United States Department of Labor
Employees' Compensation Appeals Board

N.C., Appellant	)	
and	)	**Docket No. 12-1718**
	)	**Issued: April 11, 2013**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2012 appellant, through her attorney, filed a timely appeal from a May 14, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. § 501.2(c), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that her disability for the period May 7, 2008 through May 10, 2009 was causally related to her employment injury.

On appeal, counsel contends that Dr. Sanford Davne, a Board-certified orthopedic surgeon, was not properly selected as the impartial medical examiner and, therefore, OWCP improperly relied on his report in its decision.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 6, 2007 appellant, then a 56-year-old associate advocate, filed a traumatic injury claim (Form CA-1) alleging that she had a seizure and sustained injuries to her forehead and nose as a result of falling off her chair in the performance of duty that same day. OWCP accepted the claim for contusion of the forehead and nose and closed fracture of first cervical vertebra. It noted that appellant's syncope episode had not been accepted as employment related because OWCP had not received any rationalized medical evidence addressing causal relationship.

Appellant, through her attorney, filed compensation claims for the period May 7, 2008 through May 10, 2009.[2] She also submitted a series of reports from Dr. Joseph E. Kepko, an osteopath specializing in family medicine, who indicated that she suffered from chronic post-traumatic cervical and lumbosacral facet joint syndrome and aggravation of preexisting osteoarthritis of the cervical and lumbar spine caused by her fall on November 6, 2007. Dr. Kepko opined that appellant was totally disabled for the period November 4, 2007 through January 2, 2009 and February 9 through May 1, 2009. On October 8, 2008 he opined that she was capable of returning to work part time for four hours a day with no limitations for the period October 14 through December 14, 2008.

On September 10, 2008 Dr. Christopher M. Schulze, an osteopath Board-certified in cardiology, opined that appellant's symptoms and syncopal events were inconsistent with a cardiac cause of syncope. He found that she did not have symptoms suggestive of neurocardiogenic or vasovagal syndrome. Based on his examination and a review of two neurology consultations from hospitalizations in 2005 and 2008, Dr. Schulze opined that appellant's events sounded like a seizure disorder, perhaps provoked by medication.

OWCP referred appellant to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an October 3, 2008 report, Dr. Hanley found that the accepted injuries had resolved and opined that appellant was able to return to full duty.

In a May 27, 2008 report, Dr. Yong I. Park, a Board-certified physicist, diagnosed chronic neck and low back pain secondary to osteoarthritis of the facet joints. He indicated that appellant complained of back and neck pain since November 6, 2007 after she fainted at work.

On March 23, 2009 Dr. Schulze found that appellant had a negative head up tilt table testing with sublingual nitroglycerin.

[2] Appellant filed a claim for disability compensation for the period March 16 through May 10, 2008. By decision dated June 24, 2008, OWCP denied the claim on the basis that the medical evidence submitted was not sufficient to support disability for the period claimed. On July 7, 2008 appellant, through counsel, requested an oral hearing, which was held before an OWCP hearing representative on November 20, 2008. By decision dated February 17, 2009, the hearing representative set aside and remanded the case for further development finding that the impartial medical examiner, Dr. David Bosacco, a Board-certified orthopedic surgeon, did not have all of the pertinent facts in the statement of accepted facts. Subsequently, OWCP granted compensation for the period March 16 through May 6, 2008 by decision dated July 1, 2009.

OWCP referred appellant to Dr. Thomas DiBenedetto, a Board-certified orthopedic surgeon, for an impartial medical examination. In an April 21, 2009 report, Dr. DiBenedetto found that appellant's accepted injuries had resolved and opined that she could perform her regular job without restrictions. The record contains an April 9, 2009 Form MEO23 Integrated Federal Employees' Compensation System (iFECS) report, which states that appellant's referee appointment was scheduled with Dr. DiBenedetto. The record also contains bypass screen shots for other Board-certified orthopedic surgeons, such as Dr. Richard G. Schmidt, Board-certified in oncology and Dr. Donald Leatherwood, Board-certified in hand surgery, who were bypassed because they would only handle one of the issues in the case and Dr. Robert Good, a Board-certified orthopedic surgeon and Dr. Michael Gratch, a Board-certified orthopedic surgeon, who were bypassed because they did not accept Department of Labor (DOL) patients.

