

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

D.W., Appellant

and

**NATIONAL ARCHIVES & RECORDS
ADMINISTRATION, Suitland, MD, Employer**

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**Docket No. 18-0644
Issued: November 15, 2018**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 5, 2018 appellant filed a timely appeal from January 3, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.¹

ISSUE

The issue is whether appellant has met his burden of proof to establish total disability beginning July 17, 2017 causally related to his May 17, 2017 employment injury.

¹ The Board notes that appellant submitted new evidence with his appeal. However, "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal.

FACTUAL HISTORY

On June 6, 2017 appellant, then a 45-year-old archives technician, filed a traumatic injury claim (Form CA-1) alleging that on May 17, 2017 he sustained a low back injury as a result of pulling heavy boxes weighing up to 65 pounds and placing them on a platform while on a ladder at work. He stopped work on the date of injury. OWCP accepted the claim on July 27, 2017 for strain of the back wall of the thorax muscle and tendon. Appellant initially received continuation of pay benefits. OWCP paid wage-loss compensation and medical benefits for intermittent periods of disability commencing July 17, 2017.

In a June 25, 2017 work capacity evaluation (Form OWCP-5c), Dr. Girish Rao, an internist, advised that, while appellant could not return to his usual job, he could work eight hours a day with certain restrictions as of June 28, 2017. He related that appellant's restrictions would remain in place from June 28 until July 12, 2017.

In a certificate of disability dated August 3, 2017, Dr. Dennis A. Carlini, a Board-certified orthopedic surgeon, noted that appellant was disabled through August 24, 2017.

On September 15, 2017 appellant filed two claims for compensation (Form CA-7) for leave without pay (LWOP) for the period July 17 to September 15, 2017.

By development letter dated September 18, 2017, OWCP advised appellant that additional medical evidence was necessary to support his claim for disability benefits. It afforded him 30 days to submit the necessary evidence.

In a September 7, 2017 attending physician's report (Form CA-20), Dr. Carlini diagnosed disc herniation at L5 and indicated, by checking a box marked "yes," that the diagnosed condition was caused or aggravated by an employment activity. He noted that appellant had no issues prior to the event. Dr. Carlini indicated that appellant was totally disabled from work from August 4 to October 5, 2017.

On September 29, 2017 appellant filed another Form CA-7 for compensation for LWOP for the period September 18 to 29, 2017.

On October 3, 2017 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a list of questions, to Dr. Matthew Drake, a Board-certified orthopedic surgeon, to determine whether he had residuals from his accepted conditions and to determine if he had continuing disability. The examination was scheduled for October 31, 2017 at 10:00 a.m. On November 1, 2017 OWCP was advised by its medical scheduler that appellant did not keep the scheduled appointment with Dr. Drake.

On October 16, 2017 appellant filed a claim for compensation (Form CA-7) for LWOP for the period September 30 to October 10, 2017.

In an October 9, 2017 letter, Dr. Carlini noted a history of appellant's medical treatment. He noted diagnoses of left-sided L5 radiculopathy and a central disc rupture at L4-5 and L5-S1. Dr. Carlini opined that appellant's conditions were a direct result of the May 17, 2017 work injury.

In a November 1, 2017 notice, OWCP proposed to suspend appellant's wage-loss compensation and medical benefits as he failed to appear for the examination scheduled for October 31, 2017 with Dr. Drake. On November 9 and 21, 2017 appellant apologized to OWCP for missing his appointment with Dr. Drake and expressed his intent to reschedule the examination.

In a work capacity evaluation (Form OWCP-5c) dated November 20, 2017, Dr. Carlini noted appellant's accepted condition of strain of the muscle and tendon of the back wall of the thorax and advised that he could not perform his usual work or work with restrictions. He further advised that appellant had not reached maximum medical improvement (MMI).

Appellant, on November 27, 2017, filed another claim for compensation (Form CA-7) for LWOP for the period October 11 to November 24, 2017.

OWCP, by letter dated December 5, 2017, advised appellant that his second opinion evaluation had been rescheduled for December 5, 2017 with Dr. Willie Thompson, a Board-certified orthopedic surgeon. Appellant presented for the appointment.

In December 5, 2017 report, Dr. Thompson reviewed the SOAF and medical record. He noted appellant's complaint of localized low back pain without radiculopathy and that lumbar epidural steroid injections had been recommended. Dr. Thompson provided a review of symptoms and findings on physical examination. He noted that appellant was a well-developed, well-nourished male who was in no acute distress. Dr. Thompson noted that he was alert and oriented. Appellant ambulated with a normal tandem gait. There was no evidence of a limp. On examination of the lumbar spine, Dr. Thompson reported full range of motion. There was no tenderness or paraspinal muscle spasms. Heel-walking and toe-walking were performed adequately. Straight leg raising was negative bilaterally. No motor or sensory deficits were noted. The deep tendon reflexes were intact and equal bilaterally. The dorsalis pedis pulse was 3+ and regular. Manual muscle testing revealed strength to be graded at 5/5. There was normal muscle bulk and tone. Dr. Thompson noted that he did not have imaging studies available for review. He diagnosed soft tissue sprain/strain-type injury to the lower back. Dr. Thompson indicated that appellant had received adequate treatment. He saw no objective indication for need for additional treatment or diagnostic testing. Dr. Thompson advised that there was no evidence of continuing residuals of the May 17, 2017 employment injury. There were nonindustrial factors to consider. Dr. Thompson related that appellant's prognosis was good. He opined that the recommended steroid injections were neither indicated nor would be beneficial. Dr. Thompson, in a Form OWCP-5c dated December 5, 2017, indicated that appellant could perform his usual job without restriction. He also indicated that appellant had reached MMI.

