

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 11, 2021 appellant, then a 44-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 13, 2021 he sustained a lumbar disc condition and numbness in his left foot when he lifted heavy parcels while in the performance of duty. He stopped work that same day.

OWCP accepted the claim for low back muscle/fascia tendon strain and temporary aggravation of lumbar radiculopathy.

On September 11, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period December 10, 2021 through March 9, 2022.

Dr. Jamshid J. Hekmat, a sports medicine and critical care specialist, provided treatment notes dated from September 13 to December 6, 2021. In a September 13 and October 1 and 13, 2021 notes, he advised that appellant was able to return to work with restrictions.

A September 15, 2021 magnetic resonance imaging (MRI) scan of appellant's lumbar spine read by Dr. Thomas Andrew Herbold, a diagnostic radiologist, revealed findings which included a paracentral disc protrusion with mild ligamentum flavum and facet hypertrophy; moderate-to-severe lateral recess stenosis and neural foraminal narrowing on the left with impingement on the L5 and S1 nerve roots on the left; mild central spinal canal stenosis; a disc protrusion at the L4-5 level; a disc bulge at the L1, L2, L3, and L4 levels; and no abnormal contrast enhancement of the lumbar spine.

In a September 20, 2021 note, Dr. Lin LeMay, a neurologist, advised that appellant should be off work from September 20 to October 4, 2021, due to severe lumbar radiculopathy and low back pain.

Health center records dated September 21, 2021 reflect that Dr. Ryan Mattie, Board-certified in physiatry and pain medicine, performed lumbar epidural steroid injections on that date for lumbar radiculopathy. These records further noted that appellant presented to the emergency room with a history of low back pain with spinal stenosis and for evaluation of severe low back pain with radiation to the posterior thigh, lateral left leg, and left 5th digit. Appellant's medical history reflected that he had undergone three spinal surgeries in Iran, including an L5-S1 laminectomy and two surgeries at L4-5, seven years prior. He had minor episodes of flare-ups in the past few years, but this time it was severe. The records reflected that appellant performed lifting at the employing establishment.

OWCP received a November 21, 2021 report from Emily Zuckerman, a physician assistant. Ms. Zuckerman noted that appellant presented with low back pain and radiation to the left leg for years. Appellant was referred to a neurological surgeon.

In a December 6, 2021 report, Dr. Edward Chappell, a neurosurgery specialist, diagnosed strain of muscle, fascia, and tendons, intervertebral disc displacement, and lumbar radiculopathy. He related that appellant could return to modified work.

In a December 22, 2021 operative report, Dr. Farid Kazemi, a neurologist, diagnosed a recurrent left L5-S1 extruded disc and noted that he performed a left L5-S1 foraminotomy, medial facetectomy, and microscopic left L5-S1 discectomy. A copy of the anesthesia report was also provided.

In a January 9, 2022 report, Dr. Kazemi, noted that appellant was suffering from ischiatic hernia and had undergone lumbar surgery at L5-S1 in December 2021. He also noted that appellant had a history of three lumbar disc surgeries. Dr. Kazemi advised that appellant should rest at home for three months, after which he should be able to return to work with permanent restrictions of no lifting more than 5 to 10 kilograms (11 to 22 pounds).

On March 14, 2022 OWCP received a statement from appellant explaining that he was informed that he had to have lumbar surgery as a result of his work injury; however, the neurosurgeons that OWCP referred him to would not perform the surgery. Appellant further explained that he decided to return to Iran and undergo surgery there as it cost less.

In a development letter dated September 20, 2022, OWCP requested that appellant submit additional information to establish his wage-loss compensation claims, including medical evidence from his physician explaining why the surgery was medically necessary and why he was unable to work due to his work-related injury. It afforded him 30 days to submit the necessary evidence.

OWCP received notes which were illegible.

By decision dated December 7, 2022, OWCP denied appellant's claim for disability from work for the period December 10, 2021 through March 8, 2022. It explained that there was no medical evidence to support that his accepted conditions had worsened and that the lumbar spine surgery performed on December 22, 2021 was causally related to the accepted work injury on September 13, 2021 or medically necessary. OWCP noted that appellant's medical history included prior back injuries and back surgeries and further explained that it had not received a well-reasoned medical report to support that those additional conditions, including the diagnosed recurrent left L5-S1 extruded disc for which surgery was performed, were causally related to the accepted employment injury.

LEGAL PRECEDENT -- ISSUE 1

Section 8103(a) of FECA² provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening in the amount of monthly compensation.³

In interpreting section 8103 of FECA, the Board has recognized that OWCP has broad discretion in approving services provided, with the only limitation on OWCP's authority being

² *Id.*

³ *Id.* at § 8103; *see D.H.*, Docket No. 22-0533 (issued August 4, 2022); *R.B.*, Docket No. 21-0598 (issued May 19, 2022); *N.G.*, Docket No. 18-1340 (issued March 6, 2019).

that of reasonableness.⁴ Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed to produce a contrary factual conclusion.⁵

For a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both criteria must be met for OWCP to authorize payment.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly denied appellant's request for authorization for lumbar spine surgery.

