

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

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**J.K., Appellant**

**and**

**DEPARTMENT OF HEALTH & HUMAN  
SERVICES, CENTERS FOR MEDICARE &  
MEDICAID SERVICES, Rockville, MD,  
Employer**

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**Docket No. 15-0926  
Issued: December 7, 2015**

*Appearances:*  
*Paul Kalker, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 23, 2015 appellant, through counsel, filed a timely appeal from October 7, 2014 and February 24, 2015 merit decisions 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.

**ISSUE**

The issue is whether appellant met his burden of proof to establish disability between February 24 and August 11, 2014 due to his January 6, 2014 work injury.

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

## **FACTUAL HISTORY**

On January 7, 2014 appellant, then a 54-year-old health insurance specialist, filed a traumatic injury claim alleging that he sustained injury to his head, neck, shoulders, back, hips, and legs due to a fall at work on January 6, 2014. He stopped work on January 6, 2014 and received continuation of pay through mid-February 2014. OWCP accepted that appellant sustained contusions of his face, scalp, and neck (except the eyes), exacerbation of cervical degenerative disc disease, exacerbation of lumbar degenerative disc disease, and concussion without loss of consciousness. Appellant filed a claim (Form CA-7) alleging disability for the period February 24 to August 11, 2014 due to his January 6, 2014 work injury.

In a March 17, 2014 report, Dr. Howard R. Sussman, an attending Board-certified family practitioner, indicated that appellant was first evaluated on January 7, 2014 due to his January 6, 2014 fall at work. He reported that appellant had back pain likely from an aggravation of underlying lumbosacral degeneration and that he had sustained sprains/strains of his cervical and lumbosacral spine, a right sacroiliac sprain, and a head contusion with possible concussion/mild traumatic brain injury. Appellant was reevaluated on January 14, 2014 and given the alteration in the neurological function of his bowels and bladder, he was immediately referred to University Hospital for further evaluation and placed on medical leave from work. Dr. Sussman indicated that appellant was confined to University Hospital until January 22, 2014 for paresthesias, neck and back pain, exacerbation of spinal stenosis, and aggravation of his degenerative disc disease. Appellant returned to Dr. Sussman on February 11, 2014 for paresthesias and head, neck, and back pain from the exacerbation of his degenerative disc disease. Dr. Sussman noted that appellant remained 100 percent temporarily disabled and was advised not to work until medically cleared. He indicated that appellant consulted a neurosurgeon who found aggravation of herniated cervical and lumbar discs, exacerbation of spinal stenosis with possible neuropathy, and possible demyelinating disease of the spine.<sup>2</sup> Dr. Sussman saw appellant on February 27, 2014 for “continued leg and back pain attributed to the aggravation of his degenerative disease by the [January 6, 2014] work injury.” Appellant was advised to remain out of work until medically cleared. Dr. Sussman reported that on March 6, 2014 appellant sought medical attention with another physician<sup>3</sup> for his brain injury and aggravated lumbosacral degeneration and noted, “[Appellant’s] 100 percent temporary disability was continued and he was advised not to work until medically approved.”

In a June 9, 2014 report, Dr. Andrea Coladner, an attending osteopath and Board-certified physical medicine and rehabilitation physician, note a history of a 1932 nonwork-related motorcycle accident which caused extended loss of consciousness for two and a half months, left arm amputation, fractured leg and pelvis and post-traumatic seizures. She described appellant’s January 6, 2014 work injury and noted that he first came to her in March 2014 reporting various symptoms including neck, mid-to-low back pain, and bilateral leg numbness. Dr. Coladner

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<sup>2</sup> This treatment is detailed in a February 14, 2014 report of Dr. Magdy S. Shady, an attending Board-certified neurosurgeon. Dr. Shady diagnosed herniated discs at C4-5 and C5-6, moderate L4-5 stenosis, possible diabetic neuropathy, and rule out demyelinating disease of the cervical spinal cord, but he did not indicate that any of these conditions were related to the January 6, 2014 work injury.

