

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

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R.P., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Sioux Falls, SD, Employer

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**Docket No. 12-1455  
Issued: January 10, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 27, 2012 appellant filed a timely appeal from the April 23, 2012 decision of the Office of Workers' Compensation Programs (OWCP) which denied her request for leave buyback from February 23 to March 5, 2010. 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 this case.

**ISSUE**

The issue is whether appellant established that she was disabled for the period February 23 to March 5, 2010.

**FACTUAL HISTORY**

On March 3, 2010 appellant, then a 40-year-old clerk, filed an occupational disease claim alleging that she sustained extreme pain on the right side of her neck, shoulder and arm due to

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

factors of her federal employment. The employing establishment noted that she could only work four-hour days.

In a February 23, 2010 report, Dr. J. Chris Johnson, a chiropractor, diagnosed an unspecified subluxation, cervical spondylosis with myelopathy and subluxations in the thoracic and lumbar region. He advised that appellant was unable to work. In a March 3, 2010 note, Dr. Johnson treated her for an injury sustained as a direct result of performing repetitive motions at work. He prescribed physical limitations for returning to full-time duty on March 8, 2010 with restrictions. In a June 23, 2010 report, Dr. Johnson noted that three cervical x-rays were taken and subluxations were noted at C3 and C6. He explained that moderate decreased disc space, as well as posterior lipping and spurring were evident at C5 and C6. X-rays from March 11, 2010 accompanied his report.

On August 26, 2010 OWCP accepted appellant's claim for cervical subluxations (closed dislocation cervical disc, C2 and a closed dislocated cervical disc C6).<sup>2</sup>

On August 9, 2011 appellant filed a claim for leave buyback from February 23 to March 5, 2010. The employing establishment submitted information showing that she used sick or annual leave for time lost from work between February 23 and March 5, 2010.

By letter dated February 21, 2012, OWCP advised appellant that it had received her claim to repurchase leave for the period from February 23 to March 3, 2010. She was advised that the medical evidence did not support total disability. OWCP allotted her 30 days to submit additional medical evidence to support her disability for work.

In a March 16, 2012 report, Dr. Johnson noted treating appellant since June 2007. He explained that in February 2010, she presented with new neck and shoulder pain that was caused at work. Dr. Johnson listed symptoms of severe neck, shoulder and low back/leg pain. He explained that appellant engaged in lifting, bending, pushing and pulling multiple times throughout the workday. These movements put added stress on appellant's cervical, thoracic and lumbar spine which was why she still had pain and missed time at work to let the spine and surrounding musculature heal. Dr. Johnson noted that her spine was constantly reintroduced to stressors at work and did not properly heal, resulting in occasional flare ups that required one to two weeks to recover.

By decision dated April 23, 2012, OWCP denied appellant's claim for leave buyback. It found that she had not submitted sufficient medical evidence to establish her disability for work for the period claimed.

### **LEGAL PRECEDENT**

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>3</sup> Whether a

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<sup>2</sup> OWCP originally denied appellant's claim in a June 8, 2010 decision. However, on August 26, 2010, this decision was vacated.

<sup>3</sup> 20 C.F.R. § 10.5(f).

particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>4</sup> When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.<sup>5</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 employees to self-certify their disability and entitlement to compensation.<sup>6</sup>

In situations where compensation is claimed for periods when leave was used, OWCP has the authority to determine whether the employee was disabled during the period for which compensation is claimed.<sup>7</sup> It determines whether the medical evidence establishes that an employee is disabled by an employment-related condition during the period claimed for leave buyback, after which the employing establishment will determine whether it will allow the employee to buy back the leave used.<sup>8</sup>

### ANALYSIS

OWCP accepted that appellant sustained cervical subluxations in the form of closed dislocation cervical disc, C2 and a closed dislocated cervical disc, C6. She filed a claim requesting leave buyback from February 23 to March 5, 2010. The Board finds that the medical evidence is not sufficient to establish that appellant was disabled during this period due to her accepted condition.

Appellant submitted several reports from Dr. Johnson, a chiropractor, who diagnosed a spinal subluxation based on x-ray.<sup>9</sup> Dr. Johnson did not clearly explain why appellant was totally disabled by the accepted cervical subluxation from February 23 to March 5, 2010. In his February 23, 2010 report, he diagnosed subluxation of the thoracic and lumbar region and stated only that appellant was unable to work. Dr. Johnson did not provide adequate medical rationale

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<sup>4</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>5</sup> *Id.*

<sup>6</sup> *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>7</sup> *See Laurie S. Swanson*, 53 ECAB 517 (2002); *see also* 20 C.F.R. § 10.425 (the employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing establishment).

<sup>8</sup> *See Laurie S. Swanson, id.*

<sup>9</sup> Section 8101(2) of FECA provides that chiropractors are considered physicians and their reports considered medical evidence only to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004).

explaining how her accepted cervical condition contributed to her disability for work during the claimed period.<sup>10</sup>

In his March 3, 2010 treatment note, Dr. Johnson listed restrictions on returning to full-time duty as of March 8, 2010. He did not address how her cervical subluxation caused disability. In a June 23, 2010 report, Dr. Johnson confirmed that three cervical views were taken and subluxations were noted at the C3 and C6 levels. Again, he failed to provide an opinion on whether appellant was disabled for the period from February 23 to March 5, 2010 due to the accepted condition. Dr. Johnson's reports are of limited probative value.<sup>11</sup> In a March 16, 2012 report, he advised that he had treated appellant since June 2007. In February 2010, appellant had new neck and shoulder pain that was caused by work. Dr. Johnson briefly noted that she engaged in lifting, bending, pushing and pulling multiple times throughout the workday. In addressing causal relation, he noted these movements placed added stress on the cervical, thoracic and lumbar spine. Dr. Johnson noted that appellant's spine was constantly reintroduced to stressors at work and did not properly heal, resulting in occasional flare ups that required one to two weeks to recover. The Board notes that this report is of limited probative value. Dr. Johnson did not adequately explain how the accepted cervical condition caused or contributed to appellant's disability from February 23 to March 5, 2010. 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.<sup>12</sup> OWCP advised appellant that it was her responsibility to submit medical evidence supporting that she was disabled due to her accepted employment injury for any lost time claimed February 23 to March 5, 2010.

On appeal, appellant asserts that she was unable to work during the period in question. As noted, the medical record contains insufficient evidence explaining how her accepted cervical condition prevented her from work during the period she claimed compensation.

The Board finds that the medical evidence is insufficient to establish that appellant was entitled to compensation for the period February 23 to March 5, 2010 due to her accepted employment injury.

### CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she was entitled to compensation for the period February 23 to March 5, 2010.

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<sup>10</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>11</sup> See *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value).

<sup>12</sup> See *supra* note 6.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 23, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 10, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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