

FACTUAL HISTORY

On August 22, 2011 appellant, then a 47-year-old contact representative, sustained injury when a cubicle slat fell on her head resulting in blurred vision. In a letter dated September 7, 2011, OWCP requested additional factual and medical evidence in support of her claim.

On August 22, 2011 Dr. Ravi K. Madasu, a Board-certified internist, diagnosed contusion of face and neck sprain. Appellant underwent cervical magnetic resonance imaging (MRI) scan on August 22, 2011 which demonstrated multilevel degenerative changes without fracture or dislocation. The hospital records indicate that she sustained a contusion of her head on August 22, 2011. Dr. Eric D. Blakney, a Board-certified internist, completed an undated work capacity evaluation and diagnosed head injury. He stated that appellant had a severe headache preventing work and could return to work eight hours a day on September 19, 2011. On September 14, 2012 Dr. Blakney advised that she was partially disabled and could not work eight hours until September 19, 2011.

On October 13, 2011 OWCP accepted appellant's claim for sprain of the neck and contusion of the face, scalp and neck. Appellant returned to work for four hours on October 12, 2011 and went home with a headache. She returned to work on October 17, 2011 for eight hours and stopped work on October 18, 2011.

Dr. Blakney examined appellant on August 26, 2011 and diagnosed headache. He noted that she was struck August 26, 2011 on the head by equipment and that she reported continued headache and dizziness. On September 2, 2011 Dr. Blakney examined appellant due to shoulder pain and upper back pain. He saw her on October 10, 2011 due to headaches. On October 19, 2011 appellant reported shoulder, neck and back pain due to her employment injury. On October 25, 2011 Dr. Blakney noted that she reported that her neck and head hurt from her work injury when a cubicle hit her on the head. He diagnosed allergic rhinitis and cervicgia.

On November 4, 2011 the employing establishment requested that OWCP adjudicate appellant's entitlement to continuation of pay for 37 days from August 23 to October 6, 2011. It advised that she had received continuation of pay from August 23 through October 6, 2011. In a letter dated November 22, 2011, OWCP requested additional medical evidence from appellant supporting her claimed periods of disability.

Dr. Blakney examined appellant on November 1, 2011. He diagnosed cervical disc degeneration and cervalgia. On November 21, 2011 Dr. Blakney saw her for cervicgia, neck pain and blurred vision in the right eye. Appellant also submitted notes from a physical therapist and a nurse practitioner.

In a letter dated December 9, 2011, appellant stated that her work activities consisted of sitting at a desk all day. She noted that she tried to go to work several times but after sitting down for hours at a time she developed sharp pain in her head and neck, migraine headaches and blurred vision in her right eye. Appellant stated that she had trouble sleeping at night and difficulty getting out of bed.

By decision dated January 6, 2012, OWCP denied appellant's claim for compensation from October 11 through December 20, 2011. It found that she failed to submit sufficient medical evidence to establish that she was disabled due to her accepted employment-related injuries. OWCP noted that appellant returned to work on December 21, 2011.

Appellant filed a claim for compensation requesting compensation for leave without pay used from January 4 through 13, 2012. In letters dated January 25 and February 2, 2012, OWCP requested that she provide medical evidence in support of her claimed periods of disability and allowed 30 days for a response.

Dr. Blakney completed a work capacity evaluation on January 17, 2012. He indicated that appellant was not capable of performing her date-of-injury position due to severe neck pain. Dr. Blakney opined that she was totally disabled but could return to work for eight hours a day on December 21, 2011.

On January 21, 2012 appellant filed a claim for compensation requesting compensation for leave without pay from January 18 through 26, 2012.

By decision dated May 8, 2012, OWCP denied appellant's claim for compensation for the periods January 4 through 13 and January 18 through 26, 2012 due to wage loss while attending physical therapy. It also denied her claim for continuation of pay for the period August 23 through October 6, 2012.

Appellant requested reconsideration on June 1, 2012. She submitted documentation that she underwent nerve conduction studies and an electromyogram (EMG) on December 20, 2011 which demonstrated mild bilateral carpal tunnel syndrome.

Appellant underwent a cervical MRI scan on November 14, 2011 which demonstrated mild multilevel degenerative changes with no evidence of spinal stenosis or neural foraminal stenosis at any cervical level.

Dr. Thirukandeeswaram R. Swaminathan, Board-certified in neurology and sleep medicine, examined appellant on December 5, 2011. He noted history of injury and her complaint of neck pain on the right, aggravated by prolonged sitting at work. Dr. Swaminathan found that appellant had no focal neurological deficit and that her MRI scan did not show any significant abnormalities of the cervical spine to account for her symptoms.

In a decision dated August 8, 2012, OWCP denied modification of its prior decisions. It found that there was insufficient medical evidence to establish that appellant's August 22, 2011 employment injury resulted in disability for work from August 23 through October 6, 2011 requiring continuation of pay or from January 4 through 26, 2012 requiring wage-loss compensation.

On January 31, 2013 counsel requested that OWCP include a shoulder condition due to appellant's accepted injury.

