

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**D.V., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Santa Clarita, CA, Employer**

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**Docket No. 17-1344  
Issued: March 19, 2018**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 2, 2017 appellant, through counsel, filed a timely appeal from a March 28, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish total and intermittent periods of disability beginning February 5, 2016 due to his December 21, 2015

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

employment injury; and (2) whether appellant established that his claim should be expanded to include the additional conditions of lumbar disc herniation with radiculopathy, lumbar spondylosis, and muscle spasm.

### **FACTUAL HISTORY**

On December 30, 2015 appellant, then a 39-year-old carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that, on December 21, 2015, he sustained a lumbar strain and right hip contusion when he slipped and fell in a customer's driveway while in the performance of duty. He stopped work on December 21, 2015. OWCP accepted appellant's claim for a low back strain and contusion of the right hip. Appellant received continuation of pay (COP) benefits through February 4, 2016.

Appellant was initially treated by Dr. Katayoon Shahrokh, Board-certified in physical medicine and rehabilitation, who related in a January 7, 2016 report that he complained of right-sided low back pain and discomfort and occasional right lower extremity pain. Dr. Shahrokh diagnosed lumbar muscle strain. In a work status report, she indicated that appellant could work modified duty from January 7 through 21, 2016.

In a January 7, 2016 lumbar spine magnetic resonance imaging (MRI) scan report, Dr. Geoffrey Sigmund, a Board-certified diagnostic radiologist, noted a 3 millimeter (mm) asymmetric disc bulge to the right foraminal region at L4-5, with mild-to-moderate narrowing, but otherwise normal alignment of the lumbar spine.

On January 28, 2016 the employing establishment provided appellant with a modified job offer. Appellant refused the modified job offer on February 2, 2016 and indicated that the reason was "per doctor's instruction."

In a February 1, 2016 progress note and work status report, Dr. Shahrokh described the December 21, 2015 employment injury and noted examination findings of tenderness of the right hip and decreased range of motion and tenderness of the lumbar spine. She diagnosed lumbar radiculopathy. Dr. Shahrokh noted that appellant was placed off work from February 1 through 15, 2016.

On February 4, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for total disability from February 5 to 19, 2016. On the reverse side of the claim form, the employing establishment confirmed that he had used COP from December 22, 2015 to February 4, 2016 and leave without pay (LWOP) from February 5 to 19, 2016. In an attached time analysis form (Form CA-7a), appellant indicated that he was totally disabled during the claimed period of disability. The employing establishment indicated that eight hours of work was available for him daily.

Dr. Shahrokh continued to treat appellant. In progress notes and supplemental attending physician's reports dated February 10, 12, and 16, 2016, she noted a date of injury of December 21, 2015. Dr. Shahrokh provided examination findings and reported diagnoses of lumbar radiculopathy, lumbar disc herniation, lumbar muscle strain, and lumbar disc herniation with radiculopathy. In a February 16, 2016 report, she requested that OWCP add lumbar radiculopathy and disc herniation to appellant's claim. Dr. Shahrokh explained that the herniated

disc was compressing a lumbar nerve and causing radiculopathy. She related that the diagnosis was supported by MRI scan findings of a 3 mm disc herniation and physical examination findings of asymmetric weakness, impaired sensation, and positive straight leg raise testing. Dr. Shahrokh noted that appellant was totally disabled from February 15 through 29, 2016. She explained that the reason for being off work was “incapacitating injury or pain.”

By letter dated February 17, 2016, the employing establishment requested that OWCP deny appellant’s claim for wage-loss compensation for the period February 5 through 19, 2016. It explained that he had been placed on work restrictions by his physician after the injury. However, work was not available within these restrictions until January 28, 2016. A job offer was mailed to appellant on January 29, 2016, within the physician’s restrictions, but then on February 1, 2016 appellant’s physician related that appellant was totally disabled from work. The employing establishment noted that work had been available since January 29, 2016 within the restrictions previously provided by appellant’s physician.

