



appellant met her burden of proof to establish disability for the periods January 26 through February 8, 2013 and May 4 through 31, 2013 causally related to her December 13, 2012 employment injury.

On appeal, counsel contends that appellant provided sufficient medical evidence to establish her disability as a result of her syncopal episode. He further contends that OWCP improperly focused on appellant's cervical radiculopathy condition and continuously ignored any disability related to her accepted condition.

### **FACTUAL HISTORY**

OWCP accepted that appellant, a 49-year-old distribution clerk, sustained a syncopal episode on December 13, 2012 while sorting mail in the performance of duty.

Appellant, through counsel, filed a claim for compensation (Form CA-7) for the periods January 26 through February 8, 2013 and May 4 through 31, 2013.

In a January 3, 2013 letter, OWCP requested additional medical evidence establishing appellant's disability for work during the periods claimed and afforded her 30 days to respond to its inquiries.

By decision dated May 17, 2013, OWCP denied appellant's claim for the periods of disability and also her claim that cervical radiculopathy was causally related to the December 13, 2012 employment injury.

Appellant submitted hospital records dated December 13, 2012 and a cardiac stress test dated December 14, 2012 indicating that she had suffered a traumatic brain injury in 1987 from a fall and had a known history of seizure disorder, syncope, and chest pain, but which showed no evidence of cardiac ischemia.

In reports dated April 8 through October 6, 2013, Dr. Bruce R. Rosenblum, a Board-certified neurosurgeon, diagnosed syncope and cervical radiculopathy. He noted that on December 13, 2012 appellant was sorting mail in a cramped room with no room to effectively work and began to experience neck pain into the head and pain down the left upper extremity to the second and third digits of the left hand. Appellant subsequently experienced a syncopal episode and was taken by ambulance to Jersey Shore University Medical Center where she was hospitalized from December 13 to 18, 2012. Dr. Rosenblum reported that appellant "last had a seizure in April of 1990." He opined that appellant was totally disabled for work from April 8, 2013 "until [she] saw Dr. Devinsky" to whom he had referred her for further evaluation and management of the abnormalities seen on her electroencephalogram (EEG). Dr. Rosenblum further opined that appellant was totally disabled from December 13, 2012 through April 8, 2013 due to her cervical radiculopathy condition, which he opined was caused by repetitive movements with the upper extremities required by appellant's federal duties. He noted that this was supported by findings on a magnetic resonance imaging (MRI) scan of the cervical spine which were frequently seen in patients with similar types of occupations and similar types of work performed as appellant.

On May 21, 2013 Dr. Scott R. Eisenberg, a Board-certified cardiologist, diagnosed syncope and family history of coronary artery disease (CAD) and noted that appellant had past medical history that was significant for syncope. He advised appellant to avoid employment stress which clearly precipitated her syncopal episode and noted that she was now at risk for recurrent similar or worse events. In a May 21, 2013 duty status report (Form CA-17), Dr. Eisenberg released appellant to full-time, full-duty work without restrictions effective June 1, 2013. On November 18, 2013 he reiterated his diagnoses and advised appellant to continue her current medications.

On February 4, 2014 appellant, through counsel, requested reconsideration and submitted a narrative statement indicating that she was requesting medication for her accepted condition, wage-loss compensation for the time she was out of work for her accepted condition, and additional medical conditions caused by her injury. Appellant submitted a July 18, 2013 report from Dr. Eisenberg who reiterated his diagnoses and opinions.

By decision dated July 31, 2014, OWCP denied modification of its prior decision.

On September 23, 2014 counsel requested reconsideration and submitted a July 15, 2013 report from Dr. Eisenberg who reiterated his diagnoses and noted that appellant returned to work on June 1, 2013. In a duty status report (Form CA-17) dated May 22, 2014, Dr. Eisenberg provided the following work restrictions: no lifting or carrying more than 50 pounds intermittently; standing and walking for one to two hours per day, but not prolonged; no climbing, kneeling, bending, stooping, twisting, pulling, or pushing; and cannot be in environment greater than 72 degrees in temperature.

By decision dated May 4, 2015, OWCP denied appellant's request for reconsideration without a merit review.

Appellant, through counsel, filed an appeal with the Board on August 5, 2015. In an order issued on April 1, 2016, the Board found that appellant was entitled to a merit review, due to OWCP's delay in adjudicating appellant's reconsideration request, and remanded the case for an appropriate decision on her claim for compensation.

By decision dated May 5, 2016, OWCP conducted a merit review and denied appellant's claim for disability for the periods January 26 through February 8, 2013 and May 4 through 31, 2013 on the basis that the medical evidence submitted was insufficient to support disability due to the employment injuries. It further found that appellant's additional condition of cervical radiculopathy remained denied.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of 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<sup>3</sup> 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.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that her condition relates to the employment incident.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

OWCP has accepted that appellant experienced a syncopal episode on December 13, 2012. The issue is whether appellant’s cervical radiculopathy resulted from the December 13, 2012 employment injury. The Board finds that appellant has not met her burden of proof to establish a causal relationship between the condition for which compensation is claimed and the December 13, 2012 employment injury.