In a May 21, 2009 addendum report, Dr. DiBenedetto opined that appellant was totally disabled for the period November 3, 2007 through February 3, 2008 and was partially disabled for the period February 3 through May 3, 2008 due to her accepted injuries.

By decision dated July 1, 2009, OWCP denied compensation for the period May 7, 2008 through May 10, 2009 on the basis that the medical evidence submitted was not sufficient to support disability due to the employment injury.

On July 6, 2009 appellant, through counsel, requested a hearing before an OWCP hearing representative. By decision dated September 1, 2009, the hearing representative determined that the case was not in posture for a hearing and set aside and remanded the July 1, 2009 decision for further development.

Subsequently, the employing establishment submitted appellant's position description and a November 17, 2009 statement indicating that her work was mostly sedentary, working for long periods of time at a computer terminal, using a desktop telephone and processing case files. Appellant's duties included lifting case files and copy paper, getting up from her workstation to retrieve printer documents and performing other commonly performed tasks within an office environment.

On April 13, 2010 Dr. DiBenedetto indicated that he had reviewed a November 7, 2007 computerized tomography (CT) scan of the cervical spine which revealed minimally displaced C1 ring fracture and CT scans of the cervical spine, brain and facial bones dated November 6, 2007 which revealed possible nondisplaced fracture of the nasal bone. He explained that both of these fractures could be caused by blunt trauma to the face and neck, which was the described mechanism of injury that appellant had either passed out or had a seizure while at work and struck her face. By the time of his evaluation, Dr. DiBenedetto found no residuals of the injury. Appellant's follow-up diagnostic testing, which included magnetic resonance imaging (MRI) scan of the cervical spine, showed that the fracture had healed and made no comment on any C1 fracture by May 7, 2008. Dr. DiBenedetto indicated that there were no follow-up CT scans of the nasal bone and there were no complaints on examination.

By decision dated May 3, 2010, OWCP denied compensation for the period May 7, 2008 through May 10, 2009, and the period June 22 through August 30, 2009 as there were no residuals from the employment injury.

On May 14, 2010 appellant, through counsel, requested a hearing which was held before an OWCP hearing representative on September 15, 2010. Subsequently, she submitted a December 6, 2010 report from Dr. Kepko, who opined that she suffered residuals from the employment injury and was totally disabled for the period November 6, 2007 through October 14, 2008 and partially disabled for the period October 15, 2008 through February 9, 2009.

By decision dated June 7, 2011, OWCP's hearing representative vacated the May 3, 2010 decision and remanded the case for further development.

On June 30, 2011 OWCP found a conflict in medical opinion between Dr. Hanley and Dr. Kepko and referred appellant to Dr. Sandford Davne, a Board-certified orthopedic surgeon, for an impartial medical examination. The record contains an August 18, 2011 Form MEO23 iFECS report, which states that appellant's referee appointment was scheduled with Dr. Davne. The record also contains bypass screen shots for other Board-certified orthopedic surgeons, such as Dr. William Kirkpatrick, Board-certified in hand surgery, who was bypassed under Code S because he only specialized in hand injuries, Dr. William D. Emper, a Board-certified orthopedic surgeon, and Dr. Richard Mandel, Board-certified in hand surgery, who were bypassed under code S because they did not specialize in face, neck and scalp injuries and Dr. Ronald N. Rosenfeld, a Board-certified orthopedic surgeon, who was bypassed under code O because his office was not scheduling any appointments at that time.

In his September 24, 2011 report, Dr. Davne reviewed appellant's medical history and conducted a physical examination. Appellant reported that she had been working full-time for the past two years. Dr. Davne found that her extreme limitation of active motion on examination was a reflection of symptom magnification as during the examination when distracted she moved her neck and lower back through a greater degree of motion. He concluded that the November 6, 2007 work injury had resolved and there were no residuals of the accepted condition.

