



2011 OWCP accepted her claim for a face, scalp and neck contusion and a left elbow contusion. It subsequently accepted a concussion without loss of consciousness and left elbow and forearm strain. Appellant received continuation of pay from February 3 to March 19, 2011.<sup>2</sup>

In a February 3, 2011 report, Dr. Joe Tsou, Board-certified in emergency medicine, diagnosed closed head injury and left elbow contusion. In a February 7, 2011 report, Dr. Terry Madsen, a Board certified orthopedic surgeon, noted that appellant injured her left arm at work on February 3, 2011 when she fell and hit her head and arm. He diagnosed left arm and shoulder strain and advised that she could work light duty. In March 22, 2011 reports, Dr. William Tobleman, Board-certified in emergency medicine, advised that appellant had multiple injuries from her February 3, 2011 slip and fall on ice including a concussion and multiple contusions. He advised that appellant was totally disabled. In a June 30, 2011 report, Dr. Tobleman noted that she remained unable to drive. He noted that appellant had weakness and altered numbness in a way that was not consistent with a normal neural history. Dr. Tobleman questioned if she had multiple sclerosis.

In an October 26, 2011 note, Dr. Tobleman stated that appellant was instructed not to drive on April 1, 2011 and that the restriction still applied. Appellant could return to light-duty work. In an October 26, 2011 report, Dr. Tobleman noted that his review of the last office visit of June 30, 2011 did not reference her work-related problem. He noted that it should have read, "closed head injury," with subsequent complaints of pain. Appellant still had episodes of near syncopal-like events and he recommended that she be on light duty. She could not drive or be driven to someplace specifically for job security or neurologic condition. Dr. Tobleman advised that appellant should remain off work for another month and not do any driving because of her work-related closed head injury, neck problem and post-traumatic head injury. He opined that her post-traumatic concussion-type symptoms were work related. Dr. Tobleman noted that while she was also having ataxia, it was undetermined whether it was work related.

In a December 7, 2011 report, Dr. Audrey Stein-Goldings, a Board-certified neurologist and OWCP referral physician, noted the history of injury, reviewed the medical record and presented her examination findings. She diagnosed a concussion with brief loss of consciousness, contusion of elbow, multiple sclerosis, myalgia and myositis, benign essential hypertension; obesity; other specified diffuse diseases of connective tissue, thoracic or lumbosacral neuritis or radiculitis. Dr. Stein-Goldings opined that the effects of appellant's work-related injury had resolved and any aggravation of her preexisting fibromyalgia condition had ceased. Appellant had progressive symptoms of incapacitation after the injury, but her symptoms did not arise from the injury. Dr. Stein-Goldings stated that there were no objective findings that appellant was disabled or could not drive due to her work-related condition. She concluded that appellant did not have an abnormality that would disable her from sedentary or

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<sup>2</sup> Thereafter, appellant submitted claims for compensation (Form CA-7) for wage loss through August 19, 2011. In a January 12, 2011 decision, OWCP denied the claim for wage-loss compensation because the medical evidence did not support the claim and because she refused suitable work. On July 9, 2012 OWCP's hearing representative vacated the January 11, 2012 decision finding that OWCP did not sufficiently notify appellant of the evidence needed to perfect her claim for wage-loss compensation and also did not properly develop the claim for a termination of benefits under 5 U.S.C. § 8106(c)(2). He directed that OWCP pay wage-loss benefits through August 19, 2011.

perhaps light duty and that none of her other conditions would prevent her from performing sedentary or light duty. On an attached work capacity evaluation form (OWCP-5), Dr. Stein-Goldings stated that appellant could work at her usual job.

On December 14 and 17, 2011 appellant was seen at Methodist Richardson Medical Center for testing. A December 14, 2011 doppler upper extremities indicated there was no deep vein thrombosis.

In a December 29, 2011 progress note, Dr. Tobleman stated that appellant was experiencing severe pain involving her left arm. An impression of closed head injury with near loss of consciousness with concussion, multiple trauma to body in falling and multiple neurologic complaints was provided. In a January 29, 2012 note, Dr. Tobleman reviewed Dr. Stein-Goldings report and concurred with her opinion.

