

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

_____)	
S.C., Appellant)	
)	
and)	Docket No. 12-1898
)	Issued: March 1, 2013
U.S. POSTAL SERVICE, POST OFFICE,)	
Bend, OR, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 14, 2012 appellant filed a timely appeal of June 4 and August 30, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she was entitled to disability compensation for the period April 16 to May 4, 2012; and (2) whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 1, 2012 appellant, then a 59-year-old custodian, slipped and fell while in the performance of duty. OWCP accepted her traumatic injury claim for head contusion. Appellant received continuation of pay (COP) for the period March 2 to April 15, 2012.²

Appellant filed claims for disability compensation for the combined period April 16 to May 4, 2012 and submitted medical evidence. In an April 6, 2012 report, Dr. Anthony G. Hadden, Jr., a Board-certified neurological surgeon, related that appellant sustained intermittent headaches and dizziness due to the March 1, 2012 work injury. On examination, he observed frontal scar and tenderness of the occiput and cervical spine. Computerized tomography (CT) scans of the head and neck that were obtained on March 1, 2012 showed soft tissue edema as well as cervical degenerative disc disease and facet arthrosis. Dr. Hadden diagnosed brain concussion syndrome, cervical sprain, cervicgia and memory loss. He advised that appellant be placed off duty from April 6 to May 6, 2012.³

In an April 6, 2012 report, Fran Manti, a physical therapist, evaluated appellant and found cervical nerve root compression, increased thoracic kyphosis, right scapula pain, right latissimus dorsi muscle weakness and right rhomboid, trapezius, and scalene muscle tenderness and trigger points. She opined that appellant could not perform her normal maintenance duties for the employing establishment as she was unable to lift or carry heavy items, twist her neck while driving, or use her right upper extremity to reach out or above her head.

By decision dated June 4, 2012, OWCP denied appellant's compensation claim, finding that the medical evidence did not sufficiently establish total disability for the period April 13 to May 4, 2012.

Appellant requested reconsideration on August 21, 2012. She submitted a copy of Ms. Manti's April 6, 2012 report that was cosigned by Dr. Hadden.⁴ By decision dated August 30, 2012, OWCP denied appellant's request on the grounds that it did not receive new and relevant evidence warranting further merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA bears the burden of proof to establish the essential elements of his or her claim by the weight of the evidence. For each period of disability claimed, the employee must establish that he or she was disabled for work as a result of the accepted employment injury. Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of reliable, probative and substantial medical opinion evidence.⁵ Such medical

² The case record indicates that appellant received disability compensation for the period May 5 to 22, 2012.

³ A May 4, 2012 follow-up report from Dr. Hadden noted that appellant exhibited improvement and released her to regular duty effective May 23, 2012.

⁴ Appellant also provided copies of Dr. Hadden's April 16 and May 4, 2012 reports, March 1, 2012 emergency department charts and various medical records from January 28, 2009 to November 17, 2010.

⁵ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

evidence must include findings on examination and the physician's opinion, supported by medical rationale, showing how the injury caused the employee disability for his or her particular work.⁶

Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.⁷ The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.⁸

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained head contusion while in the performance of duty on March 1, 2012 and granted COP for the period March 2 to April 15, 2012. Thereafter, appellant filed multiple claims for disability compensation for the combined period April 16 to May 4, 2012.

The Board finds that appellant did not establish her entitlement to disability compensation because the medical evidence did not sufficiently demonstrate that she was disabled for the period April 16 to May 4, 2012 due to her accepted condition. In an April 6, 2012 report, Dr. Hadden related that appellant remained symptomatic as a result of the March 1, 2012 work injury. Following a physical examination and review of the medical file, he diagnosed brain concussion syndrome, cervical sprain, cervicgia, and memory loss and recommended that appellant refrain from working from April 6 to May 6, 2012. Although Dr. Hadden opined that appellant was disabled, he did not offer adequate medical rationale setting forth the pathophysiological mechanism by which her head contusion rendered her unable to perform her regular duties as a custodian.⁹ Medical reports consisting solely of conclusory statements without supporting rationale are of diminished probative value.¹⁰

In addition, a medical issue such as disability can only be resolved through the submission of probative medical evidence from a qualified physician.¹¹ Ms. Manti's April 6, 2012 report, which was not originally cosigned by a physician, did not constitute competent medical evidence because a physical therapist is not a "physician" as defined under FECA.¹² In view of the totality of the evidence, the Board finds that appellant did not discharge her burden of proof.