Dr. Davne found that appellant's complaints in her cervical spine were not related to her C1 fracture but rather to her preexisting multiple-level severe degenerative disc disease. There were no findings of acute injury in the cervical spine other than the fracture of C1. Dr. Davne opined that appellant did not sustain an aggravation of her underlying and preexisting cervical degenerative disc disease at the time of the fall on November 6, 2007. Appellant did not have cervical radiculopathy and she had a normal neurological examination. Dr. Davne opined that her lower back complaints were not part of the accepted injury, were not present initially following the fall and were not related to the employment injury but rather to her preexisting degenerative disc disease. There were no findings of acute injury in the lumbar spine on the MRI scan. Appellant had no radicular complaints. She had some thigh numbness which, according to Dr. Davne, was not radicular. Appellant's electromyogram (EMG) findings could have been consistent with lumbar radiculopathy, however, he explained that in the absence of radicular complaints it did not correlate with radiculopathy. Dr. Davne concluded that she did not sustain an aggravation of her underlying and preexisting lumbar degenerative disc disease and did not experience lumbar radiculopathy as a result of the November 6, 2007 employment injury.

Dr. Davne found that appellant had reached maximum medical improvement. He agreed with Dr. DiBenedetto's opinion that appellant was disabled for the period November 6, 2007 through February 3, 2008. Dr. Davne also concurred that there would be an approximately three-month period of partial disability until May 3, 2008. He opined that appellant was not disabled for the period May 7, 2008 through May 10, 2009 and was capable of working full duty at that time.

By decision dated October 6, 2011, OWCP denied compensation for the period May 7, 2008 through May 10, 2009, and the period June 22 through August 30, 2009 as there were no residuals from the employment injury.

On October 19, 2011 appellant, through counsel, request a hearing which was held before an OWCP hearing representative on February 28, 2012.

By decision dated May 14, 2012, OWCP's hearing representative affirmed the October 6, 2011 decision.

LEGAL PRECEDENT

Section 8102(a) of FECA[3] sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: "The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty...." In general the term "disability" under FECA means "incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury."[4] This meaning, for brevity, is expressed as disability for work.[5] For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.[6] Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable probative and substantial medical evidence.[7]

Disability is 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 his or her federal employment, but who nonetheless 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 under FECA and is not entitled to compensation for loss of wage-earning capacity. The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the

[3] 5 U.S.C. § 8102(a).

[4] 20 C.F.R. § 10.5(f). *See also William H. Kong*, 53 ECAB 394 (2002); *Donald Johnson*, 44 ECAB 540, 548 (1993); *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984).

[5] *See Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

[6] *See William A. Archer*, 55 ECAB 674 (2004).

[7] *See Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[8]

Under FECA, Congress has provided that when there is disagreement between the physician on the part of the United States and that of the employee, the Secretary shall appoint a third physician who shall make an examination.[9] The Board has noted that the appointment of a referee physician under this section is mandatory in cases where there is such disagreement and that failure of OWCP to properly appoint a medical referee may constitute reversible error.[10]

In cases arising under section 8123(a), the Board has long recognized the discretion of the Director to appoint physicians to examine claimants under FECA in the adjudication of claims.[11] FECA does not specify how the appointment of a medical referee is to be accomplished. Moreover, it is silent as to the qualifications of the physicians to be considered.[12] The implementing federal regulations, citing to the Board's decision in *James P. Roberts*, provide that development of the claim is appropriate when a conflict arises between medical opinions of virtually equal weight.[13] The regulations state:

> "If a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or OWCP's medical adviser or consultant, OWCP shall appoint a third physician to make an examination (*see* § 10.502). This is called a referee examination. OWCP will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case."[14]

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[8] *Id*.

[9] 5 U.S.C. § 8123(a). In *Melvina Jackson*, 38 ECAB 443 (1987), the Board addressed the legislative history of section 8123 in terms of a challenge to whether an OWCP medical adviser's opinion could create a conflict in medical evidence. The Board noted that all provisions of section 8123(a) had been contained in FECA since its original enactment in 1916. *See* FECA of September 7, 1916, 39 Stat. 743. However, the last sentence of section 8123(a) pertaining to appointment of a third physician where disagreement exists between the employee's physician and the physician for the United States was found in a separate section of FECA, originally, section 22, later codified unchanged as 5 U.S.C. § 771. This section was incorporated into the current section 8123(a) as part of the general codification of Title 5 of the United States Codes in 1966. *See* FECA of September 6, 1966, 80 Stat. 378. The legislative intent in enacting the codification of Title 5 was to restate, without substantive change, the laws replaced by the codification. *See Melvina Jackson*, *id.* at 447.