In a February 18, 2016 letter, OWCP noted that Dr. Shahrokh added a new diagnosis of lumbar radiculopathy. It requested that appellant submit a detailed narrative report with medical rationale explaining how the diagnosed condition resulted from the December 21, 2015 employment injury.

By letter dated February 22, 2016, OWCP informed appellant that it received his claim for wage-loss compensation beginning February 5, 2016. It requested additional evidence to establish that he was unable to work effective February 5, 2016 as a result of his December 21, 2015 employment injury. Appellant was afforded 30 days to submit this evidence.

On February 10, 2016 appellant submitted another claim for wage-loss compensation (Form CA-7) for the period February 22 to March 4, 2016. On the reverse side of the claim form, the employing establishment noted that eight hours of work was available. It attached an OWCP time loss record which indicated that work was available for appellant from February 22 to March 4, 2016.

OWCP received a neurology consultation report dated March 1, 2016 by Dr. Rollin Chen-Chi Hu, a Board-certified neurosurgeon, who described the December 21, 2015 employment injury. Dr. Hu related appellant’s complaints of persistent low back pain and right leg pain and numbness. Upon physical examination, he reported minimal tenderness to palpation over the lumbar spine. Dr. Hu noted diminished sensation to light touch over the entire right leg. He indicated that after reviewing appellant’s lumbar spine MRI scan he found no evidence of significant degenerative changes or disc herniation, foraminal stenosis, or root impingement. Dr. Hu related that appellant’s symptoms were also inconsistent with a lumbar radiculopathy as appellant complained of numbness and weakness of the entire right leg in no particular radicular distribution. He recommended an electromyography (EMG) study to rule out a peripheral nerve or plexus issue.

Dr. Shahrokh continued to treat appellant. In attending physician’s reports dated February 29 and March 1, 2016, she described the December 21, 2015 employment injury and conducted an examination. Dr. Shahrokh reported diagnoses of lumbar muscle strain, lumbar

radiculopathy, and lumbar disc herniation. In work status notes dated from February 29 to March 8, 2016, she authorized appellant to work modified duty.

Appellant submitted a March 4, 2016 EMG and nerve conduction velocity (NCV) study by Dr. Radha Peram, a physical medicine and rehabilitation specialist. Dr. Peram noted diagnoses of chronic low back pain, lumbosacral radiculitis, and paresthesia. He reported a normal study with no electrodiagnostic evidence for neuropathy or nerve entrapment in the right lower extremity.

By letter dated March 10, 2016, the employing establishment requested that OWCP disallow appellant's claim for wage-loss compensation for the period February 22 through March 4, 2016. It confirmed that there was and continued to be eight hours of work available.

On March 11, 2016 the employing establishment provided appellant with a job offer as a modified city carrier assistant (CCA). It noted that the work hours were from 8:00 a.m. to 2:00 p.m. with scheduled days off of Saturday and Sunday.

Appellant returned to modified duty on March 18, 2016.

In reports and work status notes dated March 29 and April 19, 2016, Dr. Shahrokh conducted an examination and noted a diagnosis of chronic low back pain and lumbar muscle strain. She indicated that appellant could work modified duty for the period March 22 to May 10, 2016 with restrictions.

Appellant filed additional claims for wage-loss compensation (CA-7 forms) for intermittent periods of disability from March 7 through April 1, 2016.<sup>3</sup> In the attached Form CA-7a, he indicated that he was totally disabled from March 7 to 17, 2016. He claimed disability compensation on March 18, 21, 23, and 25, 2016 for "therapy."<sup>4</sup> Appellant also claimed disability compensation on March 22 and 24, 2016 and from March 28 through April 1, 2016 for "no work available." On the reverse side of the claim forms, the employing establishment confirmed that eight hours of work was available. It provided a time-loss record, which detailed the hours that appellant worked and the hours he requested LWOP for the months of March and April, 2016.<sup>5</sup>

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<sup>3</sup> On April 4, 2016 appellant filed a Form CA-7 claiming wage-loss compensation for the period March 7 to 18, 2016. On April 5, 2016 he filed a Form CA-7 claiming wage-loss compensation for the period March 21 to April 1, 2016.

