

FACTUAL HISTORY

On November 24, 2021 appellant, then a 33-year-old shipfitter helper, filed a traumatic injury claim (Form CA-1) alleging that on November 23, 2021 she sustained a low back injury when lifting an oversized deck plate while in the performance of duty. She did not immediately stop work. OWCP accepted appellant's claim for sprain of the ligaments of the lumbar spine and lumbar radiculopathy. It paid her wage-loss compensation on the supplemental rolls intermittently, effective January 11, 2022 through May 9, 2023.

On April 12, 2022 Dr. Yudi Wibisono, an osteopath and Board-certified internist, treated appellant for a work-related back injury. He diagnosed lumbar sprain, lumbar radiculopathy, and herniated lumbar intervertebral disc. Dr. Wibisono returned appellant to modified-duty work. In a duty status report (Form CA-17) dated April 13, 2022, he diagnosed lumbar sprain, lumbar radiculopathy, and herniated lumbar intervertebral disc and provided work restrictions.

On April 12, 2022 the employing establishment offered appellant a limited-duty assignment effective April 12, 2022 with an expiration date of May 2, 2022. The hours were 7:20 a.m. to 4:00 p.m. The limited-duty assignment included answering telephones, cleaning tools, compiling manuals and pamphlets, data entry, making deliveries, driving short or long distance, escorting contractors, filing, serving on fire watch, delivering mail, photocopying, shredding, and traffic monitoring. The physical demands would be subject to the Form CA-17 from Dr. Wibisono dated April 13, 2022. Appellant accepted the position and returned to work.

Appellant attended physical therapy treatment on August 30 and 31, 2022.

Dr. Alix Thorson, Board-certified in emergency medicine, treated appellant on August 31, 2022 for a work-related back pain that began after lifting a heavy object while at work. She noted physical findings of decreased strength with flexion and extension of the lower extremities bilaterally, positive right and left straight leg testing, tenderness to palpation of the midline and para lumbar spine, and decreased sensation to light touch on the second, third, fourth, and fifth right toes. Dr. Thorson diagnosed lumbar sprain, lumbar radiculopathy, and herniated lumbar intervertebral disc. In a Form CA-17 dated August 31, 2022, she diagnosed lumbar sprain and lumbar radiculopathy. Dr. Thorson noted restrictions of lifting/carrying intermittently up to 25 pounds 8 to 10 hours a day; seldom bending/stooping, twisting, driving a vehicle, and operating machinery; and occasional pulling/pushing.

In a Form CA-17 dated September 8, 2022, Dr. Gregory Gutke, a Board-certified physiatrist, diagnosed lumbar sprain and lumbar radiculopathy. He noted that appellant could carry/lift up to 25 pounds. Dr. Gutke noted that appellant was off work from September 6 through 7, 2022 and could return to modified duty on September 8, 2022.

Appellant filed a claim for compensation (Form CA-7) for intermittent disability for the period August 30 through September 7, 2022.

Dr. Gregory Martin, a Board-certified physiatrist, treated appellant on September 8, 2022 via telehealth appointment for worsening back pain. She reported working modified duty as a shipfitter when her back pain worsened and her supervisor sent her home on September 6

and 7, 2022. Appellant continued to complain of back pain radiating down the right leg and foot numbness. He diagnosed lumbar sprain, lumbar radiculopathy, and herniated lumbar intervertebral disc.

On September 15, 2022 appellant underwent a functional capacity evaluation, which revealed limitations on sitting, standing, walking, performing work on ladders, climbing ladders, twisting her trunk, bending/stooping, kneeling, and crawling. She demonstrated consistent effort throughout evaluation.

In a Form CA-17 dated September 21, 2022, a physician whose signature was illegible, diagnosed lumbar sprain, lumbar radiculopathy and noted appellant was off work from September 6 through 7, 2022, but could return to modified-duty work on September 8, 2022. The physician further advised that appellant could not work from September 21 through 26, 2022 due to worsening pain after the functional capacity evaluation.

In an after-visit summary dated September 21, 2022, Claire Kennedy, a physician assistant, diagnosed lumbar sprain and lumbar radiculopathy. In a medical clearance note of the same date, Ms. Kennedy noted that appellant was disabled from work from September 21 through 25, 2022 and could return to regular duty on September 26, 2022.

In a Form CA-17 dated September 26, 2022, Dr. Thorson diagnosed lumbar sprain and lumbar radiculopathy. She noted that appellant was off work from September 6 through 7, 2022 and could return to modified-duty work on September 8, 2022 secondary to her injury. Dr. Thorson further advised that appellant was off work on September 15, 2022 for the functional capacity examination (FCE). She returned her to modified-duty work from September 26 through October 10, 2022.

Appellant filed a Form CA-7 for intermittent disability from work commencing September 15 through 22, 2022.

In development letters dated October 6, 2022, OWCP informed appellant of the deficiencies of her claims for compensation. It advised her of the type of medical evidence required and afforded her 30 days to submit the requested evidence.

