



## **FACTUAL HISTORY**

On September 9, 2022 appellant, then a 51-year-old carpentry maintenance worker, filed a traumatic injury claim (Form CA-1) alleging that on August 11, 2022 he sustained lower back pain after lifting a heavy desk while in the performance of duty. He stopped work on August 30, 2022 and returned to work on September 19, 2022. On October 5, 2022 OWCP accepted appellant's claim for lower back strain.

In a note dated August 28, 2023, Dr. Arun Hatwalkar, a Board-certified internist, stated that appellant had "severe medical issues" and should be excused from work from August 28 through September 18, 2023.

On September 8, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work during the period September 1 through 9, 2023. In a time analysis form (Form CA-7a) of the same date, he claimed leave from August 29 through September 8, 2023, noting that a physician excused him from work on those dates.

In a development letter dated September 12, 2023, OWCP requested that appellant submit additional medical evidence to support disability from August 29 through September 8, 2023. It afforded him 30 days to submit the requested evidence.

In an attending physician's report (Form CA-20) dated September 15, 2023, Dr. Hatwalkar diagnosed lumbar degeneration causing moderate impingement upon the anterior thecal sac and nerve root displacement with mild-to-moderate spinal stenosis. He checked a box marked "Yes" indicating his belief that moving furniture on August 11, 2022 caused or aggravated this diagnosis, explaining that this activity could have caused or aggravated the disc protrusion and myelopathy. Dr. Hatwalkar opined that appellant was totally disabled from work during the period August 28 through September 18, 2023.

In progress notes dated September 28, 2023, Dr. Hatwalkar described appellant's course of treatment and findings. He first treated appellant on August 28, 2023. At that time, appellant complained of severe low back pain with radiation and numbness down the left leg and weakness of the hip flexors and extensors. Dr. Hatwalkar noted that he did not treat appellant at the time of his work-related injury on August 11, 2022 and could not comment upon it in detail. He stated that in general, arthritic changes develop over time, but could be exacerbated by a work-related injury, and that lifting at work could have worsened appellant's disc protrusion. Dr. Hatwalkar opined that it was impossible for him to say that aspects of appellant's work, specifically lifting, could not have caused his worsening back pain and other symptoms. He stated that it was unreasonable to say that his type of work, involving lifting, had nothing to do with appellant's worsening symptoms. Objective findings included significant neurologic signs that could potentially indicate an impending cord compression, which could cause paralysis necessitating surgery to prevent complete lower extremity paralysis. Dr. Hatwalkar observed diminished pinprick sensation down to the L4 level and in the perineal and rectal area, as well as left-sided flexor and extensor weakness of the hip. He indicated that appellant's weakness of the hip muscles, along with lifting duties of his employment requiring the use of the hip muscles, could be quite problematic.

On October 2, 2023 OWCP forwarded the medical record, including reports from Dr. Hatwalkar and a statement of accepted facts (SOAF) to a district medical adviser (DMA) for

an opinion on whether appellant was totally disabled from work during the claimed period causally related to his accepted lower back strain.

In an October 11, 2023 report, Dr. Kenechukwu Ugokwe, a Board-certified neurosurgeon serving as OWCP's DMA, noted his review of the medical record and the SOAF. He disagreed that appellant was totally disabled through September 19, 2023, stating that the period of disability was not consistent with medical findings, as they did not indicate how appellant's accepted lower back strain precluded him from working and how appellant's acute condition was causally related to an injury at work over one year prior. Dr. Ugokwe explained that this acute exacerbation occurred as a result of daily, normal, age-appropriate wear and tear of the lumbar spine.

By decision dated October 20, 2023, OWCP denied appellant's claim for compensation, finding that he had not established disability from work during the period August 29 through September 8, 2023 causally related to the accepted employment injury.

OWCP continued to receive additional medical evidence. In a note dated August 9, 2023, Dr. Michelle Woodson, a Board-certified internist, recommended a work restriction of lifting no more than 20 pounds.

