



## **FACTUAL HISTORY**

On December 25, 2012 appellant, then a 24-year-old rural carrier associate, filed a traumatic injury claim alleging that she sustained a back sprain, whiplash, a neck sprain, and a bruised arm as a result of an August 25, 2012 employment-related motor vehicle accident. On April 3, 2014 OWCP accepted her claim for closed dislocation fourth cervical vertebra (subluxation of C4) and concussion without loss of consciousness (traumatic brain injury). On April 7, 2014 appellant filed a claim for compensation commencing November 3, 2012.

In a February 1, 2013 treatment plan, Dr. Michael T. Owsley, a chiropractor, noted that appellant was now suffering from a new and distinct complaint attributable to the August 2012 automobile accident, specifically chronic tenderness and myospasm of the paraspinal musculature that she reports was not present prior to the automobile accident. He recommended a course of 10 visits for conservative chiropractic care. In February 13 and 28, 2013 forms, Dr. Owsley diagnosed dizziness and cervical injury due to motor vehicle accident and checked a box indicating that appellant was totally incapacitated at this time. In a February 19, 2014 report, he argued that an OWCP claims examiner was not qualified under Kentucky law to review his report. Dr. Owsley argued that appellant was diagnosed with subluxation of the spine as defined under chiropractic standards, that the claims examiner was not a chiropractor and therefore cannot review his records under Kentucky law, and that the treatment appellant received by him was 100 percent attributable to the accident in question and was consistent with government guidelines.

In a May 9, 2013 report, Dr. Sarah Wagers, a Board-certified physiatrist with a Board-certified subspecialty in brain injury medicine, assessed appellant with cervicgia, fibromyalgia, vertigo, and postconcussion syndrome. In a December 3, 2013 report, she noted that she had referred appellant to speech therapy and for a neuropsychological evaluation. Dr. Wagers reviewed the tests and opined that appellant's cognitive abilities were at baseline if processing speed and visual scanning results are taken into account. She noted that appellant was not able to drive except in local, low pressure environments. Dr. Wagers also indicated that appellant needed to complete speech therapy. In a March 13, 2014 attending physician's report, she noted that appellant was still undergoing care at Frazier Rehabilitation, and that her cognitive thinking and processing skills are still below normal.

In a March 13, 2014 attending physician's report, Dr. Wagers diagnosed appellant with postconcussive syndrome which she believed was sustained during her employment. She listed the period of total disability as commencing May 9, 2013. In a July 22, 2014 note, Dr. Wagers indicated that appellant was still off work and under her care. In a September 12, 2014 report, she indicated that appellant was injured in a motor vehicle accident on August 25, 2012, and sustained a mild "TBIE [traumatic brain injury]" postconcussion syndrome which has affected her personality, mood, and abilities. Dr. Wagers also noted that appellant suffered from headaches, cervical strain, and pain. She noted that, at this time, appellant was not ready to return to work, but that hopefully, if she can get her pain under control, that will help her mood and thinking.

Appellant also submitted progress notes by Dr. John A. Godfrey, a Board-certified internist, indicating that she was under his care from October 22, 2012 through July 22, 2014. In

a January 28, 2013 note, Dr. Godfrey indicated that she was under his care for blurred vision, disorientation, and confusion. In a May 9, 2013 note, he assessed appellant with hypothyroidism, vitamin D deficiency, fibromyalgia/fibromyositis, and sleep apnea. In a September 11, 2014 medical report, Dr. Godfrey noted that she was still incapacitated because of her traumatic brain injury and postconcussion syndrome. He noted that appellant's neck pain and probably her migraine headaches were related to the August 25, 2012 employment injury. Dr. Godfrey opined that appellant's earliest possible return to work date is December 15, 2014.

Appellant also submitted notes from Hardin Memorial Hospital. In an August 26, 2012 note, a nurse indicated that appellant was off work from August 26 through 27, 2012. In a September 28, 2012 note, a representative indicated that appellant was suffering from shingles and possible strep throat. On January 22, 2013 a hospital representative stated that appellant was off work "tomorrow."