OWCP received additional evidence. In a Form CA-17 dated October 5, 2022, Dr. Anne Donohue, a Board-certified physiatrist, diagnosed lumbar sprain and lumbar radiculopathy. She noted that appellant was off work from September 6 through 7, 2022 secondary to her injury and could return to work on September 8, 2022. Dr. Donohue further advised that appellant was off work on September 15, 2022 for the FCE and returned to modified duty from October 5 through November 4, 2022.

Dr. Thomas Louwers, a Board-certified physiatrist, treated appellant on October 14, 2022 and noted that appellant was off work from September 6 through 7, 2022 secondary to a herniated disc that caused decreased sensation in the right foot. He further noted that she was off work on September 15, 2022 for a functional capacity evaluation. Dr. Louwers took appellant off work from September 19 through 22, 2022 secondary to a herniated disc that caused radiating pain down both legs and decreased sensation in the right foot. In a Form CA-17 of the same date, he continued modified-duty work from October 14 through November 30, 2022.

OWCP further developed appellant's claim.² On November 1, 2022 it referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions for a second opinion evaluation with Dr. Aleksandar Curcin, a Board-certified orthopedist, requesting that he address the medical necessity of bilateral lumbar intra-articular injections, whether the accepted conditions resolved, and appellant's current work restrictions.

In a December 30, 2022 report, Dr. Curcin, diagnosed sprain of the ligament of the lumbar spine and radiculopathy of the lumbar region. He noted subjective findings of positive straight leg raising and numbness in the right S1 distribution, which corresponded to the objective findings identified on the MRI scan of multilevel degenerative disease and neural impingement at L4-5 and L5-S1. Dr. Curcin indicated that the work-related condition of lumbar radiculopathy had not resolved as appellant continued to complain of pain in the right S1 distribution and had positive straight leg raising. He noted further treatment was appropriate and recommended a targeted right S1 selective nerve root block. Dr. Curcin advised that appellant was not able to return to the shipfitter helper position but could continue with limited-duty work. He noted maximum medical improvement (MMI) had not occurred. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Curcin indicated that appellant could perform sedentary, light-duty work.

By decision dated June 1, 2023, OWCP authorized payment of wage-loss compensation for disability from work on the following claimed dates: two hours on August 30 and 31, 2022 and six hours on September 15, 2022. However, it denied appellant's claim for compensation for the remaining claimed dates of intermittent disability.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ 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.⁵ For each period of disability claimed, the employee has the

² On October 21, 2022 Dr. Ann Tu, a Board-certified physiatrist, requested that the acceptance of appellant's claim be expanded to include herniated lumbar intervertebral disc. She noted a recent MRI scan of the lumbar spine revealed a disc protrusion at L4-L5 and L5-S1 and opined that the herniated disc injury was more probable than not due to workplace exposure and activity.

³ 5 U.S.C. § 8101 *et seq.*

⁴ *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).

⁵ *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁶

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence.⁷ The opinion of the physician must be based on a complete factual and medical background, 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 this case is not in posture for decision.

In November 2022, OWCP referred appellant, along with the case record, a SOAF, and a series of questions to Dr. Curcin for a second opinion evaluation regarding the medical necessity of bilateral lumbar intra-articular injections, whether the accepted conditions resolved, and appellant's current work restrictions. In his November 10, 2022 report, Dr. Curcin diagnosed sprain of the ligament of the lumbar spine and radiculopathy of the lumbar region. He indicated that the work-related condition of lumbar radiculopathy had not resolved as she continued to complain of pain in the right S1 distribution and had positive straight leg testing. Dr. Curcin noted further treatment was appropriate and recommended a targeted right S1 selective nerve root block. He advised that appellant was not able to return to the shipfitter helper position but could continue with limited-duty work. Dr. Curcin noted MMI had not occurred. In a Form OWCP-5c of the same date he indicated that appellant could perform sedentary, light-duty work. The Board finds, however, that OWCP failed to inquire of Dr. Curcin whether appellant was disabled from work during the claimed period September 6 through 7, 2022 and September 15 through 22, 2022 causally related to the accepted November 23, 2021 employment injury.¹⁰ This is particularly important as Dr. Curcin indicated that appellant's accepted work-related lumbar radiculopathy was not resolved, that her examination revealed subjective findings that correlated to objective findings identified on the MRI scan, and that she required additional treatment for her work-related injury.

⁶ *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).

⁷ *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).

⁸ *V.A.*, Docket No. 19-1123 (issued October 29, 2019); *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

⁹ *See S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 5.

¹⁰ *See C.A.*, Docket No. 20-0353 (issued May 5, 2022).

It is well established that, proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹¹ OWCP has an obligation to see that justice is done.¹² Accordingly, once it starts to procure a medical opinion, it must do a complete job in securing from its referral physician an opinion, which adequately addresses the relevant issues.¹³

Thus, the Board will remand the case for OWCP to obtain a supplemental report from Dr. Curcin addressing whether appellant was disabled from work during the claimed period causally related to her accepted November 23, 2021 employment injury. 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.

¹¹ See e.g., *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹² See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹³ *T.B.*, Docket No. 20-0182 (issued April 23, 2021); *L.V.*, Docket No. 17-1260 (issued August 1, 2018); *Mae Z Hackett*, 34 ECAB 1421, 1426 (1983).

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2023 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: February 13, 2024
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