In progress notes dated August 11, 2023, Dr. Hassan Jamil, an internal medicine specialist, examined appellant for complaints of lower back pain. Appellant recounted to Dr. Jamil that he experienced a flare up of symptoms a week prior without an obvious trigger.

In a report dated August 28, 2023, Dr. Hatwalkar recounted that he saw appellant for his lower back pain. He noted that symptoms included radiation down the left leg with numbness and weakness of hip flexors and extensors with diminished sensation to pinprick testing. Dr. Hatwalkar diagnosed lower back, chronic thoracic, and hip pain, as well as lumbosacral radiculopathy with weakness and subacute possible *causa equina* syndrome.

Appellant underwent a left L4 transforaminal epidural steroid injection on September 5, 2023.

In a letter dated November 8, 2023, Dr. Hatwalkar noted that appellant had extensive lumbosacral spine degenerative disc disease with evidence of lumbar myelopathy. He stated that with the type of work he performed at the employing establishment, he was at high risk for exacerbation of his symptoms. Dr. Hatwalkar noted that this risk of exacerbation did not need to involve a specific incident. He opined duties of appellant's employment involving repetitive motion exacerbated his diagnosed degenerative disc disease.

On November 17, 2023 appellant requested reconsideration.

By decision dated January 4, 2024, OWCP denied modification of its October 20, 2023 decision.

On February 9, 2024 appellant requested reconsideration. In an accompanying statement, he contended that duties of his federal employment exacerbated his back conditions.

In progress notes dated January 3, 2024, Dr. Charles Bondurant, a Board-certified neurosurgeon, noted that appellant underwent a left-sided L3-4 and L4-S1 laminectomy and foraminotomy on December 12, 2023, realizing improvement in his hip girdle and leg symptoms,

while retaining longstanding lower back pain. He diagnosed lumbosacral spondylosis with radiculopathy. In progress notes dated March 13, 2024, Dr. Bondurant noted continued improvement in his left lower extremity, suspicious for radicular irritation, with continued lower back discomfort.

An MRI scan obtained on March 13, 2024 demonstrated a left paracentral protrusion at L3-4, which caused some mass effect on the descending left L4 nerve root.

In progress notes dated July 3, 2024, Dr. Bondurant noted that appellant's left leg occasionally "gave out" under him at work and that he continued to be affected by left lower flank discomfort occasionally extending into the left thigh, although his left lower extremity nerve pain had improved, and his numbness and tingling had ceased. He diagnosed lumbosacral spondylosis with radiculopathy.

By decision dated August 1, 2024, OWCP denied modification of its January 4, 2024 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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>3</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>4</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>5</sup>

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>6</sup> Disability is thus 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 a federal employment injury, but who nevertheless 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 in FECA.<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

---

<sup>3</sup> See *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

<sup>5</sup> 20 C.F.R. § 10.5(f); *B.O.*, *id.*; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>6</sup> *Id.* at § 10.5(f); see *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

<sup>7</sup> *Id.*

claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period August 29 through September 8, 2023 causally related to his accepted August 11, 2022 employment injury.

On August 28, 2023 Dr. Hatwalkar reported that appellant had severe medical issues and should be excused from work from August 28 through September 18, 2023. In a Form CA-20 dated September 15, 2023, he diagnosed lumbar degeneration causing moderate imposition upon the anterior thecal sac and nerve root displacement with mild-to-moderate spinal stenosis. Dr. Hatwalkar noted that appellant was totally disabled from work from August 28 through September 18, 2023. However, he did not attribute the claimed period of disability to appellant's accepted August 11, 2022 traumatic injury of lower back strain. The Board has held that medical evidence that does not provide an opinion regarding whether a period of disability is causally related to an accepted employment injury is of no probative value.<sup>9</sup> This evidence is, therefore, insufficient to establish the claim.