[10] *See Tony F. Chilefone*, 3 ECAB 67 (1949).

[11] *See William C. Gregory*, 4 ECAB 6 (1950).

[12] The legislative history on the enactment of FECA in 1916 and on the subsequent amendments contains no discussion and thus no guidance on the meaning or intended operation of the medical referee provision. *See Melvina Jackson*, *supra* note 9.

[13] 20 C.F.R. § 10.321(a); *James P. Roberts*, 31 ECAB 1010 (1980).

[14] *Id.* at § 10.321(b). OWCP will pay for second opinion and referee medical examinations, reimbursing the employee all necessary and reasonable expenses incidental to such examination. 20 C.F.R. § 10.322.

Congress did not address the manner by which an impartial medical referee is to be selected.[15] Rather, this was left to the expertise of the Director in administering the compensation program created under FECA.[16] It is an established principle, however, that FECA is a remedial statute and should be broadly construed in favor of the employee to effectuate its purpose and not in derogation of an employee's rights.[17] The primary rule of statutory construction is to give effect to legislative intent and, in arriving at intent; it is well settled that the words in a statute should be construed according to their common usage.[18] The Board notes that the Director has been delegated authority under FECA in the selection of a medical referee physician through section 8123(a).

Under the Federal (FECA) Procedure Manual, the Director has exercised discretion to implement practices pertaining to the selection of the impartial medical referee. Unlike second opinion physicians, the selection of referee physicians is made from a strict rotational system.[19] OWCP will select a physician who is qualified in the appropriate medical specialty and who has no prior connection with the case.[20] Physicians who may not serve as impartial specialists include those employed by, under contract to or regularly associated with federal agencies;[21] physicians previously connected with the claim or claimant or physicians in partnership with those already so connected[22] and physicians who have acted as a medical consultant to OWCP.[23] The fact that a physician has conducted second opinion examinations in connection with FECA claims does not eliminate that individual from serving as an impartial referee in a case in which he or she has no prior involvement.[24]

In turn, the Director has delegated authority to each district OWCP for selection of the referee physician by use of the Medical Management Application (MMA) within iFECS.[25] This

[15] The Board has noted that the terms of section 8123(a) are not clear and unambiguous. *Melvina Jackson*, *supra* note 9. The Board found that the definition of the term examination under FECA was sufficiently broad in scope as to encompass the interpretation of an examination by OWCP's medical adviser. *Id.* at 448. To effectuate the purpose of the medical referee provision, the Board found that a medical adviser who did not physically examine the employee may, in appropriate circumstances, create a conflict in medical opinion. *Id.* at 449.

[16] *See, e.g., Harry D. Butler*, 43 ECAB 859, 866 (1992) (the Director delegated discretion in determining the manner by which permanent impairment is evaluated for schedule award purposes).

[17] *See Stephen R. Lubin*, 43 ECAB 564, 569 (1992); *Samuel Berlin*, 4 ECAB 39 (1950).

[18] *See Erin J. Belue*, 13 ECAB 88 (1961). *See also* Sutherland Stat. Const. § 65.03, 239-40 (4th ed. 1986).

[19] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b) (July 2011).

[20] *Id.* at Chapter 3.500.4(b)(1).

[21] *Id.* at Chapter 3.500.4(b)(3)(a).

[22] *Id.* at Chapter 3.500.4(b)(3)(b).

[23] *Id.* at Chapter 3.500.4(b)(3)(c).

[24] *Id.*

[25] *Id.* at Chapter 3.500.4(b)(6) (July 2011).

application contains the names of physicians who are Board-certified in over 30 medical specialties for use as referees within appropriate geographical areas.[26] MMA in iFECS replaces the prior physician directory system method of appointment.[27] It provides for a rotation among physicians from the American Board of Medical Specialties, including the medical boards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*) and those physicians Board-certified with the American Osteopathic Association.[28]

Selection of the referee physician is made through use of the application by a medical scheduler. The claims examiner may not dictate the physician to serve as the referee examiner.[29] The medical scheduler inputs the claim number into the application, from which the claimant's home zip code is loaded.[30] The scheduler chooses the type of examination to be performed (second opinion or impartial referee) and the applicable medical specialty. The next physician in the roster appears on the screen and remains until an appointment is scheduled or the physician is bypassed.[31] If the physician agrees to the appointment, the date and time are entered into the application. Upon entry of the appointment information, the application prompts the medical scheduler to prepare a Form ME023, appointment notification report for imaging into the case file.[32] Once an appointment with a medical referee is scheduled the claimant and any authorized representative is to be notified.[33]