<sup>4</sup> Appellant requested six hours of disability compensation on March 18, 2016 and seven hours of disability compensation on March 21, 23, and 25, 2016. He requested six hours of disability compensation on March 22, 2016 and eight hours of disability compensation on March 24, 2016 and from March 28 through April 1, 2016.

<sup>5</sup> The timesheet also revealed that appellant worked 1.87 hours on March 18; .97 hours on March 21; 1.5 hours on March 22; .96 hours on March 23; .97 hours on March 24; and 87 hours on March 25, 2016. In time-loss sheets for April 2016, the employing establishment indicated that work was available on April 1, 2016; appellant worked 5.81 hours on April 4; 5.78 hours on April 5; 5.55 hours on April 6; 4.66 hours on April 7; 8.72 hours on April 11; 4.52 hours on April 12; 6.63 hours on April 15, 2016; 4.90 hours on April 20; 5.03 hours on April 21; 2.02 hours on April 22; 3.34 hours on April 25; 1.98 hours on April 26; 2.00 hours on April 27; 1.87 hours on April 28; and 1.92 hours on April 29, 2016.

By letter dated April 5, 2016, counsel noted his disagreement with OWCP's February 18, 2016 letter. He alleged that lumbar radiculopathy was a valid, compensable diagnosis.

According to an April 14, 2016 Form CA-110, the employing establishment again explained that there was no work available for appellant until January 28, 2016. It noted that he declined a modified duty offer on February 2, 2016, so it provided another modified-duty position offer on February 29, 2016. The employing establishment related that appellant worked from March 21 to 25, 2016 and then stopped work again. It confirmed that the limited-duty position was still available.

Appellant provided various physical therapy treatment notes dated March 16, 18, 20, 21, 23, and 25, and April 8, 2016.

On April 15, 2016 the employing establishment provided appellant with another modified job offer. It noted work hours of "8:00 a.m. – up to 8 hours" with rotating scheduled days off. Appellant accepted the modified job offer.

On April 28, 2016 appellant filed CA-7 forms claiming wage-loss compensation for intermittent periods of partial disability for the period April 4 to 28, 2016. In attached forms CA-7a, he indicated that the reason for using leave during that period was: "no work available."<sup>6</sup>

On the reverse side of the claim form, the employing establishment checked a box marked "No" indicating that appellant did not return to the predate-of-injury job. It also noted that it was unable to identify adequate work that was available within his medical restrictions. The employing establishment provided a time-loss record for April 2016, which indicated that, for the week of April 4 through 8, 2016, appellant worked a total of 21.78 hours and was owed 16.67 hours. It further related that, from April 11 through 15, 2016, he worked 19.87 hours and was owed 18.58 hours. The employing establishment noted that, from April 18 through 22, 2016, appellant worked 11.95 hours and was owed 26.50 LWOP hours. It indicated that, from April 25 through 29, 2016, he worked 11.17 hours and was owed 27.28 LWOP hours.

By letter dated May 3, 2016, counsel indicated that he was submitting medical documentation to support that appellant's claim be expanded to include the following conditions: lumbar disc herniation with radiculopathy, lumbar spondylosis, and muscle spasm.

By decision dated May 12, 2016, OWCP denied appellant's claim for wage-loss compensation beginning February 17, 2016. It found that the medical evidence of record failed to establish that he was disabled from work during the claimed period as a result of his accepted injury. By separate decision of the same date, OWCP also denied appellant's request to expand his claim to include lumbar disc herniation with radiculopathy, lumbar spondylosis, and muscle spasm. It found that the medical evidence of record was insufficient to establish any additional conditions causally related to the December 21, 2015 employment injury.