In a December 22, 2021 operative report, Dr. Kazemi diagnosed a recurrent left L5-S1 extruded disc and noted that he performed a left L5-S1 medial facetectomy, foraminotomy, and L5-S1 discectomy. The Board notes that appellant's accepted conditions were low back muscle/fascia tendon strain and temporary aggravation of lumbar radiculopathy. Dr. Kazemi's report did not indicate that the surgery was required as a result of appellant's accepted conditions or that the diagnosed condition of left L5-S1 extruded disc was caused by the accepted work injury. In a January 9, 2022 report, he indicated that appellant had undergone surgery at L5-S1 on December 2021 and a history of three prior lumbar disc surgeries. As Dr. Kazemi indicated that appellant's surgery was due to a recurrent left L5-S1 extruded disc that, was not an accepted condition and he did not relate appellant's accepted conditions to the surgery, the Board finds that his reports do not meet appellant's burden to show that he needed surgery due to the accepted September 13, 2021 employment injury. The Board also notes that he did not explain why the surgery was medically necessary.⁷ Dr. Kazemi's reports, consequently, are insufficient to establish that the requested surgical procedure should be authorized.⁸

The need for a rationalized medical opinion is particularly important here, as Dr. Kazemi noted that appellant had a history of preexisting spinal conditions and surgeries.⁹ In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related

⁴ See *D.C.*, Docket No. 20-0854 (issued July 19, 2021); *C.L.*, Docket No. 17-0230 (issued April 24, 2018); *D.K.*, 59 ECAB 141 (2007).

⁵ See *E.F.*, Docket No. 20-1680 (issued November 10, 2021); *J.L.*, Docket No. 18-0503 (issued October 16, 2018).

⁶ See *P.S.*, Docket No. 20-0075 (issued July 12, 2021).

⁷ *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.M.*, Docket No. 19-0563 (issued August 1, 2019).

⁸ *Id.*

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); see *R.B.*, Docket No. 19-1527 (issued July 20, 2020); *R.S.*, Docket No. 19-1774 (issued April 3, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

injury or disease and the preexisting condition.¹⁰ The reports from Dr. Kazemi are, therefore, insufficient to establish causal relationship between the accepted work injury and the requested spinal surgery.

OWCP also received reports from Drs. Hekmat, LeMay, Chappell, and Mattie. However, these reports did not address appellant's request for authorization for spinal surgery and as such the Board finds that their reports do not support his surgery authorization request.¹¹

OWCP received a November 21, 2021 report from Ms. Zuckerman, who referred appellant to a neurological surgeon. The Board has held that physician assistants are not considered physicians under FECA and their opinions regarding medical necessity and causal relationship are, therefore, of no probative medical value.¹²

The only limitation on OWCP's authority in approving or disapproving service under FECA is one of reasonableness.¹³ Appellant has not submitted reasoned medical evidence supporting that he required lumbar spine surgery due to his accepted employment injury. Thus, the Board finds that OWCP did not abuse its discretion in denying authorization for the requested lumbar spine surgery.¹⁴

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA¹⁵ 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.¹⁶ The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was

¹⁰ *Id.* at Chapter 2.805.3e (January 2013); *see M.B.*, Docket No. 20-1275 (issued January 29, 2021); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹¹ *Id.*

¹² 5 U.S.C. § 8101(2) 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, 20 C.F.R. § 10.5(t). *See also supra* note 9 at Chapter 2.805.3a(1) (January 2013); *see also M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *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).

¹³ *See S.N.*, Docket No. 21-0070 (issued March 9, 2022); *W.M.*, Docket No. 18-0957 (issued October 15, 2018).

¹⁴ *See J.C.*, Docket No. 21-0301 (issued March 3, 2022); *D.S.*, Docket No. 18-0353 (issued February 18, 2020).

¹⁵ 5 U.S.C. § 8101 *et seq.*

¹⁶ *See L.R.*, Docket No. 21-0018 (February 17, 2023); *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *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); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel Milton*, 37 ECAB 712 (1986).

receiving at the time of the injury.¹⁷ 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.¹⁸

Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of the reliable, probative, and substantial medical evidence. 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.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish disability for the period December 10, 2021 through March 8, 2022, causally related to his accepted September 13, 2021 employment injury.

OWCP received medical reports from Dr. Hekmat and Dr. LeMay which noted appellant's ability to return to work. However, these reports did not address the December 10, 2021 through March 8, 2022 time period. The Board finds that the reports from Dr. LeMay and Dr. Hekmat are, therefore, insufficient to establish that appellant was disabled from work during the time period December 10, 2021 through March 8, 2022. Thus, they are of no probative value.²⁰

In a January 9, 2022 report, Dr. Kazemi advised that appellant should rest at home for three months, after which he should be able to return to work with permanent restrictions of no lifting more than 5 to 10 kilograms (11 to 22 pounds). He did not opine that appellant was disabled from work due to the accepted conditions, and as previously noted, he did not opine that the December 22, 2021 lumbar surgery was causally related and medical necessary due to the accepted work injury. The Board has held that a report is of limited probative value if it does not contain sufficient medical rationale explaining how the claimed disability was causally related to the accepted employment injury.²¹ This report is, therefore, of diminished probative value and insufficient to meet appellant's burden of proof.

¹⁷ 20 C.F.R. § 10.5(f); *see A.N.*, Docket No. 20-0320 (issued March 31, 2021); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹⁸ *See A.N., id.*; *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, *supra* note 16.

¹⁹ *W.C.*, Docket No. 19-1740 (issued June 4, 2020); *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

²⁰ *See K.K.*, Docket No. 22-0270 (issued February 14, 2023).

²¹ *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

None of the other medical reports submitted by appellant addressed the claimed disability period or explained how the claimed disability was causally related to the accepted employment injury. Accordingly, these reports also are insufficient to support his burden of proof.²²

As the medical evidence of record is insufficient to establish disability from work during the period December 10, 2021 through March 8, 2022, causally related to the accepted 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 OWCP properly denied appellant's request for authorization for lumbar spine surgery. The Board further finds that he has not met his burden of proof to establish disability for the period December 10, 2021 through March 8, 2022, causally related to his accepted September 13, 2021 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

²² *Id.*