Under the procedure manual, a claimant may request to participate in the selection of the referee physician or may object to the physician selected under the MMA. In such instances, the claimant must provide valid reasons for any request or objection to the claims examiner.[34] The right of the claimant to participate in the selection of the medical referee is not unqualified. He or she must provide a valid reason, not limited to: (a) documented bias by the selected physician; (b) documented unprofessional conduct by the selected physician; (c) a female claimant who requests a female physician when gynecological examination is required; or (d) a

[26] *Id.* at Chapter 3.500.4(b)(6)(a).

[27] *Id.* at Chapter 3.500.5.

[28] *Id.* at Chapter 3.500.5(a).

[29] *Id.* at Chapter 3.500.5(b).

[30] *Id.* at Chapter 3.500.5(c).

[31] *Id.* The roster of physicians is not made visible to the medical scheduler under the application. The medical scheduler may update information pertaining to whether the selected physician can schedule an appointment in a timely manner and, if not, will enter an appropriate bypass code. *Id.* at Chapter 3.500.5(e-f). Upon entry of a bypass code, the MMA will present the next physician based on specialty and zip code.

[32] *Id.* at Chapter 3.500.5(g). The Form ME023 serves as documentary evidence that the referee appointment was scheduled through the MMA may be reproduced and copied for the case record.

[33] *Id.* at Chapter 3.500.4(d). Notice should include the existence of a conflict in the medical evidence under section 8123; the name and address of the referee physician with date and time of appointment; a warning of suspension of benefits under section 8123(d) and information on how to claim travel expenses.

[34] *Id.* at Chapter 3.500.4(f).

claimant with a medically documented inability to travel to the arranged appointment when an appropriate specialist may be located closer.[35] When the reasons are considered acceptable, the claimant will be provided with a list of three specialists available through the MMA.[36] If the reason offered is determined to be invalid, a formal denial will issue if requested.[37]

ANALYSIS

The Board finds that appellant has not established that she was disabled for the period May 7, 2008 through May 10, 2009 as a result of her employment injury. While OWCP accepted that she sustained an employment injury, appellant bears the burden to establish through medical evidence that she was disabled during the claimed time periods and that her disability was causally related to her accepted injury.[38] The Board finds that she did not submit sufficient rationalized medical opinion evidence explaining how the employment injury materially worsened or aggravated her contusions and C1 fracture and caused her to be disabled for work for the period May 7, 2008 through May 10, 2009.

On June 30, 2011 OWCP found a conflict in medical opinion between Dr. Hanley, who found that the accepted conditions had resolved, and Dr. Kepko, who opined that appellant was disabled and suffered residuals from the employment injury. It referred appellant to Dr. Davne, a Board-certified orthopedic surgeon, for an impartial medical examination.

On appeal, counsel contends that Dr. Davne was not properly selected as the impartial medical examiner and, therefore, OWCP improperly relied on his report in its decision. OWCP has an obligation to verify that it selected Dr. Davne in a fair and unbiased manner. It maintains records for this very purpose.[39] The record contains an August 18, 2011 Form MEO23 iFECS report stating that an impartial medical examination was scheduled with Dr. Davne. The record also contains bypass screen shots for other Board-certified orthopedic surgeons, such as Dr. Kirkpatrick who was bypassed under code S because he only specialized in hand injuries, Dr. Emper and Dr. Mandel, who were bypassed under code S because they did not specialize in face, neck and scalp injuries and Dr. Rosenfeld who was bypassed under code O because his office was not scheduling any appointments at that time.[40] The Board finds that OWCP provided documentation and properly utilized its MMA system in selecting Dr. Davne as the impartial medical examiner. The Board has placed great importance on the appearance as well as the fact of impartiality and only if the selection procedures which were designed to achieve this result are

[35] *Id.* at Chapter 3.500.4(f)(1).

[36] *Id.* at Chapter 3.500.4(f)(1)(e)(2).

[37] *Id.* at Chapter 3.500.4(f)(1)(e)(3).