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<sup>6</sup> Appellant claimed eight hours on April 13, 14, 18, and 19, 2016, six hours on April 7, 15, 22, 25, 26, 27, and 28, 2016, five hours on April 12, 2016, four hours on April 4, 5, 7, 8, and 11, 2016, and three hours on April 6 and 21, 2016.

Appellant submitted additional CA-7 forms requesting wage-loss compensation for intermittent disability during the period May 2 to June 24, 2016. In the CA-7a forms he indicated that he was partially disabled on May 3, 5, 11, 16, 18, 20, 24, 25, 27, 30, and 31, 2016 and June 6, 7, 8, 9, and 10, 2016 because there was “no work available.”<sup>7</sup> Appellant also claimed disability on May 2, 4, 6, 9, 10 11, 13, 17, 19, 23, 26 and 31, 2016 and June 21, 2016 related the reason was for “therapy” or the “doctor.” On the reverse side of the Form CA-7a, the employing establishment indicated that work was available and referred to the job offer on file. It also provided a time-loss logging sheet for May and June 2016.<sup>8</sup>

In May 10 and 31, 2016 attending physician’s report, Dr. Shahrokh reviewed appellant’s history and conducted an examination. She diagnosed chronic low back pain and lumbar muscle strain. Dr. Shahrokh related that appellant could work modified duty from May 10 through June 21, 2016 with restrictions of standing and walking no more than 45 cumulative minutes, bending at the waist, squatting, kneeling, and knee bending no more than 15 cumulative minutes, and lifting, carrying, pushing, or pulling up to 15 pounds.

On May 18, 2016 the employing establishment provided appellant with a modified job offer. It noted that the work hours were “8:00 [a.m.] – up to 6 hours” with rotating scheduled days off. Appellant accepted the modified job offer.

OWCP received appellant’s request, through counsel, for a telephone hearing, held before an OWCP hearing representative on May 23, 2016. Appellant submitted physical therapy notes dated May 9, 11, 13, 17, 19, 23, and 26, 2016.

On June 7, 2016 the employing establishment provided appellant with another modified job offer. It noted that the work hours were from “8:00 a.m. – up to 8 hours” with rotating scheduled days off. Appellant accepted the modified job offer.

Dr. Shahrokh provided a June 21, 2016 report and noted that appellant’s symptoms had improved from the previous visit. She related that he wanted to try to work full duty. Dr. Shahrokh conducted an examination and diagnosed lumbar muscle strain. She released appellant to work full duty.

By decision dated August 25, 2016, OWCP denied appellant’s claim for wage-loss compensation benefits beginning May 16, 2016. It found that the medical evidence of record failed to establish that he was disabled from work or entitled to wage-loss compensation during

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<sup>7</sup> Appellant claimed eight hours of LWOP on May 5, and June 8 and 9, 2016; approximately six hours of LWOP on May 3, 2016; four hours on May 11, 2016; and two hours of LWOP on May 16, 18, 20, 24, 25, 27, and 30, and June 6, 7, and 10, 2016. He also requested eight hours of LWOP on May 4, 6, 10 11, 17, and 31, 2016; six hours of LWOP on May 2, 9, and 13, and June 21, 2016, and four hours of LWOP on May 19, 23, and 26, 2016 for “doctor” or “therapy.”

<sup>8</sup> In a time-loss sheet for the month of May 2016, the employing establishment noted that appellant requested approximately 30 minutes of LWOP on May 28, 2016. A time-loss sheet for the month of June 2016, demonstrated that he used approximately 30 minutes of LWOP on June 21 and 24, 2016; approximately two hours of LWOP on June 4, 6, 7, 10, 14, 18, 20, 23, and 26; approximately four hours on June 19 and 21, 2016; and approximately seven hours on June 9 and 16, 2016.

the claimed period as a result of his work injury. On September 6, 2016 OWCP received appellant's request, through counsel, for a telephone hearing before an OWCP hearing representative.