Submitted to the record where copies of diagnostic testing dated September 30, 2011, December 14, 2011 and February 8, 2012.

On July 25, 2012 appellant filed a claim for compensation, Form CA-7, for the period August 20, 2011 through July 25, 2012.

By letter dated August 21, 2012, OWCP requested additional medical evidence to establish her disability for work from August 20, 2011 to July 25, 2012. Appellant was afforded 30 days for submission. Additional evidence relevant to the claimed period was not received.

By decision dated October 5, 2012, OWCP denied appellant's claim for disability for the period August 20, 2011 through July 25, 2012. It found that the medical evidence was not sufficient to support her disability due to the employment injury.

### **LEGAL PRECEDENT**

Section 8102(a) of FECA<sup>3</sup> 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.<sup>4</sup> This meaning, for brevity, is expressed as disability for work.<sup>5</sup> 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.<sup>6</sup> Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> 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).

<sup>5</sup> *See Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

<sup>6</sup> *See William A. Archer*, 55 ECAB 674 (2004).

issues which must be proved by the preponderance of the reliable probative and substantial medical evidence.<sup>7</sup>

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 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.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not established that she was disabled from August 20, 2011 through July 25, 2012 causally related to her employment injury. While OWCP accepted that she sustained an employment injury, she bears the burden to establish through medical evidence that she was disabled during the claimed time period and that her disability was causally related to her accepted injury.<sup>9</sup> The Board finds that appellant submitted insufficient medical evidence explaining how the employment injury materially worsened or aggravated her preexisting conditions and caused her to be disabled for work for the periods claimed.

In an October 26, 2011 note, Dr. Tobleman instructed appellant not to drive on April 1, 2011. This restriction continued thereafter. Dr. Tobleman, however, did not explain whether the driving restriction was due to the work-related injury. On October 26, 2011 he stated that appellant should remain off work for another month and not do any driving, specifically because of her work-related closed head injury, neck problem and work-related post-traumatic head injury. Dr. Tobleman indicated that her post-traumatic concussion-type symptoms were work-related but it was unclear if her ataxia was work related. He further noted that appellant's complaints on her last office visit of June 30, 2011 should have read, "closed head injury," and that her post-traumatic head injury complaints were work related. Although Dr. Tobleman offered some general support that she was partially disabled, he did not adequately explain the reasons why her employment-related conditions caused her partial or total disability. The need for reasoning is especially important where the record indicates that appellant has other nonaccepted conditions that could be the cause of her disability. The reports from Dr. Tobleman either do not specifically address causal relationship for the claimed period or do not provide sufficient medical reasoning to establish the claimed work-related disability. In a January 29, 2012 report, Dr. Tobleman, specifically concurred with Dr. Stein-Goldings' opinion that appellant's work-related condition had resolved and there were no objective findings to support total disability from a work-related condition.<sup>10</sup> Appellant has not met her burden of proof to

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<sup>7</sup> See *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

<sup>8</sup> *Id.*

<sup>9</sup> See *supra* notes 6 to 7. See also *V.P.*, Docket No. 09-337 (issued August 4, 2009).

<sup>10</sup> Dr. Stein-Goldings performed a second opinion for OWCP to determine the exact nature of appellant's injuries and her ability to return to work either in a limited duty or full duty status.

establish that she was disabled for work due to the employment injury during the period claimed. On December 7, 2011 Dr. Stein-Goldings' found that the employment-related conditions had resolved and there was no work-related disability. The medical evidence from the other physicians of record is insufficient as it does not offer an opinion on work-related disability for the period in question.

Appellant has not submitted adequate medical evidence establishing that she was disabled during the period August 20, 2011 through July 25, 2012 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.

On appeal, appellant contends that she established her employment-related disability. For the reasons stated above, the Board finds that her argument is not substantiated.<sup>11</sup>

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 August 20, 2011 through July 25, 2012 was causally related to her employment injury.

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<sup>11</sup> The remainder of appellant's contentions stem from OWCP's January 11, 2012 termination decision, which was reversed on July 9, 2012.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated October 5, 2012 is affirmed.

Issued: April 19, 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