[38] *See supra* notes 7 to 8. *See also V.P.*, Docket No. 09-337 (issued August 4, 2009).

[39] *See M.A.*, Docket No. 07-1344 (issued February 19, 2008).

[40] Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.6 (July 2011). *See also, e.g., P.M.*, Docket No. 12-283 (issued September 4, 2012) (where the Board found that OWCP properly utilized its MMA system in selecting the impartial medical examiner and bypassed a physician under code D because he did not accept DOL patients).

scrupulously followed may the selected physician carry the special weight accorded to an impartial specialist. As OWCP has met its affirmative obligation to establish that it properly followed its selection procedures, the Board finds that counsel's argument is not substantiated.[41]

In his September 24, 2011 report, Dr. Davne found that appellant's extreme limitation of active motion on examination was a reflection of symptom magnification as during the examination when distracted she moved her neck and lower back through a greater degree of motion. He concluded that the November 6, 2007 injury had resolved and there were no residuals of the accepted condition. Regarding her cervical spine, Dr. Davne found that appellant's complaints were not related to her C1 fracture but rather to her preexisting multiple-level severe degenerative disc disease and opined that she did not sustain an aggravation of her underlying and preexisting cervical degenerative disc disease at the time of the fall on November 6, 2007. Regarding the lumbar spine, he opined that her lower back complaints were not part of the accepted injury, were not present initially following the fall and were not related to the employment injury but rather to her preexisting degenerative disc disease. Appellant had no radicular complaints and there were no findings of acute injury in the lumbar spine on MRI scan. She had some thigh numbness which, according to Dr. Davne, was not radicular. Appellant's EMG findings could have been consistent with lumbar radiculopathy, but he explained that in the absence of radicular complaints it did not correlate with radiculopathy. Dr. Davne opined that appellant did not sustain an aggravation of her underlying and preexisting lumbar degenerative disc disease and did not experience lumbar radiculopathy as a result of the November 6, 2007 employment injury. Although Dr. Davne found that appellant was partially and totally disabled for periods of time, he concluded that she was not disabled for the period May 7, 2008 through May 10, 2009.

In his reports, Dr. Kepko diagnosed chronic post-traumatic cervical and lumbosacral facet joint syndrome and aggravation of preexisting osteoarthritis of the cervical and lumbar spine caused by her fall on November 6, 2007. On December 6, 2010 he opined that appellant suffered residuals from the employment injury and was totally disabled for the period November 6, 2007 through October 14, 2008 and partially disabled for the period October 15, 2008 through February 9, 2009. Although he opined that appellant was disabled, Dr. Kepko failed to provide a rationalized medical explanation as to why she had employment-related residuals and how the residuals of the employment injury prevented her from continuing in her federal employment. Thus, the Board finds that appellant has not met her burden of proof to establish that she was disabled for work due to the employment injury.

On May 27, 2008 Dr. Park diagnosed chronic neck and low back pain secondary to osteoarthritis of the facet joints. He indicated that appellant complained of back and neck pain since November 6, 2007 after she fainted at work. Dr. Park failed to provide a rationalized medical explanation as to why she had employment-related residuals and how the residuals of the employment injury prevented her from continuing in her federal employment. Thus, the Board finds that his report is not sufficient to establish appellant's claim.

[41] *Cf. H.W.*, Docket No. 10-404 (issued September 28, 2011) (where the Form MEO23 IFECS report was the only documentation of the scheduled impartial medical specialist examination. There were no screen shots substantiating the selection of the impartial medical specialist. The Board remanded the case by an order for selection of another impartial medical specialist and the issuance of an appropriate decision following any further development).

In support of her claim, appellant submitted reports from Dr. Schulze, who failed to offer any probative medical opinion on whether she was disabled on the dates at issue due to her accepted conditions, his reports are of diminished probative value.[42]

Appellant has not submitted any rationalized medical evidence establishing that she was disabled during the period May 7, 2008 through May 10, 2009 causally related to the employment injury. Thus, she has not met her burden of proof to establish that she is entitled to compensation for any disability.

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 her burden of proof to establish that her disability for the period May 7, 2008 through May 10, 2009 was causally related to her employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[42] *See Sandra D. Pruitt*, 57 ECAB 126 (2005). *See also V.P.*, *supra* note 38.