In an October 28, 2016 letter, appellant noted a date of injury of December 21, 2015. He related that he received his job offer on January 31, 2016. Appellant explained that he took a copy of the job offer to his physician, but she informed him that he was not ready to go back to work yet. He asserted that he had no choice, but to follow his physician's instructions.

Appellant indicated in a December 8, 2016 letter that he had asked his union representative to obtain proof of no work available and was given a memorandum of a request for a copy of appellant's leave slip. He requested that OWCP let him know if more evidence was needed. Appellant submitted a memorandum dated November 15, 2016 from his union representative to his postmaster requesting a copy of appellant's leave slips for various dates from March 7 to June 10, 2016. He also submitted various employee earnings statements for January through June 2016 and resubmitted CA-7a forms, which covered the period March 21 to June 24, 2016.

A hearing was held on January 11, 2017.<sup>9</sup> Counsel alleged that, although OWCP denied appellant's request to expand his claim because of a negative EMG/NCV study, other medical records showed a clinical presentation of radicular complaints. He requested that, on the issue of additional claims, OWCP send the claim back for additional medical review. Regarding the issue of wage-loss compensation benefits, appellant explained that, following his December 21, 2015 employment injury, he missed about six months of work. He related that he received COP for the first 45 days and began to claim compensation for disability beginning February 5, 2016. Appellant indicated that his physician took him off work from February 5 to 29, 2016. He reported that he later received a job offer from the employing establishment on March 17, 2016 and returned to light duty on March 18, 2016. Appellant explained that some days he worked one and two hours, or three and four hours because the employing establishment did not have eight hours of work available for him. He indicated that he returned to full duty in June 2016.

On February 10, 2017 OWCP received the employing establishment's response to a transcript of the January 11, 2017 hearing. It related that it mailed appellant a modified job offer on January 29, 2016. The employing establishment noted that he went to his treating physician on February 1, 2016 and was placed on total disability. It reported that on March 10, 2016 it received two medical documents dated February 29 and March 3, 2016, which placed appellant on modified duty, so the employing establishment prepared a modified job offer dated March 11, 2016. The employing establishment related that he accepted the job offer on March 17, 2016. It explained that this job had been available since January 29, 2016. The employing establishment submitted appellant's previous modified job offers and medical reports.

In a March 13, 2017 statement, appellant explained that, when he showed his treating physician a copy of the January 28, 2016 job offer, his physician decided to place him on total

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<sup>9</sup> The hearing representative indicated that the hearing was to address OWCP's decisions dated May 12 and August 25, 2016, which denied appellant's claim for wage-loss compensation benefits beginning February 17, 2016 and his request to expand his claim to include a lumbar herniated disc with radiculopathy, lumbar spondylosis, and muscle spasms.

disability so as not to jeopardize his condition. He alleged that he later accepted the March 11, 2016 modified job offer, but was working less than eight hours. Appellant further alleged that he submitted all medical proof and work status reports to his supervisor as instructed, but due to misinformation and improper filing by his employing establishment, his COP and wage-loss compensation benefits were being delayed by OWCP. He noted that his union had filed a grievance and that he had attached a copy of the grievance.

By decision dated March 28, 2017, an OWCP hearing representative affirmed the May 12 and August 25, 2016 OWCP decisions. She found that the medical evidence of record was insufficient to establish that appellant was disabled from work beginning February 5, 2016 as a result of the December 21, 2015 employment injury. The hearing representative further determined that there was no medical evidence of record sufficient to establish an additional lumbar condition causally related to the December 21, 2015 employment injury.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.<sup>13</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work.<sup>14</sup> When the physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings or disability being shown, the physician has not presented a medical opinion, supported by medical rationale, on the issue of disability or a basis for payment of compensation.<sup>15</sup>

When an employee, who is disabled from the job he or she held when injured due to employment-related residuals, returns to a light-duty position or the medical evidence establishes that, light duty can be performed, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this

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<sup>10</sup> *Supra* note 2.

