

On appeal, counsel contends that OWCP's decision was not well rationalized as two of appellant's treating physicians provided letters with contemporaneous chart notes indicating that he could not work due to his accepted employment-related conditions.

FACTUAL HISTORY

OWCP accepted that appellant, a 53-year-old management analyst, sustained a closed dislocation of the right lumbar vertebra and sacrum on May 20, 2013 due to a slip and fall on a wet bathroom floor in the performance of duty. On June 13, 2013 appellant's physician Dr. Andrew Hamilton, a Board-certified family practitioner, indicated that appellant could perform light-duty work since the date of injury. Appellant resigned on October 2, 2014.

Appellant, through counsel, filed claims for compensation (Forms CA-7) for periods of disability commencing April 20, 2014. He submitted reports dated April 9 through August 27, 2014 from his chiropractor, Dr. Thomas W. Holt, who diagnosed lumbar subluxation, subluxation sacrum, lumbar intervertebral disc (IVD) disorder with myelopathy, cervical subluxation, cervical brachial syndrome (diffuse), thoracic subluxation, abnormal posture, and segmental dysfunction of the lower extremity.³ On June 2, 2014 Dr. Holt asserted that appellant had "an exacerbation" and an "episodic marked deterioration of [appellant's] condition due to acute flare-ups of the presenting conditions." On June 4, 2014 he noted an increase in pain in the following cervical or lumbodorsal planes of motion: right cervical rotation, left cervical rotation, and cervical extension. A pinwheel test was performed to search for sensory dermatome deficits caused by neural blockages and hyperesthesia was found at left L4, L5, and S1. Lasegue's test was positive bilaterally at 40 percent. Braggard's and Patrick's testing was positive bilaterally. On July 23, 2014 Dr. Holt performed a reexamination of appellant and found that manual palpation of his spine and extremities revealed the following areas of subluxations: left sacrum, left pelvis, left L5, L2, T7, left C7, left C6, left C5, C4, and C2. These areas exhibited abnormal motion, misalignment, as well as taut, and tender fibers.

In addition, x-rays were taken consisting of anterior and posterior and lateral views of the cervical, thoracic, and lumbar spines. An increase in pain was noted in the following cervical or lumbosacral planes of motion: right lateral cervical flexion, right cervical rotation, and lumbodorsal extension. The painful areas were: left sacroiliac, left hip, right cervical, and right cervical dorsal at 75 percent. Based upon the findings of the examination, postural evaluation, and x-ray analysis, Dr. Holt recommended treatment three times per week for the next 12 weeks.

In a September 25, 2014 report, Dr. Hamilton reviewed appellant's medical history including his chronic low back pain, chronic left foot pain, chronic kidney disease, mild persistent asthma, chronic right hand pain, chronic right foot/ankle pain, atrial fibrillation, and accepted conditions of right closed dislocation of the lumbar vertebra and sacrum. He opined that the May 20, 2013 employment injury "appeared to aggravate the existing multiple pain problems noted above since [appellant's] pain medication requirements have markedly increased since the injury." Dr. Hamilton asserted that appellant was unable to perform the duties of his job due to his ongoing and still poorly controlled pain problems and by side effects of the

³ Dr. Holt indicated that he reviewed x-rays in reaching his diagnoses.

medications and treatments being used to try to control the pain. In a June 30, 2014 work excuse note, he “excused [appellant] from work due to disabling medical problems partly attributed to fall at work May 20, 2013” for the period March 4 through June 30, 2014.

In an October 28, 2014 letter, OWCP requested additional medical evidence establishing appellant’s disability from work during the claimed period and afforded him 30 days to respond to its inquires.

Appellant submitted progress reports dated December 8 and 10, 2014 from Dr. Holt and a December 10, 2014 physical therapy note from a licensed massage practitioner.

By decision dated February 3, 2015, OWCP denied appellant’s claim for disability for the period commencing April 20, 2014, finding that the medical evidence submitted was not sufficient to support disability due to the employment injury.

Subsequent to the February 3, 2015 decision, OWCP received a January 30, 2015 report by Dr. Hamilton who opined that appellant’s accepted employment injuries contributed to his inability to work since April 21, 2014.