Appellant requested reconsideration on July 9, 2013. On June 17, 2013 Dr. Blakney noted that she sustained an on-the-job injury on August 22, 2011 resulting in neck pain and

headaches. He stated that appellant had underlying cervical disc disease, which was not a problem until her employment injury. Dr. Blakney stated, “I feel that [appellant’s] complaints and inability to work were possibly caused by a combination of the on-the-job injury and her underlying disc disease, which kept her from working from August 22 through October 6, 2011.”

By decision dated August 12, 2013, OWCP denied modification, finding that the medical evidence was not sufficient to establish that appellant was disabled due to her accepted employment injuries from August 23 through October 6, 2011; January 4 through 13 or January 18 through 26, 2012. It noted that counsel argued that she sustained an aggravation of a preexisting cervical condition resulting in disability for the claimed periods.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁴ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury. Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁵

Section 8118 of FECA⁶ 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 a traumatic injury with his [or her] immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.”⁷ 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.⁸

² *Id.* at §§ 8101-8193.

³ *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁵ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ 5 U.S.C. § 8118.

⁷ *Id.* at § 8122(a)(2).

⁸ *G.M.*, Docket No. 13-1538 (issued December 17, 2013); *Carol A. Dixon*, 43 ECAB 1065 (1992).

ANALYSIS -- ISSUE 1

On August 22, 2011 appellant sustained a traumatic injury in the performance of duty when a panel of a cubicle fell and struck her forehead. OWCP accepted her claim for contusion to the face, head and neck and neck strain. Appellant claimed continuation of pay for the period August 23 through October 6, 2011. As noted she has the burden of proof to establish that she lost time from work due to her accepted employment injury.

Dr. Blakney completed work capacity evaluations and diagnosed a head injury. He indicated that appellant could return to work eight hours a day on September 19, 2011. The Board finds that the reports from Dr. Blakney are sufficient to establish that she was disabled following her injury on an intermittent basis from August 23 to September 19, 2011. Appellant did not submit any medical evidence to establish that she lost time from work due to the August 22, 2011 injury on or after September 19, 2011. There is no contemporaneous medical evidence to support her claim to continuation of pay from September 19 through October 6, 2011. Dr. Blakney released her to full restricted duty as of September 19, 2011.

Dr. Blakney completed a note on June 17, 2013 and noted that appellant sustained an on-the-job injury on August 22, 2011 resulting in neck pain and headaches. He noted that she also had underlying cervical disc disease, which was not a problem until her employment injury. Dr. Blakney stated, "I feel that [appellant's] complaints and inability to work were possibly caused by a combination of the on-the-job injury and her underlying disc disease which kept her from working from August 22 through October 6, 2011." This report is not contemporaneous to appellant's claimed period of disability. Dr. Blakney did explain why he originally advised that she could return to work on September 19, 2011. Moreover, his opinion is speculative. Due to these discrepancies, appellant has not established any additional period of disability for which continuation of pay is warranted.

LEGAL PRECEDENT -- ISSUE 2

Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurts too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁹ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁰

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹¹ Rationalized medical evidence is medical

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹² Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹³

ANALYSIS -- ISSUE 2

Appellant filed additional claims for compensation after October 6, 2011. She claimed intermittent periods of total disability due to her August 22, 2011 employment injury. The Board finds that appellant failed to submit detailed medical opinion supporting intermittent periods of disability due to her accepted head contusion or neck sprain.

Dr. Blakney completed a work restriction evaluation on January 17, 2013. He indicated that appellant experienced a period of disability, which ended on December 21, 2011 due to her neck condition. Dr. Blakney did not specify when the period of disability began or explain how her neck sprain rendered her totally disabled four months after the injury. The Board finds that this report lacks the physical findings and medical reasoning necessary to meet appellant's burden of proof in establishing intermittent disability on or after September 19, 2011 due to her accepted employment injuries.

Dr. Swaminathan's December 5, 2011 report did not address any period of disability. He did not attribute appellant's current symptoms to her accepted employment injury. This report does not provide medical support to establish her claim for periods of disability after September 19, 2011 due to her accepted employment injury.

Appellant also submitted notes from physical therapists and nurse practitioners. These professionals are not defined as physicians under FECA and they are not competent to render a medical opinion.¹⁴ As the reports are not medical evidence, the reports cannot establish a period of disability due to appellant's accepted employment injuries.

The Board finds that appellant has no medical evidence to establish periods of disability after September 19, 2011 due to her accepted employment injury.

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.

¹² *Leslie C. Moore*, 52 ECAB 132 (2000).

¹³ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁴ *G.G.*, 58 ECAB 389 (2007); 5 U.S.C. § 8101(2).

CONCLUSION

The Board finds that the medical evidence supports that appellant was disabled due to her employment injury from August 22 to September 19, 2011. The Board further finds that the record does not contain in the necessary medical opinion evidence to establish any other periods of disability due to appellant's accepted employment injuries of neck sprain and head, face and scalp contusion.

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: April 10, 2014
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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