By decision dated January 3, 2018, OWCP denied appellant's claim for disability compensation commencing July 17, 2017. It found that the weight of the medical evidence rested with Dr. Thompson's opinion and concluded that appellant submitted insufficient medical evidence to establish that the claimed disability was related to the accepted May 17, 2017 employment injuries.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish essential elements of his or her claim by the weight of the evidence.² For each period of disability claimed, the employee has the burden of proof to establish disability for work as a result of the accepted employment injury.³

Whether a particular injury causes an employee to be disabled for 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.⁴ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he hurts too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁵ 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 employees to self-certify their disability and entitlement to compensation.⁶

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 diagnosed condition and the specific employment factors identified by the claimant.⁸ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

² See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

³ See *Amelia S. Jefferson*, *id.*

⁴ See *Fereidoon Kharabi*, 52 ECAB 291 (2001); see also *A.C.*, Docket No. 17-1296 (issued February 15, 2018).

⁵ *Id.*

⁶ *Id.*

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish employment-related total disability commencing July 17, 2017 causally related to his accepted employment injury.¹⁰

Appellant was initially treated by Dr. Rao. In a June 25, 2017 report, Dr. Rao related that appellant could return to work on June 28, 2017 with restrictions. He also related that these restrictions would be in place until July 12, 2017. Dr. Rao did not report that appellant would be disabled after July 17, 2017. As previously noted, OWCP is not required to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.¹¹ As Dr. Rao's report does not address appellant's disability status as of July 17, 2017 it is insufficient to establish appellant's claim for wage-loss benefits commencing on that date.

Appellant relies upon the medical opinions of Dr. Carlini to establish that his disability from work during the claimed period was due to his accepted May 17, 2017 work injuries. In several reports, Dr. Carlini examined appellant and found that he had lumbar radiculopathy, that the condition was causally related to the May 17, 2017 employment injury, and that he was unable to work during an intermittent period August 4 to November 20, 2017. The Board notes that OWCP has not accepted the diagnosis of lumbar radiculopathy as causally related to the accepted May 17, 2017 employment injuries. OWCP has only accepted strain of the muscle and tendon of the back wall of the thorax and a lumbar strain in this case. For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relationship.¹² None of the reports from Dr. Carlini contain rationale explaining how this condition had been caused or aggravated by the accepted May 17, 2017 employment injuries. Moreover, Dr. Carlini did not offer a specific medical opinion addressing whether appellant's disability from work during the claimed period was causally related to the accepted work injuries.¹³ Thus, for these reasons, his reports are insufficient to meet appellant's burden of proof.

In his December 5, 2017 report, Dr. Thompson, OWCP's second opinion physician, opined that appellant had no residuals of the May 17, 2017 employment injuries and he had reached MMI, that he could perform his usual job without restriction, and that no further medical treatment was necessary. He examined appellant and noted full range of motion of the lumbar spine. Dr. Thompson found no tenderness or paraspinous muscle spasms. He reported that heel-walking and toe-walking were performed adequately, that straight leg raising was negative bilaterally, and no motor or sensory deficits were noted. Dr. Thompson further reported that deep tendon reflexes were intact and equal bilaterally and that the dorsalis pedis pulse was 3+ and

¹⁰ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

¹¹ *Supra* note 5.

¹² *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹³ *Id.*

regular. He related that manual muscle testing revealed strength to be graded at 5/5 and that there was normal muscle bulk and tone. Dr. Thompson diagnosed soft tissue sprain/strain-type injury to the lower back for which appellant received adequate treatment. He determined that there was no evidence of any residuals of the May 17, 2017 employment injury or objective indication for need for additional treatment or diagnostic testing. Dr. Thompson concluded that appellant's prognosis was good.

The Board finds that Dr. Thompson's report represents the weight of the medical evidence and establishes that appellant was not totally disabled as of the date of his examination due to his accepted May 17, 2017 employment injury. Dr. Thompson's opinion is based on a proper factual and medical history as he reviewed the SOAF and medical record. He also related his comprehensive examination findings in support of his opinion that appellant could work without restrictions.

As noted, appellant must submit reasoned medical evidence directly addressing the specific dates of disability for work for which he claims compensation.¹⁴ He did not provide medical evidence containing a rationalized opinion supporting that he could not work beginning July 17, 2017 due to his accepted conditions, and thus did not meet his burden of proof.

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 total disability commencing July 17, 2017 causally related to his May 17, 2017 employment injury.

¹⁴ See *K.A.*, Docket No. 16-0592 (issued October 26, 2016).

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2018
Washington, DC

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

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

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