

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

J.D., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Las Vegas, NV, Employer)

Docket No. 16-1491
Issued: November 7, 2016

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 13, 2016 appellant filed a timely appeal from an April 12, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has established employment-related disability, commencing December 30, 2015 causally related to her November 15, 2015 injury.

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal appellant submitted additional evidence. The Board can review only evidence that was before OWCP at the time of the final decision on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On November 20, 2015 appellant, then a 27-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries in the performance of duty on November 15, 2015. She reported that she was driving an employing establishment vehicle while delivering mail, lost consciousness, and hit a parked car. Appellant indicated that she was taken to an emergency room, and her injuries included a swollen jaw and pain in the knees. The record indicates that she stopped work on November 15, 2015.

Appellant received hospital treatment on November 15, 2015. Dr. Randall Miller, Board-certified in pediatric emergency medicine, indicated that appellant was seen following a syncopal episode while driving an employing establishment vehicle, resulting in her vehicle hitting a parked vehicle. He noted no preceding symptoms or prior syncopal episodes. Dr. Miller provided results on examination. The diagnostic testing performed included a computerized tomography (CT) scan of the brain, reported as normal by Dr. Keir Hales, a radiologist.

In a report dated November 16, 2015, Dr. Warren Magnus, an osteopath, provided results on examination and diagnosed syncope and collapse. As to “activity status and restrictions” he wrote: appellant was released from care, with no work until follow up with primary care physician. Dr. Magnus also completed a work activity form report stating appellant was released to regular duty on November 16, 2015. In a brief note dated November 17, 2015, Dr. Andrea Dempsey, a Board-certified internist, wrote that she recommended appellant not drive until evaluated by a neurologist. She noted that appellant reported jaw swelling and was referred for a facial x-ray.³

On November 23, 2015 OWCP accepted the claim for syncope and collapse. Appellant was advised to submit a claim for compensation (Form CA-7) to claim periods for any disability.

On February 19, 2016 appellant submitted a Form CA-7 for the period December 30, 2015 to January 19, 2016. A March 1, 2016 memorandum of telephone call (Form CA-110) indicated that appellant had not returned to work, but received continuation of pay (COP) through December 30, 2015. In a separate Form CA-110 dated March 1, 2016, appellant reported that she had not returned to work as she had suffered a seizure on February 4, 2016.

With respect to medical evidence, appellant submitted a note dated December 8, 2015 from Dr. Morton Hyson, a Board-certified neurologist, indicating that appellant was totally disabled from December 8, 2015 to January 19, 2016. Dr. Hyson did not provide results on examination or any other information. In an attending physician’s report (Form CA-20) dated January 8, 2016, Dr. Hyson reported a concurrent or preexisting diagnosis of migraines, and he diagnosed migraines, cephalgia, rule out seizures. He checked a box marked “no” relating that the conditions were caused or aggravated by the employment injury.

By letter dated March 1, 2016, OWCP requested that appellant submit additional medical evidence with respect to her claimed disability from work. On March 11, 2016 appellant

³ The record contains a November 19, 2015 facial bone x-ray report from Dr. Skyler Greene, a radiologist, reporting no facial fractures.

submitted a February 27, 2016 report from Dr. Ahmed Mohamed, an internist, indicating that she was admitted to the hospital on February 26, 2016 for seizures. On April 8, 2016 appellant submitted reports of February 4, 2016 diagnostic testing, including a CT scan of the brain and cervical area, chest x-ray, liver ultrasound, and carotid duplex study, as well as a February 5, 2016 renal ultrasound. She also submitted a January 21, 2016 brain magnetic resonance imaging (MRI) scan report.

In a decision dated April 12, 2016, OWCP denied the claim for an employment-related disability from December 30, 2015 to January 19, 2016. It found that the medical evidence of record was insufficient to establish the claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden to establish 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, that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.⁵ The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.⁶ To meet this burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.⁷

ANALYSIS

In the present case, OWCP accepted that on November 15, 2015 appellant was in the performance of duty, driving an employing establishment vehicle, when she sustained a syncopal episode and was involved in a motor vehicle accident. Appellant stopped work and claimed compensation for disability commencing December 30, 2015. As noted above, it is her burden of proof to establish a period of disability.⁸

The medical evidence of record is insufficient to establish the claimed period of disability. Dr. Magnus indicated in his November 16, 2015 report that appellant should be off until follow up with a primary care physician, without further explanation. He also wrote in a

⁴ *Steven S. Saleh*, 55 ECAB 169 (2003).

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

⁶ *See Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ *C.S.*, Docket No. 08-2218 (issued August 7, 2009); *see also R.M.*, Docket No. 16-0807 (issued August 26, 2016).

⁸ *Supra* note 4.

November 16, 2015 note that she was released to full duty. Dr. Dempsey reported in a November 17, 2015 note that appellant should not drive until seen by a neurologist. She did not provide further detail other than to note jaw swelling. The neurologist, Dr. Hyson, provided a December 8, 2015 note indicating that appellant was disabled through January 19, 2016. Dr. Hyson did not provide a medical or factual history, results on examination, or any explanation as to the period of disability and its relationship to the employment injury. In a January 8, 2016 Form CA-20, he checked a box “no” with respect to causal relationship between diagnosed conditions and employment.

Dr. Mohamed did not address an employment-related disability from work in the February 27, 2016 report, noting only a diagnosis of seizures. The brain CT scan dated January 21, 2016 and the diagnostic studies dated February 4, 2016 do not address disability from the accepted syncope and collapse on November 15, 2015.

It is appellant’s burden of proof to establish that she was disabled from work during the claimed period due to her accepted conditions. The record does not contain rationalized medical opinion evidence, based on a complete factual and medical background, supporting causal relationship between the accepted November 15, 2015 syncope and collapse and a period of disability.⁹ The Board thus finds that the evidence of record is insufficient to meet appellant’s burden of proof.

On appeal, appellant argues that her neurologist advised her not to drive until he found out the cause of her syncope, and her job involved driving to deliver mail. As noted above, the neurologist, Dr. Hyson, provided a brief note on December 8, 2015 that appellant was disabled from work through January 19, 2016, without providing any results on examination, findings, or explanation.¹⁰ As explained above, the medical evidence of record is insufficient to establish disability from work during the claimed period causally related to her accepted conditions.

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 has not established employment-related disability commencing December 30, 2015 causally related to her November 15, 2015 employment injury.

⁹ *Supra* note 7.

¹⁰ The Board also notes that the possibility a future injury is not a basis for compensation. See *Gaetan F. Valenza*, 39 ECAB 1349 (1988); see also *Coralisia Sims*, 46 ECAB 963 (1995).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 12, 2016 is affirmed.

Issued: November 7, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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