<sup>3</sup> The record does not contain a report regarding a March 6, 2014 medical visit.

diagnosed status post mild traumatic brain injury and postconcussion syndrome with residual physical, cognitive, and emotional changes,<sup>4</sup> dysthymic disorder, pain and headache disorders associated with medical and psychological factors, and anxiety disorder. She noted:

“[Appellant] requires pain medication around the clock and he is therefore currently physically unable to drive, cannot sit, stand, or walk for any reasonable amount of time. He is intellectually unable to perform his very complicated job, which requires integration of health care codes and laws with assessments of health care facilities. Secondary to the [January 6, 2014] date of injury, [appellant] is unable to return to work.”<sup>5</sup>

In an October 7, 2014 decision, OWCP denied appellant’s claim because he failed to submit sufficient medical evidence to establish disability between February 24 and August 11, 2014 due to his January 6, 2014 work injury.

In a November 21, 2014 report, Dr. Edward J. Barnoski, an attending clinical psychologist, noted that the medical records showed a history of a work-related accident on January 6, 2014 and that persistent cognitive, physical, and emotional limitations had been reported since that time.<sup>6</sup> He indicated that it appeared that appellant was experiencing postconcussion syndrome which was further compounded by his previous traumatic brain injury with residual deficits in memory, processing speed, executive functioning, and language (fluency and naming).

Appellant also submitted reports dated beginning in late 2014, in which Dr. Coladner diagnosed mild traumatic brain injury and various neck and back conditions and indicated that he was totally disabled.

In a February 24, 2015 decision, OWCP affirmed its October 7, 2014 decision denying appellant’s claim for work-related disability between February 24 and August 11, 2014. It again found that he had not submitted evidence establishing such disability.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally

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<sup>4</sup> Dr. Coladner noted that appellant had a prior history of severe traumatic brain injury due to a motorcycle accident in 1982. The accident necessitated the amputation of appellant’s left arm.

<sup>5</sup> The record also contains a number of reports, dated beginning in March 2014, in which Dr. Coladner diagnosed mild traumatic brain injury and various neck and back conditions and indicated that appellant was totally disabled.

<sup>6</sup> Dr. Barnoski examined appellant on April 15 and November 21, 2014. The report was also signed by Nicole Keenan, a certified school psychologist.

related to the employment injury.<sup>7</sup> The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 a detailed medical discussion explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup>

### ANALYSIS

OWCP accepted that on January 6, 2014 appellant sustained contusions of his face, scalp, and neck (except the eyes), exacerbation of cervical degenerative disc disease, exacerbation of lumbar degenerative disc disease, and concussion without loss of consciousness. Appellant filed a claim (Form CA-7) alleging that he had disability for the period February 24 to August 11, 2014 due to his January 6, 2014 work injury. OWCP denied his disability claim on the grounds that he did not submit sufficient medical evidence in support thereof.

The Board finds that appellant did not submit sufficient medical evidence to establish that he had disability between February 24 and August 11, 2014 due to his January 6, 2014 work injury.

In the March 17, 2014 report, Dr. Sussman reported that he saw appellant on February 11, 2014 for paresthesias and head, neck, and back pain from the exacerbation of his degenerative disc disease and indicated that he remained 100 percent temporarily disabled. He saw appellant on February 27, 2014 for “continued leg and back pain attributed to the aggravation of his degenerative disease by the [January 6, 2014] work injury.” Appellant was advised to remain out of work until medically cleared. Dr. Sussman reported that on March 6, 2014 appellant sought medical attention for his brain injury and aggravated lumbosacral degeneration and noted, “[Appellant’s] 100 percent temporary disability was continued and he was advised not to work until medically approved.” The Board finds that this report does not establish appellant’s claim for work-related disability between February 24 and August 11, 2014 because Dr. Sussman did not provide a rationalized opinion supporting his contention that he had work-related disability for this period. Although Dr. Sussman indicated that appellant’s continuing medical problems after February 24, 2014 were attributed to his January 6, 2014 work injury, he did not provide his own opinion on this matter.<sup>9</sup> The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.<sup>10</sup>