In a decision dated September 29, 2014, OWCP denied appellant's claim for compensation for the period November 3, 2012 through September 18, 2014, as she failed to provide medical reports consisting of sufficient medical rationale to establish her alleged period of disability.

### **LEGAL PRECEDENT**

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.<sup>2</sup> The medical evidence required to establish a period of employment-related disability is rationalized medical evidence.<sup>3</sup> Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.<sup>4</sup> The Board, however, 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.<sup>5</sup> To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>6</sup>

### **ANALYSIS**

OWCP accepted appellant's claim for closed dislocation fourth cervical vertebra (subluxation of C4) and concussion without loss of consciousness (traumatic brain injury) causally related to her employment-related automobile accident of August 25, 2012. Appellant filed a claim for wage-loss compensation commencing November 3, 2012.

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<sup>2</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001); see also *T.A.*, Docket No. 14-1334 (issued October 27, 2014).

<sup>3</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>4</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>5</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>6</sup> See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, *supra* note 2.

The Board finds that the reports of Dr. Owsley, a chiropractor, cannot be considered medical evidence under FECA. Section 8101(2) of FECA<sup>7</sup> 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 and subject to regulations by the Secretary.<sup>8</sup> Although Dr. Owsley provided a diagnosis of subluxation, and appellant's claim has been accepted for subluxation, there is no x-ray evidence of subluxation. Without a diagnosis of spinal subluxation from an x-ray, a chiropractor is not a physician under FECA and his opinion does not constitute competent medical evidence.<sup>9</sup> As such, Dr. Owsley's reports are insufficient to establish a work-related diagnosis from a qualified physician under FECA.

The Board further finds that documents signed by a nurse are not considered probative medical evidence, as a nurse is not a physician under FECA.<sup>10</sup> As such, nurses' notes from Hardin Memorial Hospital are also insufficient to establish a work-related diagnosis as required under FECA.

Appellant's employment-related motor vehicle accident occurred on August 26, 2012. Dr. Wagers has been treating appellant since May 19, 2013 for cervicgia, fibromyalgia, vertigo, and postconcussion syndrome. On December 3, 2013 she noted that appellant was unable to drive except in low pressure environments and also indicated that she needed to complete speech therapy. In a March 13, 2014 note, Dr. Wagers diagnosed appellant with postconcussive syndrome which she believed appellant sustained during her employment, and listed her period of disability as commencing May 9, 2013. In a July 22, 2014 note, she indicated that appellant was still off work and under her care. In a September 12, 2014 report, Dr. Wagers noted that appellant suffered from headaches and cervical strain and pain and opined that appellant was not yet ready to return to work. Her reports are insufficient, however, to establish a causal relation as it is not clear from these reports that appellant is totally disabled due to the accepted diagnosed conditions. Appellant did not see Dr. Wagers until May 9, 2013, over nine months after her August 25, 2012 employment injury. Dr. Wagers did not discuss why she believed that appellant's accident was the cause of her disability as opposed to other factors. She also discussed other nonaccepted diagnoses, and it is not clear if appellant's disability is due to the accepted accident or other causes. Likewise, Dr. Godfrey did not see appellant until two months after her motor vehicle accident. He did not explain in sufficient detail why he believed that appellant was incapacitated due to her traumatic brain injury and postconcussion syndrome.

Accordingly, the Board affirms OWCP's decision dated September 29, 2014.

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<sup>7</sup> 5 U.S.C. § 8102(2).

<sup>8</sup> *See* 20 C.F.R. § 10.311.

<sup>9</sup> *See Jay K. Tomokiyo*, 51 ECAB 361, 367-68 (2000).

<sup>10</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).

**CONCLUSION**

The Board finds that OWCP properly denied appellant's claim for compensation for the period November 3, 2012 through September 18, 2014.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 29, 2014 is affirmed.

Issued: April 17, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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