<sup>11</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>12</sup> 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>13</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

<sup>14</sup> *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>15</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).



burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.<sup>16</sup>

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence 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.<sup>17</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained a lumbar strain and right hip contusion as a result of the December 21, 2015 employment injury. Appellant stopped work and returned to modified duty on March 18, 2016. He filed claims for wage-loss compensation for total disability for the period February 5 to March 17, 2016 and for intermittent periods of partial disability beginning March 18, 2016, including dates he did not work due to medical appointments or because work was unavailable. By decision dated March 28, 2017, an OWCP hearing representative affirmed May 12 and August 25, 2016 decisions denying appellant's claim for wage-loss compensation beginning February 5, 2016.

The Board finds that appellant has failed to establish total disability for the period February 5 to March 17, 2016 due to his December 21, 2015 employment injury.

During appellant's alleged period of total disability, he received medical treatment from Dr. Shahrokh. In reports and work status notes dated February 1 to March 1, 2016, Dr. Shahrokh accurately described the December 21, 2015 employment injury. She reviewed appellant's history and provided findings on examination. Dr. Shahrokh diagnosed lumbar muscle strain, lumbar radiculopathy, and lumbar disc herniation. She noted that appellant was totally disabled from February 1 through 29, 2016 due to "incapacitating injury or pain." The Board has found, however, that when a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability.<sup>18</sup> Dr. Shahrokh did not discuss any objective findings to support appellant's inability to work, nor did she explain why he was unable to work as a result of his accepted lumbar and right hip injury.<sup>19</sup>

In a March 3, 2016 work status note, Dr. Shahrokh placed appellant on modified duty beginning February 29, 2016. She continued to provide various work status notes dated March 3 and 8, 2016, which released appellant to modified duty beginning February 29, 2016.

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<sup>16</sup> *C.G.*, Docket No. 16-1503 (issued May 17, 2017).

<sup>17</sup> *Amelia S. Jefferson*, *supra* note 13.

<sup>18</sup> *P.D.*, Docket No. 14-0744 (issued August 6, 2014); *G.T.*, 59 ECAB 447 (2008).

<sup>19</sup> *See M.M.*, Docket No. 16-0541 (issued April 27, 2010).

The Board finds that Dr. Shahrokh's additional reports also fail to establish that he was totally disabled from work from February 5 to March 17, 2016. On the contrary, Dr. Shahrokh released appellant to work modified duty beginning February 29, 2016.

The Board further finds that appellant has failed to establish intermittent periods of disability for the period March 18 to April 1, 2016, as he has not submitted evidence sufficient to establish that the employing establishment was unable to accommodate his work restrictions during that claimed period. The record reflects that appellant accepted a modified job offer as a modified CCA. On the reverse side of the CA-7 claim forms, which covered the periods March 18 to April 1, 2016, the employing establishment indicated that eight hours of work had been made available to him. As such, appellant has failed to establish that he was entitled to wage-loss compensation for intermittent periods of disability from March 18 to April 1, 2016 because there was no work available for him within his medical restrictions.

The Board also finds, however, that the case is not in posture for a decision regarding appellant's wage-loss compensation for intermittent disability for the period April 4 to 29, 2016.

