

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

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<b>L.W., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 14-870</b>
	)	<b>Issued: August 18, 2014</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>TENNESSEE VALLEY HEALTH CARE</b>	)	
<b>SERVICE, Nashville, TN, Employer</b>	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA HOWARD FITZGERALD, Acting Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 26, 2014 appellant filed an appeal of a September 6, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying a claimed period of disability.<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

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<sup>1</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from September 6, 2013, the date of OWCP's decision, was March 5, 2014. Since using March 7, 2014, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is February 26, 2014, which renders the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant established total disability from January 24 to September 30, 2011 due to her accepted conditions of closed dislocations of cervical and lumbar discs.

On appeal, appellant asserts that the totality of the medical and factual evidence substantiates the claimed period of disability. She also contends that the employing establishment discouraged her from filing a compensation claim, deliberately misinformed her of her rights in the compensation process, concealed critical information and terminated her employment without just cause.

## **FACTUAL HISTORY**

OWCP accepted that on December 6, 2010 appellant, then a 52-year-old social worker, sustained a closed dislocation of a cervical disc and closed dislocation of a lumbar disc when the government vehicle she was driving to an official visit was struck by another vehicle on the rear passenger door, causing her car to spin off the road into a ditch.<sup>3</sup> Appellant sought emergency room treatment that day but worked on December 7, 2010 at the direction of her supervisor.<sup>4</sup> She stopped work on December 8, 2010 and returned to light duty on January 11, 2011. Appellant again stopped work in January 2011 and did not return. The employing establishment terminated appellant in 2011 for alleged careless use of a government vehicle.

Dr. Henderson, a chiropractor, followed appellant beginning on December 13, 2010. He obtained December 13, 2010 x-rays which he opined showed spinal subluxations at C3-4 and from L2 to L5. Dr. Henderson found appellant totally disabled for work through February 25, 2011 due to cervical and lumbar pain. He provided manual manipulation on January 24, 25, 27 and 31, February 1, 3, 7, 8, 11 and 15, 2011. Appellant also submitted physical therapy notes dated February 17 and 21, 2011.<sup>5</sup>

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<sup>3</sup> OWCP initially denied the claim in a February 4, 2011 decision on the grounds that the medical evidence did not establish causal relationship. After a hearing request, OWCP issued an April 25, 2011 decision setting aside the February 4, 2011 decision and remanding the case for additional development regarding the x-rays of Dr. Donald T. Henderson, a chiropractor, and the presence of spinal subluxations. After additional development, OWCP issued a June 8, 2011 decision denying the claim, finding that Dr. Henderson did not qualify as a physician under FECA as there was insufficient evidence that he diagnosed spinal subluxations by x-ray. Following a hearing, OWCP issued a January 12, 2012 decision setting aside the June 8, 2011 decision and remanding the case for additional development regarding the probative quality of Dr. Henderson's x-rays and interpretation. Dr. Henderson qualified as a physician under section 8101(2) of FECA for the purposes of this case. Section 8101(2) of FECA provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). Thereafter, OWCP accepted "closed dislocation cervical vertebra" and "closed dislocation lumbar vertebra," based on Dr. Henderson's opinion.

<sup>4</sup> In December 6, 2010 reports, Dr. Eduardo C. Cabigao, an attending physician Board-certified in emergency medicine, diagnosed cervical, thoracic and lumbar muscle strains due to the car accident that day. He obtained lumbar x-rays showing normal disc height, alignment and intervertebral disc spaces.

<sup>5</sup> November 2011 imaging studies showed degenerative changes throughout the spine with disc bulges at L4-5 and L5-S1.

Appellant provided physical therapy notes dated from March to June 2012 and reports from May 10 to July 11, 2012 from Dr. Niles Roberts, an attending Board-certified physiatrist, who diagnosed chronic neck pain.

On June 19 and December 21, 2012, appellant filed claims for compensation (Form CA-7) for the period January 24 to September 30, 2011. In a December 31, 2012 letter, OWCP advised appellant of the additional evidence needed to establish her claim, including a report from her attending physician explaining how and why the accepted dislocated cervical and lumbar discs would disable her for work during the claimed period. Appellant was afforded 30 days to submit such evidence.

Appellant submitted pain clinic notes dated December 2011 to February 2012, reports of December 2011 and January 2012 epidural steroid injections, May 2012 notes from a chiropractor who did not obtain x-rays, physical therapy notes dated from November 2012 to August 2013 and July 8, 2013 imaging studies. She also provided a February 6, 2012 report from a nurse practitioner noting appellant's condition on August 9, 2011.

