

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

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C.M., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Nashville, TN, Employer

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**Docket No. 14-290  
Issued: April 15, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 22, 2013 appellant filed a timely appeal from a July 30, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she was disabled from December 5, 2011 to May 20, 2013.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Appellant requested oral argument. In a December 26, 2013 letter, the Clerk of the Board advised her to confirm a continuing desire for oral argument in Washington, DC. No written response was received. The Board, in its discretion, will decide the appeal on the record.

## **FACTUAL HISTORY**

Appellant, a 43-year-old processing clerk, filed a claim for benefits on July 18, 2011, alleging injury to her head and right thumb when a heavy metal door closed on her. OWCP accepted the claim for right thumb sprain; concussive syndrome, without loss of consciousness; nose contusion and headache.

Appellant initially sought treatment from Dr. John C. Witt, a Board-certified neurologist. In a report dated August 4, 2011, Dr. Witt related that she had been struck on the head with a metal gate on July 18, 2011. Appellant did not lose consciousness. A computerized tomography (CT) scan of the head was normal. Appellant had a headache but no migraine symptoms. Dr. Witt noted that appellant was to return to work that night and would return to the clinic in 10 weeks.

In a report dated January 9, 2012, Dr. Michael Edgeworth, a specialist in neurology, stated that appellant was experiencing postconcussion headaches, blurred vision and dizziness. He began treating her in September 2011 for headaches which began following a July 18, 2011 injury when she was struck by a metal gate. Dr. Edgeworth had appellant undergo a magnetic resonance imaging (MRI) scan, the results of which were reported as normal. Appellant returned to work but began to experience a worsening of her headaches shortly thereafter. Dr. Edgeworth noted no new neurological deficits at the time of his examination.

Appellant submitted CA-7 claim forms requesting compensation for wage loss from July 18, 2011 to May 20, 2013.

By letter to appellant dated June 5, 2013, OWCP requested additional factual and medical evidence in support of her claim.

In a March 8, 2012 report, Dr. Edgeworth reviewed the history of injury and noted that appellant still experienced chronic headaches. He prescribed medication which was helping her as it produced a decrease in the severity and frequency of her headaches and she had returned to part-time work. On July 2, 2012 Dr. Edgeworth reiterated his findings. He noted that appellant was pleased with her improvement. There were no changes in her medication.

In a report dated January 21, 2013, Dr. Witt related that since appellant was seen in August 2011 she complained of unremitting severe daily headaches and neck pain that prevented her from working. On physical examination appellant had no acute distress or discomfort. Dr. Witt assessed chronic daily headache with migrainous and analgesic rebound features. On February 25, 2013 he related that appellant's headaches had significantly improved, but that she still had neck pain which she felt prevented her from working. On March 25, 2013 appellant related that her neck pain was improved, but that physical therapy she received for the neck aggravated her headaches. She also submitted a physical therapy report.

By decision dated July 30, 2013, OWCP denied appellant's claim for wage loss for intermittent dates from December 5, 2011 to May 20, 2013.

## LEGAL PRECEDENT

It is the employee's burden of proof to establish disability during the period of time for which wage-loss compensation is claimed. The term "disability" is defined by implementing regulations as "the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total."<sup>3</sup> The Board has long held that whether a particular injury causes an employee disability for employment is a medical question which must be resolved by probative medical evidence.

## ANALYSIS

OWCP accepted the conditions of right thumb sprain; concussive syndrome, without loss of consciousness; nose contusion and headache. Dr. Edgeworth stated in a January 9, 2012 report that he began treating appellant in September 2011 for headaches following the July 18, 2011 work injury. Appellant experienced headaches, blurred vision, dizziness and postconcussion syndrome. An MRI scan of her head showed normal results. On March 8, 2012 Dr. Edgeworth noted that he had prescribed medication which produced a decrease in the severity and frequency of appellant's headaches and she returned to part-time work. On July 2, 2012 Dr. Edgeworth reiterated his findings. He advised that appellant's condition continued to improve.

Dr. Edgeworth failed to provide an opinion addressing specifically whether appellant was disabled for work due to the accepted conditions during the period December 5, 2011 through May 20, 2013.<sup>4</sup> While he documented that she experienced headaches he failed to discuss whether she became disabled on intermittent duties. Dr. Edgeworth did not provide any work restrictions or indicate that appellant was unable to perform the duties of her job as a clerk.

On January 21, 2013 Dr. Witt stated that appellant was having daily, severe headaches and neck pain which prevented her from working. He discussed her medication that was initially effective in reducing the severity of her headaches. Dr. Witt advised that an August 2011 CT scan was negative and showed no abnormal or acute findings. He concluded that appellant had migraine headaches, but noted that she was in no acute distress or discomfort. Dr. Witt did not address any specific dates of disability due to her headaches or other residuals. He stated in his March 25, 2013 report that appellant had recently been prescribed medication which had substantially reduced the frequency and severity of her headaches. Dr. Witt's reports, however, did not provide a medical opinion on whether she became totally disabled from work due to her accepted conditions. While he noted that appellant was not working, he did not provide medical opinion to support dates of intermittent disability. Dr. Witt's opinion is of further diminished probative value because he did not treat her between August 2011 through January 2013. The reports from him failed to establish that appellant was disabled for work during this period.

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<sup>3</sup> 20 C.F.R. § 10.5(f).

<sup>4</sup> *William C. Thomas*, 45 ECAB 591 (1994).

As noted, to establish entitlement to compensation, an employee must establish through competent medical evidence that disability from work resulted from the employment injury.<sup>5</sup> 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 their disability and entitlement to compensation.<sup>6</sup> Appellant has the burden to establish disability for work based on rationalized medical opinion evidence. There is no such evidence in this case. Drs. Edgeworth and Witt did not offer sufficient opinion or supporting medical rationale regarding specific dates that appellant was disabled for work.

OWCP also received physical therapy notes. However, records from a physical therapist do not constitute competent medical opinion. A physical therapist is not a “physician” as defined under FECA.<sup>7</sup> Thus, the physical therapy records are of no probative medical value.

The Board notes that appellant would be entitled to compensation for a reasonable amount of time, generally four hours, missed from work due to medical treatment or testing for her employment-related condition.<sup>8</sup> While appellant has not specifically claimed that she sustained wage loss due to medical treatment, a supplemental rolls payment report dated July 30, 2013 substantiates that OWCP determined that she was entitled to wage loss for medical appointments of four hours each on seven dates from January 9, 2012 until March 25, 2013. Appellant has not established that she is entitled to additional wage-loss benefits.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision.<sup>9</sup>

### **CONCLUSION**

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for wage loss from December 5, 2011 to May 20, 2013.

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<sup>5</sup> *Donald E. Ewals*, 51 ECAB 428 (2000).

<sup>6</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>7</sup> *See David P. Sawchuk*, 57 ECAB 316 (2006).

<sup>8</sup> *See G.S.*, Docket No. 11-949 (issued November 14, 2011).

<sup>9</sup> *See* 5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605, 10.607.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2014  
Washington, DC

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

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

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