On April 28, 2016 appellant filed CA-7 forms claiming total disability for the period April 4 to 29, 2016 because no work was available. On the reverse side of the CA-7 forms covering the period April 4 to 29, 2016, the employing establishment indicated that it was "unable to identify adequate work that is available within medical restrictions." It provided a time-loss document for the month of April 2016 and detailed how many LWOP hours that appellant was owed. The Board finds, therefore, that the evidence of record establishes that the employing establishment was unable to accommodate appellant's work restrictions from April 4 to 29, 2016. OWCP regulations provide that an employee is not entitled to compensation for any wage loss to the extent that evidence establishes that an employee had medical restrictions in place, that light duty within those work restrictions was available, and that the employee was previously notified in writing that such duty was available.<sup>20</sup> In this case, the evidence of record has demonstrated that appellant was authorized to work with restrictions, but the employing establishment did not have adequate work within his medical restrictions. OWCP continued to deny his wage-loss compensation claim for the period April 4 to 29, 2016 in light of the fact that the employing establishment indicated on the CA-7 forms that it did not have work available within appellant's work restrictions. Accordingly, the Board must remand the case for OWCP to issue appropriate wage-loss compensation for the period April 4 to 29, 2016.

The Board further finds that, for the remaining claimed periods of disability after April 29, 2016, the evidence of record lacks sufficient information to determine whether there was appropriate modified-duty work available for appellant such that he was not entitled to intermittent periods of partial disability. Appellant claimed approximately eight hours of wage-loss compensation on May 5 and June 8 and 9, 2016, six hours of LWOP on May 3, 2016, four hours on May 11, 2016, and two hours of LWOP on May 16, 18, 20, 24, 25, 27, and 30 and June 6, 7, and 10, 2016 because no work was available. On the reverse side of the CA-7 claim forms, which covered the periods after April 29, 2016, the employing establishment indicated that work was available. It noted that the job offer was on file. The evidence of record reflects that appellant

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<sup>20</sup> 20 C.F.R. § 10.500(a).

accepted an April 25, 2016 modified job offer, which noted work hours from “8:00 a.m. – up to 2 hours.” He also accepted a modified job offer on May 18, 2016, which noted work hours of “8:00 a.m. – up to 6 hours” with rotating scheduled days off. On June 7, 2016 the employing establishment provided appellant with another modified job offer, which reported work hours of “8:00 a.m. – up to 8 hours.”

Although the employing establishment asserted on the CA-7 forms that there was work available, the evidence of record also demonstrates that a modified job offer for up to eight hours was not available until June 7, 2016. The current record before the Board does not clearly establish that the employing establishment was able to accommodate appellant’s work restrictions full time, such that his claim for intermittent periods of partial wage-loss compensation should be denied.<sup>21</sup> Appellant has asserted that the employing establishment was not always available to provide eight hours of modified duty to him. The modified job offers dated April 25 and May 18, 2016 appear to support his assertion as they demonstrate that his modified duty was available for up to two or six hours. On remand, OWCP must develop the case and make factual findings on the status of appellant’s employment at the time he requested wage-loss compensation for partial disability from May 2 to June 6, 2016 because there was no work available within his work restrictions.

In addition, the Board also finds that the case is not in posture for decision regarding whether appellant is entitled to compensation for medical treatment on the following dates: February 10, 12, 16, and 29, 2016; March 1, 3, 4, 7, 8, 16, 18, 21, 23, 25, and 29, 2016; April 8 and 19, 2016; May 9, 10, 11, 13, 17, 19, 23, 26, and 31, 2016; and June 21, 2016. The record contains evidence that appellant was examined by Dr. Shahrokh or underwent physical therapy treatments on these dates. OWCP’s procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.<sup>22</sup> It notes that a claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider’s location.<sup>23</sup> As a rule, no more than four hours of compensation or COP should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.<sup>24</sup>

Accordingly, the case will also be remanded for consideration of payment of up to four hours of wage-loss compensation for each of these medical appointments and travel time.

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<sup>21</sup> See *J.G.*, Docket No. 17-0910 (issued August 28, 2017) (the Board remanded the case for OWCP to determine whether there was modified work available for appellant on November 25, 2016 when the employing establishment initially noted that he only worked 15.54 hours for the period September 17 through November 30, 2016, but later claimed that there was always work available for the claimant); see also *J.T.*, Docket No. 15-1133 (issued December 21, 2015).

<sup>22</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.19 (February 2013).

