

On August 14, 2009 she filed a recurrence of disability claim alleging on July 29, 2009 she sustained a recurrence of disability causally related to her July 28, 2009 employment injury. Appellant stated that she experienced frequent headaches and nausea with vomiting and blurred vision. In a letter dated August 18, 2009, OWCP stated that her initial traumatic injury claim was accepted with no time loss and must be adjudicated to determine whether she sustained a work-related injury on July 28, 2009. It requested additional factual and medical evidence in support of appellant's claim.

Appellant responded on September 8, 2009 and stated that while discharging a patient, the television in his room moved hitting her on the head. She stated that she felt dazed and saw floaters. Appellant noted that she sustained a lump on her head of five to seven centimeters. She submitted a witness statement from a coworker who saw her hit her head on the television. The witness stated that appellant took a few steps back and seemed dazed.

Dr. Michael D. Calabrese, general practitioner, first saw appellant on July 29, 2009 noting her history of a television hitting her in the back of the head on July 28, 2009. He reported that she was disoriented for a few seconds but did not fall following this incident. Dr. Calabrese stated that appellant visited the emergency room the next day complaining of headaches, nausea and vomiting. Appellant had a laceration on the back left side of her head, but did not require stitches and was diagnosed with a concussion. Dr. Calabrese diagnosed postconcussion syndrome, migraine headaches, nausea and vomiting, fatigue, increased urination and visual disturbance. He opined that appellant was temporarily partially disabled due to these conditions.

On September 30, 2009 OWCP accepted appellant's claim for postconcussion syndrome and head laceration. In a letter dated October 1, 2009, it informed her that her case was open for medical treatment of her work-related condition.

Appellant filed a recurrence of disability claim on October 6, 2009 alleging she stopped work on October 1, 2009 due to her injury-related symptoms of migraine headaches with nausea and vomiting, earaches, intermittent blurred vision and neck stiffness. On the reverse of the form, appellant's supervisor explained that appellant was performing limited-duty work on July 28, 2009 due to an accepted right shoulder condition. The employing establishment controverted appellant's claim, noting the temporal relationship between a suitable work offering in her shoulder claim and her current claim for disability.

Appellant submitted her emergency room notes dated July 29, 2009 which diagnosed a closed head injury without loss of consciousness, abrasion or laceration. In a note dated October 5, 2009, Brian Kron, a physician's assistant from Dr. Calabrese's office stated that appellant was unable to work for four weeks due to her concussion.

OWCP requested additional factual and medical evidence in support of appellant's claim for total disability by letter dated October 19, 2009. Appellant filed a claim requesting wage-loss compensation from October 1 through November 3, 2009.

Dr. Minsoo Kang, a Board-certified neurologist, completed a report on October 20, 2009 describing appellant's head injury and stating that she received stitches. He indicated that

appellant reported constant headaches and cervicgia as well as photophobia, phonophobia, osmophobia, floaters, nausea, loss of appetite, sweating, stiffness of the neck, difficulty with concentration and dizziness. Dr. Kang diagnosed postconcussive syndrome and post-traumatic migraines. In a November 9, 2009 report, he repeated his diagnoses.

On October 9 and November 2 and 3, 2009 Mr. Kron and Rachele Tabaczynski, physician's assistants from Dr. Calabrese's office, completed notes indicating that appellant was totally disabled for four weeks after each note. Dr. Calabrese completed a report on October 5, 2009 and stated that appellant was experiencing stress, financial stress, anxiety and depressive symptoms. He diagnosed postconcussive syndrome, migraine headaches, nausea, vomiting, fatigue, increased urination and visual disturbance. Dr. Calabrese stated, "Due to the traumatic forces of this injury, treatment is expected to be medically necessary for at least two years or better." He examined appellant on November 3, 2009 repeating his diagnosing and stating, "The patient is unable to be gainfully employed at this time." Dr. Calabrese further stated, "This patient has been and remains temporarily partially disabled due to the injury that occurred on July 28, 2009...." On December 1, 2009 a physician's assistant for Dr. Calabrese indicated that appellant would be totally disabled for four weeks due to concussion syndrome with laceration.

