



sprain, right sternocleidomastoid strain, right trapezius strain and right shoulder strain. Appellant stopped work on February 18, 2012 and did not return.

Appellant was treated on February 18, 2012 by Dr. Megan Dines, a Board-certified internist, who diagnosed torticollis and recommended oral medications.

On February 21, 2012 appellant was treated by Dr. Kenneth W. Greene, a Board-certified internist, who diagnosed cervical sprain, right sternocleidomastoid strain, trapezius strain and right shoulder strain. Appellant reported injuring her neck on February 18, 2012 when she was pulling mail from a sorting machine. Dr. Greene noted that a computerized tomography (CT) scan of the neck revealed no acute abnormality. He noted findings of limited neck range of motion, tenderness of the right trapezius and sternocleidomastoid area with spasm. Dr. Greene recommended physical therapy, pain medications and warm compressors. He released appellant to work with restrictions in place. Dr. Greene noted a history of injury on February 18, 2012 and diagnosed cervical sprain, trapezius strain, right shoulder strain and right sternocleidomastoid strain. He noted with a checkmark "yes" that the injury was causally related to an industrial event.

On February 21, 2012 appellant was treated by a physician's assistant who diagnosed cervical strain, trapezius strain and right shoulder strain. He returned her to work with restrictions and advised that she could return to normal activity without restrictions in two to three weeks.

By letter dated March 5, 2012, OWCP advised appellant that her claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It advised that, because she had not returned to full-time work, her claim would be formally adjudicated. OWCP noted the accepted conditions and requested that appellant submit a comprehensive medical report from her treating physician which supported that she was totally disabled from all work including sedentary work due to the February 18, 2012 injury. It indicated that it could not authorize continuation of pay as there was no medical evidence in the file to support that she was totally disabled from all work.

Appellant submitted a February 21, 2012 report from a physician's assistant previously of record. A February 24, 2012 report from a nurse practitioner noted that appellant was treated on February 24, 2012 and could return to work on February 28, 2012 without limitations. On February 24, 2012 Dr. Charles K. McIntosh, an osteopath, treated appellant for recurrent neck pain gradually worsening which occurred at work while lifting and pulling boxes off a shelf. He noted examination findings of neck pain and stiffness with tingling and diagnosed cervical muscle spasm. An x-ray of the right shoulder dated February 24, 2012 showed no abnormalities.

A February 23, 2012 duty status report from Dr. Kevin J. Paley, a Board-certified orthopedist, noted her diagnosed conditions were due to her injury and that she could not return to work. In a report dated February 27, 2012, he noted a history of injury and diagnosed cervical neck sprain with possible herniated nucleus pulposus. Dr. Paley noted neck tenderness with intact sensations and no focal deficits. He indicated that appellant had been off work since the date of injury and extended it to March 27, 2012. In a February 27, 2012 prescription note, Dr. Paley indicated that she was unable to work from February 23 to March 23, 2012. On March 16, 2012 he opined that appellant had a significant injury to her cervical spine and right

shoulder and was incapable of employment at that time. Dr. Paley advised that she could not perform overhead activities, was limited to lifting 10 pounds with no repetitive twisting, rotation, flexion or extension of the cervical spine. On April 2, 2012 he noted appellant's continued complaints of pain in the neck with radiculopathy. Dr. Paley recommended a magnetic resonance imaging (MRI) scan and advised that she was off work through May 1, 2012. Similarly, in an April 30, 2012 report, he noted an MRI scan of the right shoulder revealed arthritis, subacromial spurring and subacromial bursitis. Dr. Paley noted an April 24, 2012 cervical spine MRI scan revealed a noncompressive bulging disc at C5-6. He noted a limited range of motion of the right shoulder without neurological deficit and extended appellant's off work time through June 30, 2012.

Appellant submitted a CA-7, claim for compensation, for total disability from April 7 to 20, 2012 and April 21 to May 4, 2012. On April 27, 2012 OWCP requested additional evidence supporting total disability from work.

In a decision dated May 14, 2012, OWCP denied appellant's claim for continuation of pay from February 19 to April 3, 2012 on the grounds that the evidence was insufficient to establish that she was totally disabled from all work due to the February 18, 2012 injury. It also denied compensation beginning April 4, 2012 on the grounds that there was no evidence to support that she was totally disabled due to the February 18, 2012 injury.