<sup>23</sup> *Daniel Hollars*, 51 ECAB 355 (2000); *Jeffrey R. Davis*, 35 ECAB 950 (1984).

<sup>24</sup> *Supra* note 22 at Chapter 2.901.19(c) (February 2013).

## LEGAL PRECEDENT -- ISSUE 2

Where an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>25</sup> To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such causal relationship.<sup>26</sup> Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>27</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>28</sup>

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>29</sup>

## ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish the additional conditions of lumbar disc herniation with radiculopathy, lumbar spondylosis, and muscle spasm causally related to the accepted December 21, 2015 employment injury.

OWCP accepted that appellant sustained a low back strain and contusion of the right hip as a result of the December 21, 2015 employment injury. In a February 16, 2016 report, Dr. Shahrokh reviewed his history and provided physical examination findings. She diagnosed lumbar radiculopathy, lumbar disc herniation, and lumbar disc herniation with radiculopathy and requested that OWCP expand the acceptance of his claim to include those conditions. Dr. Shahrokh explained that the herniated disc was compressing a lumbar nerve and causing radiculopathy. She related that the diagnosis was supported by MRI scan findings of a 3 mm disc herniation and physical examination findings of asymmetric weakness, impaired sensation, and positive straight leg raise testing.

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<sup>25</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>26</sup> *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>27</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

<sup>28</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>29</sup> Larson, *The Law of Workers' Compensation* § 1300; *K.S.*, Docket No. 16-0404 (issued April 11, 2016).

Although Dr. Shahrokh opined that appellant's claim should be expanded to include lumbar disc herniation and radiculopathy, she did not provide sufficient medical rationale explaining how the accepted December 21, 2015 employment injury caused, aggravated, or contributed to his lumbar disc herniation and radiculopathy.<sup>30</sup> The Board has found that medical evidence is of limited probative value if it contains a conclusion regarding causal relationship, but does not offer any rationalized medical explanation on the issue of causal relationship.<sup>31</sup> Accordingly, Dr. Shahrokh's report is insufficient to establish that appellant sustained lumbar disc herniation and radiculopathy as a result of his December 21, 2015 employment injury.

The Board finds that there is no medical evidence in the record to establish that appellant sustained lumbar disc herniation and radiculopathy as a consequence of his accepted December 21, 2015 employment injury. On the contrary, the evidence of record contains a March 1, 2016 report by Dr. Hu, who indicated that diagnostic testing did not show any evidence of significant degenerative changes or disc herniation. He also reported that appellant's symptoms were not consistent with lumbar radiculopathy. Accordingly, the Board finds that Dr. Hu's report fails to establish that appellant sustained any consequential lumbar disc herniation or radiculopathy as a result of the accepted December 21, 2015 employment injury.

The Board finds that appellant has failed to meet his burden of proof to expand the accepted conditions of his claim to include lumbar disc herniation with radiculopathy, lumbar spondylosis, and muscle spasm. The mere fact that a condition manifests itself or is worsened during an employment period does not raise an inference of causal relationship between the two. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.<sup>32</sup> The Board finds that appellant did not meet his burden of proof to expand the accepted conditions of his claim.

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 February 5 to March 17, 2016 and partially disabled on intermittent dates for the period March 17 to April 1, 2016 as a result of his accepted December 21, 2015 employment injury. The Board also finds that this case is not in posture for decision regarding whether he was entitled to compensation for partial disability on intermittent dates beginning April 24, 2016 because no work was available within his restrictions and regarding his claimed reimbursement for medical appointments on specific dates. The Board finds that appellant has not

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<sup>30</sup> *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

<sup>31</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>32</sup> *Patricia J. Bolleter*, 40 ECAB 373 (1988).

meet his burden of proof to expand his claim to include the additional conditions of lumbar disc herniation with radiculopathy, lumbar spondylosis, and muscle spasm.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further development consistent with this decision of the Board.

Issued: March 19, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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