By decision dated January 4, 2010, OWCP denied appellant's claim for recurrence of disability finding that she had failed to submit sufficient detailed medical evidence to support her claim. Appellant requested a review of the written record on January 4, 2010 and submitted duplicates of her emergency room notes and Dr. Calabrese's November 3, 2009 report.

In a report dated January 7, 2010, Dr. Kang repeated his diagnoses and stated that appellant was unable to work. He recommended a magnetic resonance imaging (MRI) scan to rule out intracranial pathology due to the continuous nature of appellant's headaches. Dr. Calabrese examined appellant on January 12, 2010 and stated that her diagnosed conditions of postconcussive syndrome, migraine headaches with nausea and vomiting, fatigue, increased urination and visual disturbances were a direct result of her January 28, 2009 employment injury. He examined her on March 2, 2010 and stated that she had continued symptoms after a head injury that occurred at work. Dr. Calabrese noted that appellant's blurry vision and floaters were improving and that her headaches were becoming less frequent. He stated that she was experiencing short-term memory loss, but found no cognitive delay or dysfunction. Dr. Calabrese opined that appellant's diagnoses of postconcussive syndrome, migraine headaches, nausea and vomiting, fatigue, increased urination and visual disturbances were a "direct result of the above described injury" based on examination of her, diagnostic tests and objective physical findings. He again concluded that due to the "traumatic forces" of her injury her treatment was expected to be medically necessary for at least two years.

Appellant testified at the oral hearing on June 3, 2010. She stated that she was temporarily totally disabled due to her head injury. Appellant stated that she stopped work on October 1, 2009 due to increased symptoms including severe migraine headaches, throwing up, fatigue and loss of vision. Following the oral hearing, she submitted a report dated April 6, 2010 from Dr. Calabrese, who stated that she had not been able to return to work because of the headache pain. Dr. Calabrese repeated his diagnoses and stated that appellant was currently unable to return to gainful employment. In a note dated June 18, 2010, he stated, "As of [October 5, 2009], this [patient] was no longer able to perform her job duties. Appellant was

taken out of work due to the injury that occurred on [July 28, 2009].” In a report dated May 4, 2010, Dr. Calabrese noted that she reported floaters in her vision, ringing in her left ear, headaches and short-term memory loss. He continued to opine that appellant’s diagnosed conditions were due to her employment injury and that she was totally disabled due to these conditions which were likely to require treatment for two years.

By decision dated July 20, 2010, the Branch of Hearings and Review affirmed OWCP’s January 4, 2010 decision finding that appellant had not submitted sufficient medical evidence to establish a recurrence of total disability. OWCP’s hearing representative found that Mr. Kron completed a report dated October 5, 2009 and a treatment note dated June 18, 2010 supporting appellant’s disability for work which were not relevant as Mr. Kron was not a physician for the purposes of FECA.

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 which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.² Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing October 1, 2009 and her July 28, 2009 employment injury.³ This burden includes the necessity of furnishing 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 employment factors and supports that conclusion with sound medical reasoning.⁴

ANALYSIS

A television located on a swing arm struck appellant in the back of the head on July 28, 2009. Dr. Calabrese first examined appellant on July 29, 2009 and found that she was partially disabled due to the employment-related conditions of postconcussion syndrome, migraine headaches, nausea and vomiting, fatigue, increased urination and visual disturbance. On September 30, 2009 OWCP accepted her claim for postconcussion syndrome and head laceration.

² 20 C.F.R. § 10.5(x).

³ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-89 (1982).

⁴ *See Nicolea Brusio*, 33 ECAB 1138, 1140 (1982).