Dr. Eric S. Smith, an attending physician Board-certified in occupational medicine, submitted reports from November 6, 2012 to January 23, 2013 discussing pain management. In a January 24, 2013 report, he stated that, although he came to the claim "relatively late," he felt that appellant had a "compelling and logical" argument regarding the employing establishment's handling of her claim and blaming her for an automobile accident she did not cause.

In a September 6, 2013 decision, OWCP denied appellant's claims for total disability for the period January 24 to September 30, 2011 as the medical evidence was insufficient to establish an injury-related disability for that period.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA has the burden to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence.<sup>6</sup>

To establish a causal relationship between a claimed period of disability and the accepted employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.<sup>7</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>8</sup> Rationalized medical evidence is 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

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<sup>6</sup> *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

<sup>7</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>8</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup>

### ANALYSIS

OWCP accepted that appellant sustained a closed dislocation of a cervical disc and closed dislocation of a lumbar disc. Following a brief return to work in January 2011, she was terminated from the employing establishment. Appellant claimed compensation for total disability from January 24 to September 30, 2011. OWCP denied the claim, by decision dated September 6, 2013, finding that the medical evidence submitted was insufficient to establish total disability for the claimed period.

Appellant provided reports from Dr. Henderson, an attending chiropractor, who found her totally disabled for work from December 13, 2010 to February 25, 2011 due to cervical and lumbar pain. However, Dr. Henderson did not explain his medical reasons for finding that appellant was totally disabled for work beginning January 24, 2011 or why treatment on the specified dates was necessitated by the accepted closed cervical and lumbar disc dislocations. Dr. Henderson's opinion is of insufficient probative value to establish total disability for work from January 24 to February 25, 2011.<sup>10</sup>

Appellant also provided a February 6, 2012 report from a nurse practitioner discussing her condition on August 9, 2011, within the claimed period of disability. As nurse practitioners and physical therapists are not considered physicians under FECA, their reports are of no probative medical value.<sup>11</sup>

Appellant also submitted reports that address her condition on and after December 2011, beyond the claimed period of disability. These include reports from Dr. Roberts, an attending Board-certified physiatrist who treated appellant beginning May 10, 2012, reports from Dr. Smith, an attending physician Board-certified in occupational medicine who followed appellant beginning on November 6, 2012, physical therapy and chiropractic notes from March 2012 to August 2013 and July 2013 imaging studies. As these documents do not address the claimed period of disability, they are irrelevant to the issue before the Board.<sup>12</sup>

OWCP advised appellant by December 31, 2012 letter of the additional evidence needed to establish her claim, including a medical report from her attending physician explaining how and why the accepted injuries would disable her for work for the claimed period. As appellant did not submit such evidence, OWCP's September 6, 2013 decision denying the claim was proper. The medical evidence did not establish a work-related disability for the claimed period.<sup>13</sup>

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<sup>9</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>10</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>11</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005); *James Robinson, Jr.*, 53 ECAB 417 (2002). See 5 U.S.C. § 8101(2).

<sup>12</sup> In a January 24, 2013 report, Dr. Smith generally indicated that appellant had an employment-related condition but he did not specifically address whether the work injury caused disability during the claimed period.

<sup>13</sup> *J.F.*, 58 ECAB 124 (2006); *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); see also *Terry R. Hedman*, 38 ECAB 222 (1986).

On appeal, appellant asserts that the totality of the medical and factual evidence substantiates the claimed period of disability. As explained above, appellant submitted numerous medical reports but these documents did not explain how and why the accepted injuries would disable her for work for the claimed period. Appellant also contends that the employing establishment discouraged her from filing a compensation claim, deliberately misinformed her of her rights in the compensation claim process, concealed critical information and terminated her employment without just cause. The Board notes that Dr. Smith remarked in his January 24, 2013 report that appellant had a “compelling and logical” legal argument regarding the employing establishment’s alleged misconduct. However, these issues are not within the Board’s jurisdiction on the present appeal and are not relevant to the medical issue of causal connection.

**CONCLUSION**

The Board finds that appellant has not established total disability from January 24 to September 30, 2011 due to accepted condition of closed dislocations of a cervical and lumbar disc.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers’ Compensation Programs dated September 6, 2013 is affirmed.

Issued: August 18, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees’ Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees’ Compensation Appeals Board

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