OWCP referred appellant to Dr. Aleksandar Curcin, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of his employment-related conditions. In a February 27, 2015 report, Dr. Curcin reviewed a statement of accepted facts and appellant’s medical records, and reported the findings of his physical examination. He found no medical records or imaging studies that documented the existence of a preexisting condition. Dr. Curcin pointed out that “the mechanism of a ground level fall would not be expected to pathologically and substantially aggravate any preexisting condition.” He concluded that there was no objective pathology resulting from the May 20, 2013 employment injury and that appellant was capable of performing his regular duties.

On May 7, 2015 appellant, through counsel, requested reconsideration and submitted an April 8, 2015 narrative statement and a July 29, 2014 magnetic resonance imaging (MRI) scan of the lumbar spine.

Appellant submitted a voluminous amount of medical documentation dated April 15, 2014 through April 15, 2015 regarding the course of his treatment with Dr. Hamilton, including diagnostic testing results. He also submitted progress reports dated March 17, 2014 through March 12, 2015 from Dr. Holt who reiterated his diagnoses and opinions. On December 13, 2014 Dr. Holt stated that OWCP had accepted a closed dislocation lumbar vertebra and closed dislocation sacrum and opined that the resulting left lower buttocks and left hip pain continued, and contributed to appellant’s inability to work since April 13, 2014. He concluded that appellant’s chronic pain disorder was caused by his accepted injuries.

By decision dated May 29, 2015, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

Section 8102(a) of FECA⁴ sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: “The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty....” In general the term “disability” under FECA means “incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.”⁵ This meaning, for brevity, is expressed as disability for work.⁶ For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.⁷ Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable probative and substantial medical evidence.⁸

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used under FECA, and is not entitled to compensation for loss of wage-earning capacity. The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he was totally disabled for the period commencing April 20, 2014, causally related to his employment injuries. While OWCP accepted that he sustained a closed dislocation of the right lumbar vertebra and sacrum on May 20, 2013 appellant bears the burden to establish through medical evidence that he was disabled during the claimed time periods and that his disability was causally related to the accepted injuries.¹⁰ The Board finds that appellant has submitted no rationalized medical evidence explaining how the accepted conditions materially worsened or aggravated any preexisting lumbar or sacrum conditions causing disability for work for the period commencing April 20, 2014.

⁴ 5 U.S.C. § 8102(a).

⁵ 20 C.F.R. § 10.5(f); *see also* *William H. Kong*, 53 ECAB 394 (2002).

⁶ *See Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁷ *See William A. Archer*, 55 ECAB 674 (2004).

⁸ *See Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁹ *Id.*

¹⁰ *See supra* notes 7 and 8. *See also V.P.*, Docket No. 09-337 (issued August 4, 2009).

In his February 27, 2015 second opinion report, Dr. Curcin found no medical records or imaging studies that documented the existence of a preexisting condition, point out that a fall at ground level “would not be expected” to aggravate a preexisting condition and concluded that there was no objective pathology resulting from the May 20, 2013 employment injury. He opined that appellant was capable of performing his regular duties. Dr. Curcin found no residuals from appellant’s accepted injuries.

Appellant submitted medical documentation dated April 15, 2014 through April 15, 2015 regarding the course of his treatment with Dr. Hamilton for his chronic low back pain, chronic left foot pain, chronic kidney disease, mild persistent asthma, chronic right hand pain, chronic right foot/ankle pain, atrial fibrillation, and accepted conditions of right closed dislocation of the lumbar vertebra and sacrum. In the June 30, 2014 note, Dr. Hamilton “excused [appellant] from work due to disabling medical problems partly attributed to fall at work May 20, 2013” for the period March 4 through June 30, 2014. He opined that the May 20, 2013 employment injury “appeared to aggravate the existing multiple pain problems noted above since [appellant’s] pain medication requirements have markedly increased since the injury.” Dr. Hamilton asserted that appellant was unable to perform the duties of his job due to his ongoing and still poorly controlled pain problems and due to side effects of the medications and treatments being used to try to control the pain. In the January 30, 2015 report, he opined that appellant’s accepted employment injuries contributed to his inability to work since April 21, 2014. Although Dr. Hamilton opined that appellant was totally disabled from work, his opinion is conclusory in nature, and fails to explain in detail how the accepted medical conditions were responsible for appellant’s disability and why he could not perform his federal employment.¹¹ Consequently, the Board finds that Dr. Hamilton’s reports are insufficient to establish appellant’s claim that he was totally disabled for the period commencing April 20, 2014 causally related to his employment injuries.