Appellant requested an oral hearing which was held on September 7, 2012. She submitted reports from Dr. Paley dated April 30, 2012, previously of record. In a May 16, 2012 duty status report, Dr. Paley noted appellant's diagnoses were due to her injury and she could not return to work. On June 1, 2012 he treated her for neck, cervical spine and right shoulder pain. Dr. Paley noted that appellant was not working because there was no light duty available and would be off work through June 30, 2012. He recommended a cortisone injection and physical therapy. Similarly, on June 27 and July 18, 2012, Dr. Paley treated appellant for neck pain and rotator cuff tendinopathy. He noted moderate cuff weakness and impingement signs and extended appellant's disability through September 1, 2012. On September 28 and October 22, 2012 Dr. Paley noted that appellant continued to be symptomatic with neck and right shoulder pain. He noted that she was cleared to return to work with restrictions on October 2, 2012. An April 20, 2012 MRI scan of the right shoulder revealed mild degenerative changes minimal stenosis and bursitis. An April 24, 2012 MRI scan of the cervical spine revealed noncompressive shallow disc protrusion at C5-6. An April 30, 2012 physician's assistant note indicated that appellant was off work through June 30, 2012.

By decision dated November 26, 2012, an OWCP hearing representative affirmed OWCP's decision dated May 14, 2012.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8118 of FECA<sup>2</sup> provides for payment of continuation of pay, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to traumatic injury with her immediate supervisor on a form approved by the Secretary of Labor within the time specified

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

in section 8122(a)(2) of this title. OWCP's regulations clarify that continuation of pay is payable for a maximum of 45-calendar days; however, time lost on the day or shift of the injury does not count toward continuation of pay.<sup>3</sup> The employing establishment must keep the employee in a pay status for that period.

In order to establish entitlement to continuation of pay, an employee must establish, on the basis of reliable, probative and substantial evidence, that he or she was disabled as a result of a traumatic employment injury. As part of this burden, he or she must furnish medical evidence from a qualified physician who, based on a complete and accurate history, concludes that the employee's disability for specific periods was causally related to such injury.<sup>4</sup> As used in FECA, the term disability means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury.<sup>5</sup> In other words, if an employee is unable to perform the required duties of the job in which he or she was employed when injured, the employee is disabled.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that on February 18, 2012 appellant sustained a cervical sprain, right sternocleidomastoid strain, right trapezius strain and right shoulder strain. It found that she was not entitled to continuation of pay from February 19 to April 3, 2012 because the medical evidence of record failed to establish that she was totally disabled due to her accepted cervical sprain, right sternocleidomastoid strain, trapezius strain and right shoulder strain. The Board finds that appellant has not submitted sufficient medical evidence to establish that she was totally disabled from February 19 to April 3, 2012 due to her accepted employment injury.

Appellant submitted a February 23, 2012 duty status report from Dr. Paley who made diagnoses and advised that she could not return to work. In reports dated February 27, 2012, Dr. Paley diagnosed cervical neck sprain with possible herniated nucleus pulposus. He noted that appellant had been off work since the date of injury and extended it through March 27, 2012. Similarly, on March 16, 2012, Dr. Paley noted that she had a significant injury to her cervical spine and right shoulder and was incapable of her current work activities. Likewise, on April 2, 2012, he treated appellant for continued complaints of neck pain with radiculopathy and advised that she was off work through May 1, 2012. However, Dr. Paley's reports are of diminished probative value. He did not discuss the issue of total disability with reference to the accepted February 18, 2012 employment incident. Furthermore, Dr. Paley offered no reasoned explanation as to how the diagnosed conditions rendered appellant totally disabled from work

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<sup>3</sup> 20 C.F.R. § 10.215(a).

<sup>4</sup> *Carol A. Dixon*, 43 ECAB 1065 (1992); *Virginia Mary Dunkle*, 34 ECAB 1310 (1983). See *Carol A. Lyles*, 57 ECAB 265 (2005); 20 C.F.R. § 10.205(a) (to be eligible for continuation of pay, a person must: (1) have a traumatic injury which is job related and the cause of the disability, and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury).

<sup>5</sup> *Marvin T. Schwartz*, 48 ECAB 521 (1997).

<sup>6</sup> *Id.*

from February 19 to April 3, 2012.<sup>7</sup> Other reports from him dated April 30 to October 22, 2012 similarly failed to address how the diagnosed conditions rendered appellant totally disabled from work from February 19 to April 3, 2012.

Appellant was treated by Dr. Greene on February 21, 2012 who diagnosed cervical sprain, right sternocleidomastoid strain, trapezius strain and right shoulder strain. She reported injuring her neck on February 18, 2012 when she was pulling mail from a sorting machine. However, Dr. Greene did not indicate that appellant was disabled from work, rather he released her to work with restrictions in place. In a February 21, 2012 first report of an injury, he noted a history and diagnosed cervical sprain, trapezius strain, right shoulder strain and right sternocleidomastoid strain. Dr. Greene did not address how any of the accepted conditions caused total disability. His reports do not establish that appellant's disability from February 19 to April 3, 2012 was due to an accepted February 18, 2012 injury.

