

compensation for partial disability from August 27 to November 3, 2005 and leave buy back for the period August 24 to 25, 2005.² The Board found that the reports by Dr. John T. Harbaugh, a treating physician Board-certified in family practice and occupational health, were of little probative value as the physician failed to support his opinion with objective evidence and rationale. On February 26, 2010 the Board found that appellant filed a timely reconsideration request and set aside OWCP's May 11, 2009 nonmerit decision which found that her request for reconsideration was untimely filed and failed to establish clear evidence of error.³ The facts and circumstances contained in the prior decisions are incorporated herein by reference.⁴

The medical and factual evidence relevant to appellant's claim for wage-loss compensation for the period April 2 through June 19, 2006 is set forth below.

Appellant filed claims for wage-loss compensation (Form CA-7) for the period April 2 through June 9, 2006. In support of her claim, she submitted various reports from Dr. Harbaugh, and a report from Dr. Andrea Nachenberg, a treating Board-certified physiatrist. In a March 31, 2006 report, Dr. Harbaugh reported seeing appellant for a flare up of severe neck pain extending from her neck to her arm. Appellant related that the pain began on March 30, 2006 and worsened after working that day. Physical findings included a positive left-sided Spurling's test, moderately tender left posterolateral neck and tenderness of the trapezius muscles. Dr. Harbaugh noted severe pain in the left arm with some relief provided when appellant flexed or rotated her head to the right. He related this "occurs often with cervical radiculitis." Dr. Harbaugh diagnosed acute left cervical radiculitis due to cervical disc disease of the neck and previous neck surgery and indicated that appellant was disabled from working at this time. Appellant was to return on April 4, 2006 for a recheck. In an April 4, 2006 Attending Physician's report (Form CA-20), Dr. Harbaugh indicated that she was totally disabled for the period March 31 to April 11, 2006. Diagnoses included chronic neck and shoulder pain with evidence of left cervical radiculitis. Dr. Harbaugh checked "yes" to the question of whether the condition was employment related.

On April 8, 2006 Dr. Nachenberg diagnosed possible C8-T1 cervical radiculopathy. A physical examination revealed diminished cervical extension and flexion, slight left trapezius pain on cervical flexion, a negative Spurling's test bilaterally, full shoulder range of motion and left arm and hand pain complaints with left shoulder abduction.

In an April 13, 2006 CA-20 form, Dr. Harbaugh diagnosed cervical radiculopathy and cervical strain and noted the period of disability as April 11 to 19, 2006. He checked "yes" to

² Docket No. 06-1532 (issued April 20, 2007).

³ Docket No. 09-1624 (issued February 26, 2010).

⁴ On June 12, 2001 appellant, then a 46-year-old clerk, filed an occupational disease claim alleging that on March 31, 1999 she first realized her cervical degenerative disc disease had been permanently aggravated by her employment. On the back of the form, the employing establishment noted that she had been on limited duty since April 13, 1999 due to her accepted carpal tunnel syndrome under claim number xxxxxx901. OWCP accepted the claim for cervical radiculopathy and authorized cervical surgery, which was performed on June 29, 2004. Subsequently, it expanded appellant's claim to include cervical intervertebral disc displacement without myelopathy.

the question of whether the condition was employment related. On April 18, 2006 Dr. Harbaugh noted that appellant returned for a follow-up visit for her left cervical radiculitis flare up with pain and left hand numbness and weakness. A physical examination revealed tenderness in the trapezius muscle and moderate left neck tenderness. Range of motion for the neck included 35 degrees left, 60 degrees right and four-finger forward flexion from the chin to the chest. Dr. Harbaugh indicated that appellant continued to be disabled from working.

By letter dated May 4, 2006, OWCP informed appellant that the evidence of record was insufficient to support her claim for disability beginning April 4, 2006 and advised her as to the medical and factual evidence required to support her claim.

Dr. Harbaugh, in a May 1, 2006 CA-20 form, diagnosed cervical disc disease with possible C6-7 disc protrusion or osteophyte possibly impinging on the spinal cord and checked "yes" to the question of whether the condition was employment related. He indicated the period of disability as April 27 to May 3, 2006.

In a May 10, 2006 CA-20 form, Dr. Harbaugh diagnosed cervical radiculopathy and checked "yes" to the question of whether the condition was employment related. The period of disability was listed as May 4 to 13, 2006.