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<sup>7</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>8</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>9</sup> Dr. Sussman referenced a February 2014 evaluation of Dr. Shady, an attending Board-certified neurosurgeon. Although Dr. Shady diagnosed herniated discs at C4-5 and C5-6, moderate L4-5 stenosis, possible diabetic neuropathy, and rule out demyelinating disease of the cervical spinal cord, he did not indicate that any of these conditions were related to the January 6, 2014 work injury.

<sup>10</sup> *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

In his June 9, 2014 report, Dr. Coladner's referenced appellant's January 6, 2014 work injury and noted that he had a prior history of severe traumatic brain injury due to a motorcycle accident in 1982. She diagnosed status post mild traumatic brain injury and postconcussion syndrome with residual physical, cognitive, and emotional changes, dysthymic disorder, pain and headache disorders associated with medical and psychological factors, and anxiety disorder. Dr. Coladner indicated that appellant was intellectually unable to perform his very complicated job, which required integration of health care codes and laws with assessments of health care facilities. She noted, "Secondary to the [January 6, 2014] date of injury, he is unable to return to work." The Board finds that this report does not establish appellant's claim for work-related disability on or after February 24, 2014 because Dr. Coladner did not explain her conclusion that the January 6, 2014 work injury contributed to his disability on or after February 24, 2014 or distinguish the work incident from the preexisting brain injury. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>11</sup> Dr. Coladner diagnosed a number of medical conditions which have not been accepted as related to the January 6, 2014 work injury and she did not explain the role these conditions might have played in appellant's continuing disability. The record also contains a number of other reports, dated beginning in March 2014, in which she diagnosed mild traumatic brain injury and various neck and back conditions and indicated that appellant was totally disabled. However, these reports also do not contain a rationalized medical opinion that appellant had disability on or after February 24, 2014 due to his January 6, 2014 work injury.

In the November 21, 2014 report, Dr. Barnoski noted that persistent cognitive, physical, and emotional limitations had been reported since appellant sustained a work-related accident on January 6, 2014. He believed appellant was experiencing postconcussion syndrome which was further compounded by his previous traumatic brain injury with residual deficits in memory, processing speed, executive functioning, and language (fluency and naming). Although Dr. Barnoski suggested that appellant might have some continuing cognitive deficits related to the January 6, 2014 work injury, he did not provide a clear opinion regarding this matter. He did not specify whether the January 6, 2014 work injury contributed to the observed deficits or whether they were due to the preexisting brain injury. Moreover, Dr. Barnoski did not provide any opinion regarding whether the January 6, 2014 work injury caused or contributed to appellant's claimed disability from February 24 to August 11, 2014. Therefore, his report is of limited probative value on the relevant issue of this case.<sup>12</sup>

On appeal, counsel argues that appellant had work-related disability beginning February 24, 2014 because he sustained permanent aggravation of cervical herniated discs, permanent aggravation of spinal stenosis, neuropathy, and demyelinating disease of the spine at work on January 6, 2014. However, none of these diagnoses has been accepted as due to the

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<sup>11</sup> *C.M.*, Docket No. 14-88 (issued April 18, 2014).

<sup>12</sup> *See supra* note 10.

January 6, 2014 work injury and the medical record does not otherwise establish that appellant has such work-related conditions.<sup>13</sup>

The Board finds that appellant has failed to establish disability between February 24 and August 11, 2014 due to his January 6, 2014 work 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.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish disability between February 24 and August 11, 2014 due to his January 6, 2014 work injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 24, 2015 and October 7, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.<sup>14</sup>

Issued: December 7, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>13</sup> Counsel also asserted that appellant sustained a more serious head injury on January 6, 2014 than a concussion without loss of consciousness, but he did not adequately explain how the medical evidence of record supported this assertion.

<sup>14</sup> James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.