

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period March 16 through August 6, 2022, causally related to his accepted January 30, 2022 employment injury.

FACTUAL HISTORY

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

On January 31, 2022 appellant, then a 29-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on January 30, 2022 he felt a sharp pain in his lower back when he slipped and fell when exiting his police vehicle while in the performance of duty. He stopped work on the date of the claimed injury.

By decision dated May 12, 2022, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the January 30, 2022 employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In a March 11, 2022 note, Dr. Steven C. Rosa, a chiropractor, related that appellant was treated for complaints of moderate cervico-thoracic pain and moderate-to-severe lumbar pain. On physical examination, he observed that appellant had spasm and tenderness of the spine, and restricted intersegmental mobility. Dr. Rosa opined that appellant was totally disabled until March 25, 2022.

Appellant submitted unsigned chiropractic treatment notes dated February 22 through April 12, 2022, which noted that he was disabled until April 14, 2022.

On April 14, 2022 Dr. Charles E. Raftery, a Board-certified orthopedic surgeon, described appellant's incident at work, and recounted appellant's complaints of persistent low back and neck pain. On physical examination, he observed restricted cervical and lumbar range of motion. Dr. Raftery diagnosed low back and neck pain. He recommended that appellant remain out of work until diagnostic studies were completed and reviewed.

In a report dated May 12, 2022, Dr. Raftery indicated that he evaluated appellant for complaints of low back pain and neck symptoms and provided examination findings. He reported that lumbar spine x-rays revealed slight decreased disc space at L5-S1 and cervical spine x-rays demonstrated preserved disc spaces. Dr. Raftery advised that appellant remain out of work due to his restricted cervical range of motion. In a separate report of even date, he opined that, based on the mechanism of injury, he believed that appellant sustained cervical and lumbar sprains as a result of his fall at work on January 30, 2022.

³ Docket No. 23-0759 (issued January 23, 2024).

On May 27, 2022 appellant, through counsel, requested reconsideration.

In an August 2, 2022 note, Dr. Raftery indicated that appellant was under his care and was to remain out of work pending additional testing results.

By decision dated August 24, 2022, OWCP accepted appellant's claim for cervical spine sprain and lumbar spine sprain.

On August 25, 2022 appellant returned to full-duty work.

On September 12, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period March 16 through August 6, 2022.

In a September 16, 2022 development letter, OWCP informed appellant of the deficiencies of his claim for disability from work for the period March 16 through August 6, 2022. It advised him of the type of additional evidence needed and afforded him 30 days to provide the necessary evidence.

OWCP received additional reports from Dr. Raftery. In a July 5, 2022 report, Dr. Raftery reported physical examination findings and diagnosed lower back and cervicogenic pain. In an August 2, 2022 report, he reported physical examination findings, diagnosed resolving lower back pain, cervicogenic pain with cervical radiculitis, and opined that appellant should remain out of work.

In a report dated October 28, 2022, Dr. Raftery noted diagnoses of lower back pain and cervicogenic pain. He reported that appellant was disabled from work due to his work-related cervical and lumbar sprains from January 30, 2022 to the present and continuing "due to ongoing pain and limited range of motion." Dr. Raftery explained that appellant did not make sufficient progress in his recovery to allow him to return to work sooner. He further reported that the "combination of ongoing pain and limited range of motion resulted in my opinion that [appellant] remain out of work." Dr. Raftery opined that the end date of disability was currently unknown and would be dependent on continuing progress in his recovery.

Appellant also submitted November 2 and December 15, 2022 reports wherein Dr. David C. Levi, Board-certified in pain medicine and anesthesiology, discussed appellant's cervical and lumbar conditions and opined that he remained totally disabled.

By decision dated January 9, 2023, OWCP denied appellant's claim for disability compensation for the period March 16 through August 6, 2022. It found that the medical evidence of record was insufficient to establish that he was disabled from work during the claimed period due to his accepted January 30, 2022 employment injury.

On January 30, 2023 appellant, through counsel, requested reconsideration.

In a report dated January 23, 2023, Dr. Byron V. Hartunian, a Board-certified orthopedic surgeon, reviewed appellant's medical records and noted examination findings of no palpable muscular spasm over cervical and lumbar muscles during motion. He diagnosed resolved cervical and lumbar muscle strains and facet syndrome of the cervical spine. Dr. Hartunian opined that

appellant was totally disabled from work from January 30, 2022 through mid-November 2022, when he became capable of sedentary work. He also opined that appellant was totally disabled from his job as a police officer from January 30, 2022 until January 1, 2023. Dr. Hartunian explained that the trauma from appellant's slip and fall traumatic injury resulted in cervical and paraspinal muscle fibers tearing, causing an inflammatory reaction, irritating the surrounding nerves. He noted that the symptoms associated with the diagnosed conditions of cervical sprains were pain and limited range of motion. Dr. Hartunian reported that prolonged sitting, as would be required in appellant driving four hours to and from work, would aggravate these symptoms. He also explained that inflammation in the cervical and lumbar areas would make tasks such as driving, sitting, standing, walking, bending, lifting, and carrying extremely difficult, and would impair appellant's focus and concentration. Dr. Hartunian opined that appellant was totally disabled from work during the periods of time mentioned.

By decision dated April 26, 2023, OWCP denied modification of the January 9, 2023 decision.

Appellant, through counsel, appealed to the Board. By decision dated January 23, 2024, the Board affirmed the April 26, 2023 OWCP decision.⁴

On May 2, 2024 appellant, through counsel, requested reconsideration. In support of his request, appellant submitted an April 30, 2024 report from Dr. Bassem Azkul, a Board-certified family medicine physician.