In his reports, Dr. Rosenblum diagnosed syncope and cervical radiculopathy. He noted that on December 13, 2012 appellant was sorting mail in a cramped room with no room to effectively work and began to experience neck pain into the head and pain down the left upper extremity to the second and third digits of the left hand. Dr. Rosenblum opined that appellant was totally disabled from December 13, 2012 through April 8, 2013 due to her cervical radiculopathy condition, which he opined was caused by repetitive movements with the upper extremities required by appellant’s federal duties. He noted that this was supported by findings on an MRI scan of the cervical spine which were frequently seen in patients with similar types of occupations and similar types of work performed as appellant. The Board finds that

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<sup>3</sup> OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

<sup>4</sup> See *T.H.*, 59 ECAB 388 (2008).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Dr. Rosenblum failed to provide sufficient medical rationale explaining the mechanism of how sorting mail at work on December 13, 2012 caused appellant's cervical radiculopathy condition. Dr. Rosenblum noted that her condition occurred while she was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed condition.<sup>7</sup> Dr. Rosenblum's opinion was based, in part, on temporal correlation. However, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>8</sup> Dr. Rosenblum did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that the December 13, 2012 employment injury caused or contributed to the diagnosed condition. Thus, the Board finds that the reports from Dr. Rosenblum are insufficient to establish that appellant's cervical radiculopathy is causally related to the December 13, 2012 employment injury.

The reports from Dr. Eisenberg, the December 13, 2012 hospital records, and the December 14, 2012 cardiac stress test do not specifically address whether the December 13, 2012 employment injury caused or contributed to a cervical radiculopathy condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>9</sup> Thus, appellant has not met her burden of proof with this evidence.

The Board finds that appellant failed to submit any rationalized medical evidence to support her allegation that she sustained a cervical radiculopathy condition causally related to the December 13, 2012 employment injury and did not meet her burden of proof to establish a claim for compensation.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8102(a) of FECA<sup>10</sup> sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: "The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty...." In general the term "disability" under FECA means "incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury."<sup>11</sup> This meaning, for brevity, is expressed as disability for work.<sup>12</sup> For each period of disability claimed, the employee has the burden of proving that she

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<sup>7</sup> See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

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

<sup>9</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>10</sup> 5 U.S.C. § 8102(a).

<sup>11</sup> 20 C.F.R. § 10.5(f). See also *William H. Kong*, 53 ECAB 394 (2002); *Donald Johnson*, 44 ECAB 540, 548 (1993); *John W. Normand*, 39 ECAB 1378 (1988); *Gene Collins*, 35 ECAB 544 (1984).

<sup>12</sup> See *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

was disabled for work as a result of the accepted employment injury.<sup>13</sup> Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable, probative, and substantial medical evidence.<sup>14</sup>

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability as that term is used under FECA and is not entitled to compensation for loss of wage-earning capacity. The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

While OWCP accepted that appellant sustained a syncopal episode at work on December 13, 2012, appellant bears the burden of proof to establish through medical evidence that she was disabled during the claimed time periods and that her disability was causally related to her accepted injuries.<sup>16</sup> The Board finds that appellant has not submitted rationalized medical evidence explaining how the employment injuries materially worsened or aggravated her medical condition and caused her to be disabled for work for the periods January 26 through February 8, 2013 and May 4 through 31, 2013.

In his reports, Dr. Rosenblum diagnosed syncope and opined that appellant was totally disabled for work from April 8, 2013 “until [she] saw Dr. Devinsky” to whom he had referred her for further evaluation and management of the abnormalities seen on her EEG. The Board finds that Dr. Rosenblum failed to provide a probative medical opinion on whether appellant was actually disabled from work on the dates at issue due to her accepted condition, and if so on what basis.<sup>17</sup>

In his reports, Dr. Eisenberg diagnosed syncope and released appellant to full-time, full-duty work without restrictions effective June 1, 2013. In a duty status report (Form CA-17) dated May 22, 2014, he provided work restrictions. The Board finds that Dr. Eisenberg failed to provide a probative medical opinion explaining how appellant’s accepted conditions caused her

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<sup>13</sup> See *William A. Archer*, 55 ECAB 674 (2004).

<sup>14</sup> See *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

<sup>15</sup> *Id.*

<sup>16</sup> See *supra* notes 13-14. See also *V.P.*, Docket No. 09-337 (issued August 4, 2009).

<sup>17</sup> See *T.R.*, Docket No. 17-0239 (issued April 12, 2017) (the issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician).

to be disabled for employment on the dates at issue.<sup>18</sup> Thus, the Board finds that the reports from Dr. Eisenberg are insufficient to establish appellant's claim for compensation.

Therefore, the Board finds that appellant has not met her burden of proof to establish that she was disabled for work for the claimed period.

On appeal, counsel contends that appellant provided sufficient medical evidence to establish her disability as a result of her syncopal episode. He further contends that OWCP improperly focused on appellant's cervical radiculopathy condition and continuously ignored any disability related to her accepted condition. The Board finds that OWCP properly adjudicated appellant's claim for disability compensation. Appellant has not submitted rationalized medical evidence establishing that she was disabled for the periods January 26 through February 8, 2013 and May 4 through 31, 2013 causally related to the accepted employment injuries. Thus, appellant has not met her burden of proof to establish that she is entitled to compensation for any disability.

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 met her burden of proof to establish cervical radiculopathy causally related to the December 13, 2012 employment injury. The Board further finds that appellant has not met her burden of proof to establish disability for the periods January 26 through February 8, 2013 and May 4 through 31, 2013 causally related to her December 13, 2012 employment injury.

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<sup>18</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2017  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board