



## **FACTUAL HISTORY**

On April 25, 2016 appellant, then a 66-year-old housekeeping aid, filed a traumatic injury claim (Form CA-1) alleging that on February 29, 2016 he sustained a low back and neck strain when he slipped on, a liquid cleaning agent, and fell while in the performance of duty. He stopped work on March 3, 2016 and returned on March 7, 2016.

In a February 27, 2017 duty status report (Form CA-17) and work capacity evaluation (Form OWCP-5c), Dr. Deborah Madden, a family practitioner, noted clinical findings of severe back pain radiating into legs. She diagnosed degenerative disc disease and lumbar sprain. Dr. Madden checked a box marked “yes” indicating that appellant could return to work with restrictions of sitting for six hours per day; lifting/carrying up to 10 pounds; standing, walking, and pushing/pulling up to 10 pounds; and reaching above shoulder for one hour per day.

Appellant subsequently submitted medical evidence, including progress notes, emergency department health records, procedure notes, physical therapy and respiratory treatment notes, psychiatric reports, and social work notes dated from October 25, 2015. These notes set forth records corresponding to the treatment he received for a multiplicity of conditions including chronic pain syndrome, degenerative disc disease of the lumbar spine with radiculopathy, essential hypertension, hyperlipidemia, peripheral neuropathy, restless leg syndrome, gastroesophageal reflux disease, asthma-chronic obstructive pulmonary disease, bilateral knee osteoarthritis, syncopal episodes of undetermined origin, transient ischemic attacks, major depression, and anxiety.

On March 31, 2018 appellant retired from federal employment.

In a September 6, 2018 letter, B.S., a human resource specialist for the employing establishment, requested a status update on appellant’s claim. He related that appellant had not been able to work due to his workplace injury and other medical factors. B.S. also indicated that appellant had since retired and was suffering a great financial hardship.

In an October 18, 2018 letter, Dr. Madden requested authorization for treatment secondary to conditions causally related to a work-related injury. She recounted that on February 29, 2016 appellant sustained a slip and fall injury at work and was subsequently treated in the emergency department on March 2 and 5, 2017 for cervical pain and worsening lumbar pain. Dr. Madden indicated that since the February 29, 2016 work injury, treatment therapies included conservative treatment of alternating heat and ice, pain clinic, lumbar epidural steroid injections, physical therapy, and limited physical restrictions.

On October 29, 2018 OWCP accepted appellant’s claim for neck strain.<sup>2</sup>

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<sup>2</sup> In a separate decision of even date, OWCP denied appellant’s entitlement to continuation of pay for the period March 1 to April 14, 2016 as the injury was not reported on a form approved by OWCP within 30 days following the injury.

On December 21, 2018 appellant filed a wage-loss compensation claim (Form CA-7) for leave without pay (LWOP) taken during the period May 18, 2017 through March 30, 2018.

In a December 31, 2018 development letter, OWCP advised appellant that the evidence submitted was insufficient to establish total disability from May 18, 2017 through March 30, 2018 and requested that he submit additional evidence to establish that he was unable to work during the period claimed due to his February 29, 2016 employment injury. It afforded him 30 days to submit the necessary evidence.

In a May 22, 2019 letter, L.L., a human resource specialist for the employing establishment, noted that she was providing additional information regarding appellant's time off work beginning May 18, 2017. She explained that he was on light duty when entered a LWOP status and that the employing establishment was unable to place him for work within his medical restrictions. L.L. noted that appellant voluntarily retired on March 31, 2018 and subsequently filed the wage-loss compensation claim alleging total disability. She requested that OWCP review his claim and reconsider its denial of payment.

By decision dated July 15, 2019, OWCP denied appellant's claim for wage-loss compensation for the period May 18, 2017 through March 30, 2018.

On July 26, 2019 appellant requested reconsideration.

In a July 26, 2019 letter, B.L., a human resource specialist for the employing establishment, noted that on two occasions the employing establishment had mailed and uploaded into the ECOMP system medical documentation regarding appellant's lost wages and confirmed his status as unemployable. She requested that OWCP fully review the evidence submitted and reconsider his wage-loss compensation claim.

Appellant submitted additional medical evidence, including an October 23, 2017 hospital emergency department progress note and an October 27, 2017 telephone call addendum by Dr. Karen J. Alldredge, an emergency physician, regarding his complaints of chronic, severe back pain with left-sided paresthesias.