Appellant filed a recurrence claim alleging that on October 1, 2009 she was no longer able to work due to her accepted head injury.⁵ In support of her claim for a recurrence of total disability, appellant submitted a series of reports from Dr. Calabrese, who examined her on October 5, 2009, repeated his diagnoses and opined that her medical treatment due to these conditions was likely to take two years. Dr. Calabrese first stated that appellant was totally disabled in a report dated November 3, 2009 based on consistent diagnoses. He stated, “This patient has been and remains temporarily partially disabled due to the injury that occurred on [July 28, 2009]....” While the November 3, 2009 report supports that appellant was totally disabled for work due to her accepted conditions, Dr. Calabrese did not offer any explanation of how and why her employment-related condition had worsened or why she had increased disability. Due to the lack of additional physical findings and medical reasoning supporting increased disability, this report is not sufficient to establish a period of total disability due to appellants accepted employment injury.

Dr. Calabrese examined appellant on January 12, March 2, April 6 and May 4, 2010 and stated that she had continued symptoms after a head injury that occurred at work. He diagnosed postconcussive syndrome, migraine headaches, nausea and vomiting, fatigue, increased urination and visual disturbances as a result of her accepted employment injury based on examination of her, diagnostic tests and objective physical findings. Dr. Calabrese stated that appellant was currently unable to return to gainful employment because of the headache pain. In a note dated June 18, 2010, he stated, “As of [October 5, 2009], this patient was no longer able to perform her job duties. Appellant was taken out of work due to the injury that occurred on [July 28, 2009]....” These reports are not sufficient to meet appellant’s burden of proof as Dr. Calabrese did not explain why her employment-related headaches increased resulting in her total disability for work. Dr. Calabrese did not offer medical reasoning explaining how and why appellant’s symptoms would increase on or after October 5, 2009 rendering her totally disabled. Due to the lack of medical reasoning, these reports are not sufficient to establish appellant’s claim.

Dr. Kang first examined appellant on October 20, 2009 and incorrectly described her head injury stating that she received stitches. He listed her symptoms of constant headaches and cervicalgia as well as photophobia, phonophobia, osmophobia, floaters, nausea, loss of appetite, sweating, stiffness of the neck, difficulty with concentration and dizziness and diagnosed postconcussive syndrome as well as post-traumatic migraines. Dr. Kang repeated his findings and diagnoses on November 9, 2009. In his January 7, 2010 report, he again diagnosed postconcussive syndrome and post-traumatic migraines. Dr. Kang also stated that appellant was unable to work. While he supported her disability for work in his January 7, 2010 report, he did not explain why he believed that her diagnosed conditions prevented her from performing any work. Dr. Kang did not offer any medical reasoning in support of his opinion. Without medical rationale explaining how and why appellant’s diagnosed condition resulted in disability for work, these reports are not sufficient to meet appellant’s burden of proof in establishing a recurrence of disability on or after October 1, 2009.

⁵ The record indicates that appellant was performing light-duty work at the time of her July 28, 2009 head injury due to a shoulder condition accepted by OWCP as employment related. The shoulder claim is not currently before the Board and will not be addressed in this decision.

Appellant submitted several notes from physician's assistants in Dr. Calabrese's office dated October 5, 9 and November 2 and 3 and December 1, 2009 indicating that she was totally disabled due to her accepted concussion. The report of a physician's assistant is entitled to no weight because physician's assistants are not physicians pursuant to section 8101(2) of FECA.⁶ These reports, therefore, cannot establish appellant's disability for work on the dates alleged and cannot establish a recurrence of disability on or after October 1, 2009.

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 failed to submit the necessary medical opinion evidence to establish that she sustained a recurrence of disability on or after October 1, 2009 causally related to her accepted employment injury of July 28, 2009.

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

⁶ *Lyle E. Dayberry*, 49 ECAB 369 (1998); *see also* 5 U.S.C. § 8101(2).