⁶ *Dean E. Pierce*, 40 ECAB 1249 (1989).

⁷ *Laurie S. Swanson*, 53 ECAB 517, 520 (2002). *See also Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁸ *Jefferson*, *supra* note 5.

⁹ *Emma R. Bowman*, Docket No. 94-2431 (issued September 13, 1996); *Arita M. Cruz*, Docket No. 94-1694 (issued June 11, 1996).

¹⁰ *William C. Thomas*, 45 ECAB 591 (1994).

¹¹ *A.D.*, Docket No. 10-1837 (issued May 10, 2011). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

¹² 5 U.S.C. § 8101(2); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,¹³ OWCP's regulations provide that the evidence or argument submitted by a claimant must either: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁴ Where the request for reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁵

ANALYSIS -- ISSUE 2

On August 21, 2012 appellant timely filed a request for reconsideration of the June 4, 2012 merit decision. She submitted a copy of Ms. Manti's April 6, 2012 report that was cosigned by Dr. Hadden, *inter alia*. OWCP denied the request on August 30, 2012, finding that appellant did not offer new evidence warranting further merit review.

The Board finds that the copy of the April 6, 2012 physical therapy report, signed by Dr. Hadden, constitutes relevant and pertinent new evidence not previously considered by OWCP.

The Board notes that Ms. Manti's original report was received and considered by OWCP prior to issuance of the June 4, 2012 merit decision. At that point, it did not constitute competent medical evidence because it was not cosigned by a qualified physician.¹⁶ The copy subsequently furnished by appellant was signed by both Ms. Manti and Dr. Hadden. The Board has held that medical documents from a nonphysician may be considered probative if cosigned by a physician.¹⁷ Because the copy of the April 6, 2012 physical therapy report contains Dr. Hadden's signature, it constitutes new competent medical evidence that may be assessed for its probative value.

The underlying issue of the June 4, 2012 merit decision was whether appellant was unable to perform her regular job duties from April 16 to May 4, 2012 due to her accepted head contusion. In the April 6, 2012 report, Ms. Manti opined that she could not perform her maintenance duties for the employing establishment. Since the report addressed the relevant issue, OWCP was obligated to conduct a merit review of the claim. Reopening a claim for merit review does not require a claimant to submit all evidence that may be necessary to discharge her burden of proof.¹⁸ If OWCP should determine that the new evidence submitted lacks probative

¹³ 5 U.S.C. § 8128(a).

¹⁴ *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See 20 C.F.R. § 10.606(b)(2).

¹⁵ *L.D.*, 59 ECAB 648 (2008). See 20 C.F.R. § 10.608(b).

¹⁶ See *supra* notes 11 and 12.

¹⁷ *S.R.*, Docket No. 12-126 (issued June 1, 2012); *Rosita F. Brown*, Docket No. 03-1076 (issued July 1, 2003); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Overview*, Chapter 3.100.3(c) (March 2010).

¹⁸ *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989); *Helen E. Tschantz*, 39 ECAB 1382 (1988).

value, it may deny modification of the prior decision, but only after the case has been reviewed on the merits.¹⁹

On remand OWCP shall conduct a merit review of the case, further develop the record as necessary and issue an appropriate merit decision.

CONCLUSION

The Board finds that appellant did not establish that she was entitled to disability compensation for the period April 16 to May 4, 2012. The Board also finds that OWCP improperly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2012 decision of the Office of Workers' Compensation Programs be affirmed. The August 30, 2012 decision of OWCP is set aside and the case remanded for further merit review.

Issued: March 1, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁹ *Dennis J. Lasanen*, 41 ECAB 933 (1990).