In a progress report dated August 28, 2023, Dr. Hatwalkar recounted that he saw appellant for his lower back pain. He noted that symptoms included radiation down the left leg with numbness and weakness of hip flexors and extensors with diminished sensation to pinprick testing. In his September 28, 2023 report, Dr. Hatwalkar observed diminished pinprick sensation down to the L4 level and in the perineal and rectal area, as well as left-sided flexor and extensor weakness of the hip. He stated that appellant's weakness of the hip muscles, along with lifting duties of his employment requiring the use of the hip muscles, could be quite problematic. In a letter dated November 8, 2023, Dr. Hatwalkar noted that appellant had extensive lumbosacral spine degenerative disc disease with evidence of lumbar myelopathy. However, he did not specifically address appellant's claimed period of disability in these reports. 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. As such, these reports are of no probative value with regard to the issue of appellant's disability for the claimed period and are insufficient to establish his claim for wage-loss compensation.<sup>10</sup> As such, these reports, notes, and letters from Dr. Hatwalkar are insufficient to establish appellant's disability claim causally related to his accepted August 11, 2022 traumatic injury of lower back strain.

Appellant also provided notes and reports from Drs. Woodson, Jamil, and Bondurant dated August 9, 2023 through July 3, 2024 that contained no opinion on causal relationship between appellant's claimed period of disability and the accepted employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition

---

<sup>8</sup> *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

<sup>9</sup> *See S.D.*, Docket No. 20-1255 (issued February 3, 2021); *L.L.*, Docket No. 19-1794 (issued October 2, 2020); *C.R.*, Docket No. 19-1427 (issued January 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>10</sup> *See also G.P.*, Docket No. 23-1133 (issued March 19, 2024); *D.P.*, Docket No. 13-1721 (issued February 21, 2014); *P.D.*, Docket No. 13-2034 (issued May 8, 2014); *Paul Foster*, 56 ECAB 208 (2004).

resulting in disability is of no probative value on the issue of causal relationship.<sup>11</sup> As such, this evidence is insufficient to establish the claim.

Appellant submitted the results of MRI scans obtained on September 1, 2022, August 15, 2023, and March 29, 2024. The Board has held that diagnostic tests, standing alone, and lack probative value on the issue of causal relationship.<sup>12</sup> As such, this evidence is insufficient to establish the claim.

OWCP referred the case record and a SOAF to Dr. Ugokwe, the DMA, for review and an opinion on causal relationship. In an October 11, 2023 report, Dr. Ugokwe, serving as OWCP's DMA, disagreed with Dr. Hatwalkar that appellant was totally disabled through September 19, 2023, stating that the period of disability was not consistent with medical findings, as they did not indicate how appellant's accepted lower back strain precluded him from working and how appellant's acute condition was causally related to an injury at work over one year prior. Dr. Ugokwe explained that this acute exacerbation occurred as a result of daily, normal, age-appropriate wear and tear of the lumbar spine. The Board has reviewed the opinion of Dr. Ugokwe and notes that it has reliability, probative value, with respect to its conclusions. Dr. Ugokwe further provided medical rationale for his opinion.<sup>13</sup> The Board, therefore, finds that his opinion is entitled to the weight of the medical evidence.<sup>14</sup>

As the medical evidence of record is insufficient to establish disability from work for the period August 29 through September 8, 2023 causally related to the accepted August 11, 2022 employment injury, the Board finds that appellant has not met 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 disability from work for the period August 29 through September 8, 2023 causally related to his accepted August 11, 2022 employment injury.

---

<sup>11</sup> See *S.S.*, Docket No. 24-0814 (issued September 27, 2024).

<sup>12</sup> See *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

<sup>13</sup> See *V.B.*, Docket No. 22-0799 (issued October 25, 2022); *S.H.*, Docket No. 20-1633 (issued September 9, 2021); *J.W.*, Docket No. 18-0670 (issued September 11, 2018) (finding that a probative medical opinion must be based on a complete factual and medical background of the employee).

<sup>14</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 1, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 2024  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board