Appellant was treated by Dr. Dines on February 18, 2012, who diagnosed torticollis and recommended oral medications. Similarly, on February 24, 2012 she was treated by Dr. McIntosh for recurrent neck pain gradually worsening which occurred at work while lifting and pulling boxes off a shelf. Dr. McIntosh diagnosed cervical muscle spasm. However, he did not provide a history detailing appellant's employment injury on February 18, 2012 which occurred when she was sweeping mail, rather they indicated that she was lifting boxes.<sup>8</sup> Furthermore they offered no explanation as to how the diagnosed conditions rendered her totally disabled from work from February 19 to April 3, 2012.

Appellant also submitted reports from a physician's assistant dated February 21 and April 30, 2012 and a nurse practitioner dated February 24, 2012. However, this evidence is of no probative medical value as the Board has held that physician's assistants and nurses are not competent to render a medical opinion under FECA.<sup>9</sup> Therefore, these reports are insufficient to meet appellant's burden of proof to support continuation of pay.<sup>10</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.<sup>11</sup> Whether a particular injury causes an employee to be

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<sup>7</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>8</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

<sup>9</sup> *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

<sup>10</sup> *See id.*; *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

<sup>11</sup> *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

disabled for employment and the duration of that disability are medical issues.<sup>12</sup> The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

In addition to denying appellant's claim for continuation of pay from February 19 to April 3, 2012, OWCP denied her claims for compensation for the period beginning April 4, 2012. The Board finds that the medical evidence is insufficient to establish that disability beginning April 4, 2012 was caused or aggravated by the accepted cervical sprain, right sternocleidomastoid strain, trapezius strain and right shoulder strain.

Appellant submitted an April 30, 2012 report from Dr. Paley who noted an MRI scan of the right shoulder revealed arthritis, subacromial spurring and subacromial bursitis and an April 24, 2012 MRI scan of the cervical spine revealed a noncompressive bulging disc at C5-6. Dr. Paley found her disabled through June 30, 2012. In a May 16, 2012 duty status report, he noted that appellant's diagnoses were due to her injury and she could not return to work. Similarly, in reports dated June 1 to July 18, 2012, Dr. Paley treated her for neck and cervical spine pain, rotator cuff tendinopathy and impingement. He noted that appellant was not working because there was no light duty available and extended her disability through September 1, 2012.<sup>14</sup> Likewise, on September 28 and October 22, 2012, Dr. Paley noted that she continued to be symptomatic with neck and right shoulder pain. He noted that appellant was cleared to return to work with restrictions on October 2, 2012. Although these notes indicated that she was disabled, Dr. Paley failed to provide a reasoned opinion explaining why she was disabled for any particular period due to the accepted work injury. He did not explain why the accepted cervical sprain, right sternocleidomastoid strain, trapezius strain and right shoulder strain caused or contributed to disability on or after April 4, 2012. As noted, part of appellant's burden of proof includes submitting rationalized medical evidence which supports a causal relationship between the alleged disabling condition and the accepted injury.

As noted above, appellant also submitted medical records from Dr. Paley, Dr. Greene, Dr. Pines and Dr. McIntosh which predate the claimed period of compensation beginning April 4, 2012. These reports are of limited probative value as they do not specifically address disability on or after April 4, 2012. The remainder of the medical evidence, including an MRI scan of the right shoulder and cervical spine, fail to provide an opinion on the causal relationship between accepted conditions and appellant's claimed disability. For this reason, this evidence is not sufficient to meet her burden of proof.

Appellant also submitted a physician's assistant note dated April 30, 2012; however, this evidence is of no probative medical value as the Board has held that physician's assistants are

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<sup>12</sup> *Id.*

<sup>13</sup> See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>14</sup> There is no evidence of record from the employer or OWCP that indicates that light-duty work was unavailable.

not competent to render a medical opinion under FECA.<sup>15</sup> Therefore, these reports are insufficient to meet her burden of proof.<sup>16</sup>

On appeal, appellant asserted that there was no light duty available for her due to the National Reassessment Process. However, she provided no supporting evidence that she had been on a light-duty position at the time of the incident.

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 was not entitled to continuation of pay for her February 18, 2012 employment injury. The Board also finds that she did not meet her burden of proof to establish that she was entitled to wage-loss compensation beginning April 4, 2012.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> See *supra* note 9.

<sup>16</sup> See *id.*; *Charley V.B. Harley*, *supra* note 10.