By decision dated September 5, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the preponderance of the evidence.<sup>4</sup> Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

employee was receiving at the time of injury.<sup>5</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>6</sup> Whether a particular injury caused an employee to be disabled from employment and the duration of that disability are medical issues which must be proven by the preponderance of the reliable, probative, and substantial medical evidence.<sup>7</sup>

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 his or her disability and entitlement to compensation.<sup>8</sup>

When an employee who is disabled from the job that he or she held when injured on account of employment-related residuals returns to a limited-duty position, or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. As part of this burden of proof, the employee must show a change in the nature and extent of the injury-related condition, a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty job requirements.<sup>9</sup> This burden of proof includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>10</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>11</sup>

### ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision.

The record reflects that appellant was working in a modified-duty employment position on March 7, 2016. He stopped work again on May 18, 2017 and subsequently filed a Form CA-7 claiming wage-loss compensation for total disability until March 31, 2018. OWCP also received a May 22, 2019 letter from L.L., a human resource specialist for the employing establishment, who

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<sup>5</sup> A.S., Docket No. 17-2010 (issued October 12, 2018); S.M., 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

<sup>6</sup> K.C., Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

<sup>7</sup> S.G., Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291-92 (2001).

<sup>8</sup> J.B., Docket No. 19-0715 (issued September 12, 2019).

<sup>9</sup> S.F., Docket No. 19-1735 (issued March 12, 2020); J.B., Docket Nos. 18-1752, 19-0792 (issued May 6, 2019).

<sup>10</sup> H.T., Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>11</sup> E.M., Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

indicated that appellant was on light duty when he stopped work and that the employing establishment was unable to provide work within his work restrictions.

The Board finds that, in this case, the factual evidence of record is insufficient to determine whether appellant is claiming a recurrence of disability due to a withdrawal of his light-duty position or because of a change in his accepted February 29, 2016 employment injury.<sup>12</sup> As noted above, OWCP's regulations allow for a claimant to establish a recurrence of disability under either scenario.<sup>13</sup> Accordingly, the evidence of record must be fully developed so that it contains accurate information regarding appellant's claim in order to determine whether he sustained a recurrence of disability beginning May 18, 2017 because of a change of withdrawal of his limited-duty assignment due to an employment injury or because of a change and worsening of his accepted February 29, 2016 employment injury.<sup>14</sup>

On December 31, 2018 OWCP requested, in a development letter, that appellant provide additional evidence regarding his wage-loss compensation claim for total disability. The Board notes, however, that the employing establishment was not instructed to provide information regarding whether the limited-duty employment position in which he worked was withdrawn or modified during the period in which he has claimed wage-loss compensation. Although the May 22, 2019 letter indicated that OWCP was unable to accommodate appellant's work restrictions, the letter did not establish the periods of time and duration of the employing establishment's inability to provide light-duty work, whether the light duty was due to an employment injury, or the specific reason why the work was unavailable.<sup>15</sup>

It is well established that, proceedings under FECA are not adversarial in nature and, while the employee has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>16</sup> Accurate information regarding whether appellant's limited-duty assignment was available beginning May 18, 2017 is essential to determine whether he sustained a recurrence of total disability.<sup>17</sup> This evidence is of the character normally obtained from the employing establishment and is more readily accessible to OWCP than to him.<sup>18</sup> On remand, OWCP shall request that the employing establishment furnish documentation clarifying when appellant began to work modified duty and whether his modified-

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<sup>12</sup> See *L.F.*, Docket No. 19-0519 (issued October 24, 2019); see also *M.S.*, Docket No. 18-0130 (issued September 17, 2018).

<sup>13</sup> *Supra* notes 1 and 2.

<sup>14</sup> See *D.M.*, Docket No. 18-0527 (issued July 29, 2019); *J.G.*, Docket No. 17-0910 (issued August 28, 2017); *M.A.*, Docket No. 16-1602 (issued May 22, 2017).

<sup>15</sup> See *L.F.*, *supra* note 12.

<sup>16</sup> *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

<sup>17</sup> See *K.T.*, Docket No. 17-0009 (issued October 8, 2019); *Y.R.*, Docket No. 10-1589 (issued May 19, 2011).

<sup>18</sup> *J.T.*, Docket No. 15-1133 (issued December 21, 2015); *J.S.*, Docket No. 15-1006 (issued October 9, 2015).

duty assignment was available or had been withdrawn, effective May 18, 2017. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that the case is not in posture for decision.<sup>19</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 15, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 23, 2020  
Washington, DC

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

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

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

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<sup>19</sup> In light of the Board's disposition of the first issue, the second issue is moot.