Dr. Azkul, in an April 30, 2024 report, reviewed appellant's medical records and injury history. He explained that appellant experienced a whiplash injury when he fell from an upright position without head restraint. Dr. Azkul pointed out that during a whiplash event, the hips, back, and trunk move forward and up compressing the cervical spine, coupled with displacement of the trunk causes the head to revolve backward into segment flexes, which appellant experienced. He reported that, consequently, appellant's lumbar and cervical paraspinal muscles were torn and weakened by the January 30, 2022 employment injury. Dr. Azkul opined that appellant also sustained facet joint injuries from the accepted January 30, 2022 employment injury. He related that appellant sustained functional deficit from the torn muscles which in turn caused his incapacity from January 30 through mid-November 2022. Appellant's disability was supported by the objective evidence including his grossly limited cervical range of motion and tenderness on palpation at C5-6 and C6-7, cervical facets, and right paraspinal musculature. He explained that due to his reduced range of motion, weakness, and muscle functional deficit limited his ability to perform the duties of his position including carrying, lifting, and supporting heavy objects; sitting; driving; and other job duties. Dr. Azkul concluded that the biomechanical deficits due to the lumbar and cervical muscle strains caused appellant's total disability from January 30 through mid-November 2022 and partial disability from mid-November 2022 through January 15, 2023, when he returned to his police office job.

By decision dated May 10, 2024, OWCP denied modification of the April 26, 2023 decision.

⁴ *Id.*

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.⁶ Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ 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.⁸

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.⁹ 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 specific employment factors identified by the claimant.¹⁰

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.¹¹

ANALYSIS

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

The Board preliminarily notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's April 26, 2023 decision, which was considered by the

⁵ *Supra* note 2.

⁶ See *A.W.*, Docket No. 24-0382 (issued May 16, 2024); *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).

⁷ 20 C.F.R. § 10.5(f); *A.W., id.*; *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁸ *A.W., id.*; *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

⁹ *A.W., id.*; *A.S.*, Docket No. 20-0406 (issued August 18, 2021); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁰ *A.W., id.*; *T.L.*, Docket No. 20-0978 (issued August 2, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

¹¹ See *C.T.*, Docket No. 20-0786 (issued August 20, 2021); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

Board in its January 23, 2024 decision. Findings made in prior Board decisions are *res judicata* and cannot be considered absent further merit review by OWCP under section 8128 of FECA.¹²

Following the Board's January 23, 2024 decision, OWCP received an April 30, 2024 report from Dr. Azkul. The Board finds that, while the opinion from Dr. Azkul is not completely rationalized, it indicates that appellant was disabled from work due to his accepted employment injury for the period March 16 through August 6, 2022.¹³ Dr. Azkul concluded that the biomechanical deficits due to appellant's accepted lumbar and cervical muscle strains caused appellant's total disability from January 30 through mid-November 2022 and partial disability from mid-November 2022 through January 15, 2023. He explained that appellant experienced a whiplash injury when he fell from an upright position without head restraint. Dr. Azkul pointed out that during a whiplash event, the hips, back, and trunk move forward and up compressing the cervical spine, coupled with displacement of the trunk causes the head to revolve backward into segment flexes, which appellant experienced. He provided a pathophysiological explanation that appellant's accepted employment injury caused torn muscles which led to functional deficits and decreased cervical range of motion and instability which caused him to be unable to perform his police officer duties.¹⁴ Appellant's disability was supported by the objective evidence including his grossly limited cervical range of motion and tenderness on palpation at C5-6 and C6-7, cervical facets, and right paraspinal musculature. Dr. Azkul explained that appellant's reduced range of motion, weakness, and muscle functional deficit limited his ability to perform the duties of his position including carrying, lifting, and supporting heavy objects; sitting; driving; and other job duties.

Accordingly, the Board finds that Dr. Azkul's report, although insufficiently rationalized to meet appellant's burden of proof to establish the claim, raises an uncontroverted inference between his accepted conditions and resultant inability to work for the period March 16 through August 6, 2022 and, thus, it is sufficient to require OWCP to further develop the medical evidence.¹⁵

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹⁶ While the claimant has the responsibility to establish entitlement

¹² *T.A.*, Docket No. 24-0300 (issued May 1, 2024); *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

¹³ *See A.M.*, Docket Nos. 23-0083 & 23-0084 (issued March 21, 2024); *A.C.*, Docket No. 20-1340 (issued November 1, 2022); *D.G.*, Docket No. 18-0043 (issued May 7, 2019); *see also E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹⁴ *See A.M., id.*; *V.D.*, Docket No. 21-1053 (issued March 20, 2023).

¹⁵ *See A.M., id.*; *A.C., supra* note 13; *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

¹⁶ *See A.M., id.*; *A.C., id.*; *V.K.*, Docket No. 20-0989 (issued January 25, 2022); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁷

The case shall, therefore, be remanded for further development. On remand OWCP shall refer appellant to a physician in the appropriate field of medicine, along with the case record and a statement of accepted facts for a rationalized medical opinion as to whether appellant's disability from work beginning March 16, 2022 is causally related to his accepted January 30, 2022 employment injury. If the second opinion physician disagrees with the opinion provided by Dr. Azkul, he or she must provide a fully-rationalized opinion explaining why the accepted employment injury was insufficient to have caused appellant's claimed disability. After 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 May 10, 2024 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 11, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁷ *A.M., id.; V.K., id.; A.J.*, Docket No. 18-0905 (issued December 10, 2018); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).