

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

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**L.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Hughsonville, NY, Employer**

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**Docket No. 13-326  
Issued: April 22, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 28, 2012 appellant filed a timely appeal from an October 24, 2012 Office of Workers' Compensation Programs' (OWCP) merit decision. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.<sup>2</sup>

**ISSUE**

The issue is whether appellant established a recurrence of total disability beginning July 23, 2012 causally related to her July 11, 2012 employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Appellant submitted new evidence on appeal, but the Board lacks jurisdiction to review such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

## **FACTUAL HISTORY**

On July 11, 2012 appellant, then a 46-year-old officer-in-charge, acting postmaster, filed a traumatic injury claim for neck and left shoulder pain from opening a business window. She did not immediately stop work.

In a July 13, 2012 emergency room report, Dr. George Stapleton, Board-certified in emergency medicine, noted the history of the July 11, 2012 incident and appellant's complaints of right lateral neck pain radiating to the left. On examination, appellant held her head slightly turned to the right. She had severe tenderness of the right lateral neck and moderate tenderness to the postern neck. Dr. Stapleton noted x-ray findings and diagnosed cervical strain and torticollis. He recommended that appellant not work for three days. In a July 13, 2012 x-ray report, Dr. Jaime Parent, a Board-certified diagnostic radiologist, noted that appellant reported neck pain after a strain injury. He advised that cervical spine x-rays showed no fracture or malalignment. Dr. Parent listed an impression of no acute abnormality and no significant degenerative changes.

Medical evidence from Dr. Riccardo J. Esposito, a Board-certified family practitioner, included prescription notes keeping appellant off work due to injury on July 13, 20 and 23 to 30, 2012 and onwards due to workers' compensation (neck and back injuries). In his initial report signed July 20, 2012, Dr. Esposito noted that the date of injury was July 13, 2012 but reported the history of injury as "patient at work lifting a window, injured neck "heard pop" in neck." He diagnosed neck/cervical spasms and pain. Dr. Esposito indicated that appellant could not return to work because of neck pain. In July 27, August 3 and 17, 2012 progress reports, he diagnosed neck/cervical spine pain and indicated that appellant could not return to work because she cannot rotate or extend neck secondary to workers' compensation injury.

In an August 9, 2012 report, Dr. Richard Perkins, a Board-certified orthopedic surgeon, noted that appellant's symptoms of neck pain, mid-back pain, low back pain, numbness and tingling in the fingers on left side began on July 11, 2012 when she was opening a window at work. He noted that appellant has been out of work since that time and given conservative care including physical therapy. An impression of chronic spinal pain was provided and authorization for cervical, thoracic and lumbar magnetic resonance imaging (MRI) scan was requested.

On August 17, 2012 appellant filed a Form CA-2a for recurrence of disability commencing July 23, 2012. She stated that her neck and back pain never lessened but worsened as she continued to work after. Appellant indicated that she went to the emergency room on July 13, 2012 and while she was directed to remain out of work until Monday or until she saw her primary physician, she was unable to get coverage for the office until July 20, 2012. She noted that her primary physician wanted to keep her out of work until further notice, but she had no coverage for Saturday. When appellant saw her primary physician again on July 23, 2012, he insisted that she stay out of work. She indicated that she went to the emergency room on July 13, 2012; saw Dr. Esposito on July 20, 23 and 27, August 3 and 17, 2012; saw Dr. Perkins on August 19, 2012; and underwent physical therapy on August 1, 3, 6, 8, 10, 13 and 17, 2012.

In an August 31, 2012 progress report, Dr. Esposito noted examination findings and diagnosed cervical neck spasm with torticollis spasms. He advised no work due to neck and

back injury until further notice. In an August 31, 2012 doctor's progress report, Dr. Esposito diagnosed neck/cervical spine pain. He opined that appellant was totally disabled due to limited range of motion of cervical spine with pain due to workers' compensation injury. In a September 12, 2012 progress report, Dr. Esposito noted that appellant's neck and cervical spine pain remained the same and she was totally disabled. He also noted that he was awaiting approval for an MRI scan.

On September 5, 2012 OWCP accepted the claim for neck sprain. It noted that, while Dr. Parent diagnosed torticollis,<sup>3</sup> the relationship between that condition and the July 11, 2012 employment-related injury was not clear. OWCP requested that appellant submit a well-reasoned medical explanation within 30 days as to how the July 11, 2012 employment incident caused or aggravated torticollis. It further noted that, although Dr. Richard Perkins, a Board-certified orthopedic surgeon, diagnosed chronic spinal pain, pain generally was a symptom of a medical condition. Appellant returned to work following her July 11, 2012 injury. She stopped work on July 23, 2012. In another September 5, 2012 letter, regarding appellant's recurrence claim, OWCP informed her of the type of medical evidence needed to support her claim. Appellant was afforded 30 days in which to respond.

Appellant provided a September 18, 2012 statement in which she stated that she continued to work after her July 11, 2012 injury out of necessity to keep her post office open due to lack of coverage. She stated that on July 23, 2012 she saw Dr. Esposito and they both agreed that she was not going to get better and she could actually hurt herself more if she continued to work. Appellant stated that the lightest movements of bending, lifting, turning, standing, sitting and driving caused extreme pain and muscle spasms. She noted her course of treatment since the July 11, 2012 injury and that she had since lost her detail of officer-in-charge, acting postmaster, due to her injury. Appellant enclosed a series of e-mails trying to find coverage for her office. She also submitted physical therapy notes; a July 13, 2012 MRI scan report of the cervical spine; requests for authorization. Other evidence submitted included July 13, 2012 emergency room discharge instructions and physical therapy reports.