Appellant also submitted reports from his chiropractor, Dr. Holt. Before this evidence can be considered for its probative value, Dr. Holt must be established as a physician under FECA. Under section 8101(2) of FECA, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.¹² OWCP regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation, or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.¹³ In appellant’s case, Dr. Holt noted reviewing x-rays and diagnosed a lumbar subluxation and noted that OWCP accepted a closed dislocation of the right lumbar vertebra and sacrum. Therefore, to the extent that Dr. Holt provides an opinion with respect to the accepted dislocation, the Board finds that he is a physician under FECA.¹⁴

¹¹ See *J.J.*, Docket No. 15-1329 (issued December 18, 2015).

¹² 5 U.S.C. § 8101(2); see also *Jack B. Wood*, 40 ECAB 95, 109 (1988).

¹³ 20 C.F.R. § 10.5(bb); see also *Bruce Chameroy*, 42 ECAB 121, 126 (1990).

¹⁴ See *K.C.*, Docket No. 12-1970 (issued March 13, 2013) (where OWCP accepted dislocations of the lumbar vertebra and sacrum, the Board found that, to the extent that the claimant’s chiropractor provided an opinion with respect to the accepted dislocations, he would be considered a physician under FECA).

In his reports, Dr. Holt diagnosed lumbar subluxation, subluxation sacrum, lumbar IVD disorder with myelopathy, cervical subluxation, cervical brachial syndrome (diffuse), thoracic subluxation, abnormal posture, and segmental dysfunction of the lower extremity based on x-rays. He opined that appellant had “an exacerbation” and an “episodic marked deterioration of [appellant’s] condition due to acute flare-ups of the presenting conditions.” On December 13, 2014 Dr. Holt stated that OWCP had accepted a closed dislocation of the lumbar vertebra and sacrum and opined that the resulting left lower buttocks and left hip pain continued and contributed to appellant’s inability to work since April 13, 2014. He listed a number of diagnosed conditions which have not been accepted by OWCP as related to the May 20, 2013 work injury. Dr. Holt did not address causal relationship and thus his reports do not establish that appellant’s conditions were work related.¹⁵ He also briefly referred to an exacerbation and acute flare-ups, but did not provide any additional detail. The Board finds that, although Dr. Holt found appellant disabled from work, he failed to provide a probative medical opinion explaining how appellant’s accepted conditions caused him to be disabled for employment on the dates at issue.¹⁶ Thus, appellant has not met his burden of proof to establish that he was totally disabled for work due to the employment injuries for the period claimed.

The July 29, 2014 MRI scan of the lumbar spine is diagnostic in nature and has limited probative medical value because it does not specifically address whether appellant was totally disabled as a result of his employment injuries.¹⁷ Thus, the Board finds that this evidence is insufficient to meet his burden of proof.

Appellant further submitted a physical therapy note dated December 10, 2014. This document does not constitute competent medical evidence because a physical therapist is not a “physician” as defined under FECA.¹⁸ As such, this evidence is also insufficient to meet appellant’s burden of proof.

On appeal, counsel contends that OWCP’s decision was not well rationalized because two of appellant’s treating physicians provided letters with contemporaneous chart notes indicating that he could not work due to his accepted employment-related conditions. The Board finds, however, that appellant’s physicians have not provided sufficiently rationalized medical opinion evidence establishing that he was disabled during the period commencing April 20, 2014 due to the accepted conditions. Thus, appellant has not met his burden of proof to establish that he is entitled to compensation for total disability.

¹⁵ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (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).

¹⁶ See *J.G.*, Docket No. 12-1348 (issued February 25, 2013).

¹⁷ See *K.L.*, Docket No. 15-1504 (issued April 4, 2016); *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

¹⁸ 5 U.S.C. § 8101(2); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). See also *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

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 appellant has not met his burden of proof to establish that he was totally disabled for the period commencing April 20, 2014 causally related to his employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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