certified family medicine specialist, provided a history of injury and treatment. He related appellant's complaints of organic brain syndrome, generalized achiness and joint pain, weakness, insomnia, paresthesias, numbness from the left elbow to the ring and small fingers, and numbness from the left wrist into the thumb and fingers. On examination Dr. Ellis observed findings consistent with a recent left ear infection, cervical and lumbar paraspinal tenderness and spasm, mild bilateral plexus impingement, weakness in movement of all extremities, healed surgical scars over the left wrist and elbow with median and ulnar nerve impairment, and a mildly positive Romberg sign. He diagnosed Lyme disease with sequelae of systemic infection and immune response, causing severe fatigue, cognitive issues, and impaired functioning of all extremities. Dr. Ellis found appellant totally disabled from work due to severe malaise and weakness beginning in March 2018.

In an addendum report dated December 13, 2018, Dr. Ellis opined that Lyme disease temporarily totally disabled appellant from work for intermittent periods August 17 through December 24, 2017, January 17 through May 13, 2018, and commencing May 27, 2018.

By decision dated April 29, 2019, OWCP denied modification of its February 16, 2018 decision.

By separate decision of even date, OWCP denied modification of its April 9, 2018 decision as the evidence submitted was insufficient to establish that the accepted condition disabled appellant from work from November 26 through December 9 and December 12 through 23, 2017, and January 3 through 19, and January 22 through February 3, 2018.

By decision dated May 15, 2019, OWCP denied appellant's claim for compensation for the period February 4 through March 17, 2018. It found that the medical evidence of record was insufficient to establish disability from work for the claimed period due to his accepted July 15, 2014 employment injury.

On August 20, 2019 appellant, through counsel, appealed OWCP's April 29 and May 15, 2019 decisions to the Board.

By decision dated March 16, 2021,<sup>5</sup> the Board set aside in part, finding that appellant had met his burden of proof to establish entitlement to wage-loss compensation for up to four hours of

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<sup>5</sup> *Supra* note 3.

lost time for medical appointments on September 27, November 9, 14, and 16, 2017, and January 11, 2018. The Board, however, further affirmed in part, finding that appellant had not met his burden of proof to establish intermittent disability from work for the remainder of the claimed period, causally related to his accepted July 15, 2015 employment injury, as the medical evidence of record was insufficient to establish disability from work during the claimed period due to the accepted employment injury.

On March 16, 2022 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a March 9, 2022 report, Dr. Ellis recounted appellant's history of Lyme disease, subsequent treatment, and ongoing symptoms of joint pain and difficulty concentrating. He diagnosed Lyme disease, unspecified. Dr. Ellis contended that the July 15, 2015 tick bite caused both Lyme disease and a *Borrelia miyamotoi* infection (hard tick relapsing fever, as both diseases were carried by the same black-legged tick, October 2020 neurologic testing indicated that appellant had tick-borne relapsing fever, and that October 20, 2020 laboratory tests were positive for tick-borne relapsing fever. He explained that Lyme disease occurred most frequently in June and July whereas *Borrelia miyamotoi* infection occurred most commonly in July and August. Dr. Ellis noted that appellant had been bitten in the northeastern portion of Maine in July, which overlapped the time of year for both Lyme disease and *Borrelia miyamotoi* infection. He also noted that appellant's anxiety, fatigue, and cognitive issues were indicative of having tick-borne relapsing fever in addition to ongoing arthritis indicative of Lyme disease. Dr. Ellis found appellant totally disabled from work from August 17 through December 24, 2017, and from January 17, 2018 through January 8, 2019 and continuing due to physical and cognitive symptoms of his accepted July 15, 2015 employment injury. He provided medical literature regarding chronic Lyme disease.

By decision dated June 1, 2022, OWCP denied modification.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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> 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>7</sup> Whether a particular injury causes an

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<sup>6</sup> See *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> *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

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.<sup>8</sup>

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 appellant, 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.<sup>9</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 their disability and entitlement to compensation.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish entitlement to wage-loss compensation for intermittent disability from work for the period September 26, 2017 through March 17, 2018.

Preliminarily, the Board notes that findings made in prior Board decisions are *res judicata*, absent further review by OWCP under section 8128 of FECA. It is, therefore, unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's May 15, 2019 decision as the Board considered that evidence in its March 16, 2021 decision.<sup>11</sup>

Dr. Ellis, in his March 9, 2022 report, opined that appellant was totally disabled from work from August 17 through December 24, 2017, and from January 17, 2018 and continuing due to physical and cognitive symptoms of chronic Lyme disease. He also attributed appellant's symptoms, in part, to a *Borrelia miyamotoi* (hard tick relapsing fever) infection, a condition not accepted by OWCP. Although Dr. Ellis asserted that October 2020 neurologic test results and October 20, 2020 laboratory tests indicated a diagnosis of tick-borne relapsing fever, these test reports are not of record. Additionally, he did not explain his opinion in light of January 11, March 21, and June 26, 2018 serology test results that were negative for *Borrelia*. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain

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<sup>8</sup> 20 C.F.R. § 10.5(f); *B.O., id.*; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>9</sup> *See D.W.*, Docket No. 20-1363 (issued September 14, 2021); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>10</sup> *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

<sup>11</sup> *A.C.*, Docket No. 20-1340 (issued November 1, 2022); *L.K.*, Docket No. 19-0313 (issued January 15, 2020); *A.L.*, Docket No. 19-0285 (issued September 24, 2019).

medical rationale explaining how the claimed disability was related to employment factors.<sup>12</sup> Thus, Dr. Ellis' report is insufficient to establish the claim.

Dr. Ellis also submitted medical literature regarding chronic Lyme disease. The Board has held, however, that reliance on medical literature has little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation at hand.<sup>13</sup> Accordingly, this evidence is also insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish intermittent disability from work during the period September 26, 2017 through March 17, 2018, causally related to the accepted July 15, 2015 employment injury, the Board finds that appellant 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 intermittent disability from work during the period September 26, 2017 through March 17, 2018 causally related to his accepted July 15, 2015 employment injury.

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<sup>12</sup> *A.C., id.; see Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining causal relationship between the accepted work factors and a diagnosed condition/disability).

<sup>13</sup> *T.K.*, Docket No. 22-0334 (issued July 13, 2022); *S.J.*, Docket No. 20-0896 (issued January 11, 2021); *R.G.*, Docket No. 18-0917 (issued March 9, 2020); *Roger D. Payne*, 55 ECAB 535 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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