An October 18, 2012 ancillary medical report from Dr. Parent listed the July 11, 2012 diagnoses as neck sprain and cervicalgia.

Reports from Dr. Esposito included progress notes dated October 7, 2012. In an October 2, 2012 disability report, Dr. Esposito indicated that appellant could not work due to workers' compensation injury until October 17, 2012.

In a September 17, 2012 letter, the employing establishment controverted the claim.

By decision dated October 24, 2012, OWCP denied appellant's recurrence of disability claim. It found the factual and medical basis of the claimed recurrence was unclear. OWCP further found the medical evidence did not provide a well-rationalized statement with objective medical findings to support that her recurrence was causally related to her July 11, 2012 work injury.

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<sup>3</sup> This appears to be a typographical error as it was Dr. Stapleton that diagnosed torticollis.

## LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening cause or a new exposure to the work environment that caused the illness.<sup>4</sup>

An employee who claims a recurrence of disability due to an accepted employment injury has the burden of proof to establish by the weight of substantial, reliable and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>5</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>6</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>7</sup>

The term disability as used in FECA means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>8</sup> For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>9</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>10</sup> The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>11</sup>

The Board will not require OWCP to pay compensation for disability in the absence of any 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 their disability and entitlement to compensation.<sup>12</sup>

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<sup>4</sup> *J.F.*, 58 ECAB 124 (2006); 20 C.F.R. § 10.5(x).

<sup>5</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>6</sup> *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>7</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>8</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>9</sup> *Sandra D. Pruitt*, 57 ECAB 126 92005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>10</sup> *G.T.*, 59 ECAB 447 (2008); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>11</sup> *D.I.*, 59 ECAB 158 (2007).

<sup>12</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001)

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.<sup>13</sup> Appellant's burden of proving that she was disabled on particular dates requires that she furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.<sup>14</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>15</sup>

### ANALYSIS

OWCP accepted that appellant sustained a neck strain in the performance of duty on July 11, 2012. It did not accept that her torticollis condition or chronic spinal pain was causally related to the July 11, 2012 work injury. Appellant stopped work on July 23, 2012.

The July 13, 2012 reports of Drs. Stapleton and Parent, who saw appellant at an emergency room, did not specifically address disability beginning on or after July 23, 2012. Although Dr. Stapleton recommended that appellant not work for three days, the record reflects that appellant did not stop work at that time. In addition to cervical strain, he diagnosed torticollis but he did not address whether the July 11, 2012 employment injury caused or aggravated torticollis. In an October 18, 2012 ancillary medical report, Dr. Parent listed the July 11, 2012 diagnoses as neck sprain and cervicalgia. However, he provided no medical opinion as to how the July 11, 2012 employment incident caused or aggravated cervicalgia. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>16</sup> The Board notes that appellant's claim was not accepted for either torticollis or cervicalgia.

Medical evidence from Dr. Esposito included prescription notes advising that appellant should not work due to injury on July 13, 20 and 23 to 30, 2012 and onward due to workers' compensation injuries to the neck and back. However, Dr. Esposito did not fortify his conclusion with medical rationale.<sup>17</sup> In his initial report signed July 20, 2012, Dr. Esposito noted that the date of injury was July 13, 2012 but reported the history of injury as "patient at work lifting a window, injured neck 'heard pop' in neck." He diagnosed neck/cervical spasms and pain. Dr. Esposito indicated that appellant could not return to work because of neck pain. In progress reports dated July 27, August 3, 17 and 31, September 12 and October 7, 2012, he continued to opine that appellant could not return to work because of her workers' compensation injury. However, none of Dr. Esposito's reports explained with sound medical reasoning how disability beginning July 23, 2012 was connected to the July 11, 2012 injury.

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<sup>13</sup> *S.F.*, 59 ECAB 525 (2008).

<sup>14</sup> *Ronald A. Eldridge*, *supra* note 5.

<sup>15</sup> *Mary A. Ceglia*, *supra* note 6.

<sup>16</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>17</sup> *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

In an August 9, 2012 report, Dr. Perkins noted the history of the July 11, 2012 injury and provided an impression of chronic spinal pain. However, he did not address recurrence of disability beginning July 23, 2012 and his report is of limited probative value on the matter.

Diagnostic reports such as MRI scans and x-rays, which do not contain an opinion as to the cause of appellant's condition, also do not address recurrence of disability and thus, offer, limited probative value on the matter.<sup>18</sup> Physical therapy reports of record do not constitute probative medical evidence, as physical therapists do not qualify as physicians under FECA.<sup>19</sup>

In summary, the medical evidence of record is unsupported by sufficient medical rationale or reasoning which explains why the claimed disability beginning July 23, 2012 was caused or aggravated by the accepted neck sprain.<sup>20</sup> The Board finds that the evidence submitted was insufficient to establish that appellant sustained a recurrence of disability and OWCP properly denied her claim.

On appeal appellant contends that her July 11, 2012 injury intensified until she lost almost full mobility of her neck. She argues that the factual and medical basis of her recurrence has been established. However, for the reasons set forth above, appellant has not established either that the claimed recurrence or that her current conditions are due to her accepted injury.

Appellant may submit new evidence or argument as part of a formal 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 failed to establish a recurrence of disability on or after July 23, 2012 causally related to her July 11, 2012 employment injury.

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<sup>18</sup> See *Mary E. Marshall*, 56 ECAB 420 (2005).

<sup>19</sup> See 5 U.S.C. § 8101(2).

<sup>20</sup> *A.M.*, Docket No. 09-1895 (issued April 23, 2010) (when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated October 24, 2012 is affirmed.

Issued: April 22, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board