On May 17, 2006 OWCP received an April 27, 2006 report from Dr. Harbaugh in which he continued to find appellant disabled from working. Dr. Harbaugh diagnosed left cervical radiculitis with moderate to severe symptoms. Appellant indicated her pain level as 10 out 10. A review of an April 12, 2006 magnetic resonance imaging (MRI) scan revealed C3-4 and C7-T1 disc bulges. A physical examination revealed better cervical range of motion and mild left neck tenderness. In a May 18, 2006 CA-20 form, Dr. Harbaugh diagnosed improved cervical radiculopathy and radiculitis. He checked "yes" to the question of whether the condition was employment related and that appellant was totally disabled for the period May 15 to 28, 2006. On June 5 and 6, 2006 OWCP received reports dated May 4 and 15, 2006 report from Dr. Harbaugh diagnosing improved left cervical radiculopathy. The May 4, 2006 physical examination revealed improved neck range of motion, neck tenderness diffusely, normal upper extremity reflexes and intact sensation. In his May 15, 2006 report, Dr. Harbaugh indicated that appellant continued to be disabled from working. A physical examination performed on May 15, 2006 revealed tenderness of the left-sided neck and trapezius muscles and a review of an MRI scan revealed disc bulges at C3-4 and C7-T1.

In a June 5, 2006 CA-20 form, Dr. Harbaugh diagnosed improved cervical radiculopathy and radiculitis. He checked "yes" to the question of whether the condition was employment related and noted total disability from May 26 to June 9, 2006.

By decision dated June 14, 2006, OWCP denied appellant's claim for compensation beginning April 2, 2006.

Subsequently, OWCP received reports dated May 26 and June 9, 2006, report from Dr. Harbaugh reporting physical findings similar to his prior report. Dr. Harbaugh noted that appellant remained off work in his June 9, 2006 report and that she would be rechecked on June 19, 2006.

On June 22, 2006 appellant requested an oral hearing before OWCP's hearing representative, which was held on October 6, 2006.

In a June 27, 2006 report, Dr. Harbaugh noted that appellant returned to light-duty work on June 19, 2006.

In reports dated January 5 and February 12, 2007, Dr. Harbaugh diagnosed cervical radiculitis. He stated that appellant was taken off work in the spring of 2006 due to complications following her neck surgery in 2004.

In a May 7, 2008 report, Dr. Harbaugh provided physical findings and noted appellant had been unable to work for several weeks following a flare-up in March 2006. He related that appellant continued with neck pain and pain radiating into her upper arms and shoulders.

In a June 22, 2008 report, Dr. Harbaugh diagnosed cervical radiculitis and intervertebral degenerative disc disease. He noted that appellant continued to have neck pain radiating in to her shoulders. With respect to appellant's disability in 2006, Dr. Harbaugh stated that she "had a severe setback with pain radiating in to her left arm" as well as weakness of her left hand intrinsic muscles and fourth and fifth finger residual sensory disorder. He stated that appellant had been disabled from working in the spring of 2006 and that she was released to return to modified work when her condition improved.

On January 13, 2009 OWCP received unsigned CA-20 forms dated April 28, May 11, 12, 16 and 28, June 8 and 15 and July 25, 2006 stating that appellant was temporarily totally disabled for the period April 2 through June 19, 2006.⁵ It also received corresponding reports for this period from Dr. Harbaugh.

In an April 11, 2006 report, received by OWCP on January 13, 2009, Dr. Harbaugh diagnosed acute left cervical radiculitis, probably due to her prior surgery. In an April 18, 2006 report, he diagnosed cervical disc disease with disc bulges and possible C6-7 osteophyte or central disc protrusion, which might impinge on the spinal cord. Dr. Harbaugh indicated that appellant was unable to work from April 11 to 17, 2006. He stated that she was totally disabled for the period April 18 to 27, 2006. In an April 27, 2006 report, Dr. Harbaugh related that appellant experienced a flare-up of her left cervical radiculitis and left hand weakness. He diagnosed left cervical radiculitis with improving symptoms and indicated that she was "too acute and too uncomfortable to return to work at present." On May 4, 2006 Dr. Harbaugh stated that appellant was unable to work from May 4 to 13, 2006 and diagnosed improved cervical radiculopathy and radiculitis. In a May 15, 2006 report, he diagnosed status post appellant's June 24, 2004 cervical discectomy and fusion with improved symptoms of left cervical radiculopathy. Dr. Harbaugh indicated that she continued to be disabled from working for the period May 15 to 28, 2006. On May 26, 2006 he diagnosed cervical disc disease, osteophyte and cervical radiculitis with left hand weakness. Dr. Harbaugh indicated that appellant would remain off work for May 26 to June 9, 2009. On June 15, 2006 he noted disability for the period June 9 to 19, 2006 with a diagnosis of left cervical radiculitis with intrinsic muscular weakness. In a

⁵ The forms noted that a "signature was on file."

