

filed an occupational claim based on carrying her mailbag as a part-time letter carrier and OWCP had accepted the claim on November 27, 2006 for lumbar degenerative disc disease, lumbar facet arthropathy and lumbar radiculitis. She had stopped working and claimed compensation as of July 18, 2006. The Board remanded the case for further development of the medical evidence.

In a decision dated September 3, 2009, the Board found a conflict in the medical evidence under 5 U.S.C. § 8123(a) as to whether appellant had an employment-related disability commencing July 18, 2006.³ The case was remanded to resolve the conflict. In an order dated December 17, 2010, the Board remanded the case to OWCP.⁴ The Board noted that OWCP had never properly rescinded acceptance of the conditions accepted on November 27, 2006, yet the statement of accepted facts (SOAF) indicated that lumbar facet arthropathy and lumbar degenerative disc disease were not employment related. The case was remanded for OWCP to prepare a proper SOAF and secure a rationalized medical opinion from the referee physician.

OWCP referred appellant to Dr. Arthur Hughes, a Board-certified neurologist selected as a referee physician. The questions posed to Dr. Hughes included a question as to whether there was an employment-related aggravation of a preexisting condition and whether appellant “has been disabled since [July 18, 2006] due to any employment[-]related aggravation of her degenerative disc disease.”

In a report dated June 16, 2011, Dr. Hughes noted that the accepted conditions were lumbar radiculitis, lumbar degenerative disc disease and lumbar facet arthropathy. He provided a history and results on examination and diagnosed lower back and left leg pain by history of uncertain cause. In response to the questions posed, Dr. Hughes opined that there was no evidence that the job as a letter carrier aggravated the preexisting lumbar degenerative disc disease. He further opined that appellant had not been disabled since July 18, 2006 due to an employment-related aggravation of degenerative disc disease. Dr. Hughes stated that she had lower back pain, which is not a consequence of degenerative disc disease. As to disability, he stated, “By her history, [appellant] was not, however, capable of performing her duties as a letter carrier as a consequence of lower back pain. This is based on appellant’s history and supporting history in the medical record regarding ongoing lower back pain.”

By decision dated July 29, 2011, OWCP determined that appellant was not entitled to compensation commencing July 18, 2006. It found the weight of the evidence was represented by Dr. Hughes.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of establishing 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 The term disability is

³ Docket No. 09-353 (issued September 3, 2009).

⁴ Docket No. 10-675 (issued December 17, 2010).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁷

ANALYSIS

OWCP accepted lumbar degenerative disc disease, lumbar facet arthropathy and lumbar radiculitis on November 27, 2006.

The medical issue in this case is whether appellant was disabled during the period July 18, 2006 to January 3, 2007 due to an accepted employment-related condition.

The report from Dr. Hughes does not resolve this issue. The questions posed to Dr. Hughes did not accurately identify the issue and his report does not clearly address the issue. OWCP asked him if there was an employment-related aggravation and if appellant had been disabled due to an aggravation. The issue does not involve an aggravation of a preexisting condition as OWCP accepted the underlying degenerative disc disease. As to disability, Dr. Hughes appeared to indicate that appellant was disabled for some period due to low back pain, but the period was unclear. In addition, he referred only to “uncertain” and “undetermined” as causes of the back pain, without further explanation.

The case will be remanded to OWCP to properly resolve the issue. On return of the case record, OWCP should secure a supplemental report that addresses the issue presented. The referee physician should have a clear understanding of the accepted employment-related conditions and provide a rationalized opinion as to an employment-related disability for the date-of-injury position during the period July 18, 2006 to January 3, 2007. After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case must be remanded to OWCP for further development of the medical evidence.

⁷ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 29, 2011 is set aside and the case remanded for further actions consistent with this decision of the Board.

Issued: April 23, 2012
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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