June 19, 2006 report, Dr. Harbaugh released appellant to limited-duty work that day and noted his disagreement with OWCP's denial of her wage-loss claim.

By decision dated June 15, 2010, OWCP denied modification of the denial of appellant's claim for wage-loss compensation for the period April 2 to June 19, 2006.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of her claim by the weight of the evidence.⁷ For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.⁸ Whether a particular injury causes an employee to become disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁹

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.¹⁰ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.¹¹ An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.¹² When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wages.

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s).¹³ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁸ See *Amelia S. Jefferson, id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

⁹ See *Edward H. Horton*, 41 ECAB 301 (1989).

¹⁰ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Conard Hightower*, 54 ECAB 796 (2003); 20 C.F.R. § 10.5(f).

¹¹ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

¹² *Merle J. Marceau*, 53 ECAB 197 (2001).

¹³ *A.D.*, 58 ECAB 149 (2006); *Sedi L. Graham*, 57 ECAB 494 (2006).

be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁴

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.¹⁵

ANALYSIS

Appellant has an accepted injury for cervical radiculopathy and cervical intervertebral disc displacement without myelopathy. She claimed compensation for disability from April 2 to June 19, 2006. Appellant bears the burden to establish through probative medical evidence that she was disabled during this period causally related to her accepted injury.

In support of her claim for disability for the period April 2 to June 19, 2006, appellant submitted various reports. Dr. Harbaugh reported that she was totally disabled in CA-20 forms dated April 4 and 13, May 1 and 10 and June 5, 2006. He reported physical findings and treatment given in reports dated March 31, April 11, 18 and 27, May 4, 7, 15, 16 and 26, June 9, 15 and 19, 2006, January 5 and February 17, 2007 and May 7 and June 22, 2008. Dr. Harbaugh noted on June 27, 2006 that appellant returned to light-duty work on June 19, 2006. However, these reports and CA-20 forms are of limited probative value as he failed to provide any medical rationale explaining how and why she became disabled due to her accepted injury or unable to continue work at her light-duty position for the period April 2 to June 19, 2006. Moreover, it is well established that the checking of a box “yes” is of little probative value in establishing causal relationship.¹⁶ Without any explanation to support that appellant was disabled for the period April 2 to June 19, 2006 due to her accepted conditions of low cervical radiculopathy and cervical intervertebral disc displacement without myelopathy, these reports and CA-20 forms are insufficient to meet her burden of proof.¹⁷

Appellant also submitted an April 8, 2006 report from Dr. Nachenberg who diagnosed possible C8-T1 cervical radiculopathy and provided physical findings. Dr. Nachenberg provided no opinion as to whether appellant was disabled from working or the cause of her cervical radiculopathy. Medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.¹⁸ Thus, Dr. Nachenberg’s report is insufficient to establish that appellant’s disability for the period April 2 to June 19, 2006.

¹⁴ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

¹⁵ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁶ *See D.D.*, 57 ECAB 734 (2006); *Barbara J. Williams*, 40 ECAB 649 (1989).

¹⁷ *T.F.*, 58 ECAB 128 (2006); *Richard A. Neidert*, 57 ECAB 474 (2006) (a medical report is of limited probative value on a given medical question if it is unsupported by medical rationale).

¹⁸ *A.D.*, *supra* note 13; *Michael E. Smith*, 50 ECAB 313 (1999).

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

Appellant had the burden of proving by the preponderance of the reliable, probative and substantial evidence that she was disabled for work as a result of her employment injury. For the reasons stated above, the Board finds that she failed to sustain her burden of proof to establish that she was totally disabled due to her accepted employment condition during the claimed period.¹⁹

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 15, 2010 is affirmed.

Issued: July 5, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁹ See *Fereidoon Kharabi*, *supra* note 15.