

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

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T.C., Appellant	)	
	)	
and	)	
	)	<b>Docket No. 16-1652</b>
	)	<b>Issued: May 9, 2017</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>TRANSPORTATION SECURITY</b>	)	
<b>ADMINISTRATION, Houston, TX, Employer</b>	)	
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*Appearances:* *Case Submitted on the Record*  
Richwell Ison, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 9, 2016 appellant, through counsel, filed a timely appeal from a February 22, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

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

<sup>3</sup> Appellant timely requested oral argument pursuant to section 501.5(b) of Board procedures. 20 C.F.R. § 501.5(b). By order dated January 11, 2017, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 16-1652 (issued January 11, 2017).

## ISSUE

The issue is whether appellant met her burden of proof to establish that she was totally disabled for any period between March 14, 2007 and November 6, 2014, causally related to accepted conditions.

On appeal counsel asserts that the medical evidence submitted, established that appellant was entitled to wage-loss compensation due to the accepted conditions.

## FACTUAL HISTORY

On March 19, 2007 appellant, then a 40-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that she suffered stress, and pain in her head, neck, shoulders, and back on March 14, 2007 when she passed out at work. She stopped work that day and did not return. The employing establishment controverted the claim.

In support of her claim appellant submitted a March 20, 2007 report, in which Linda Thompson, a counselor, noted seeing appellant on March 17, 2007. She diagnosed major depressive disorder, single episode; panic disorder with agoraphobia; and post-traumatic stress disorder (PTSD). On March 23, 2007 Dr. Junaid Khan, a Board-certified internist, advised that appellant should be excused from work from January 14 until March 31, 2007.

By letter dated April 4, 2007, OWCP informed appellant of the evidence needed to support her claim.

Appellant thereafter submitted a March 20, 2007 statement. She indicated that on March 5, 2007 she was harassed by a supervisor while in a group of officers and this offended her. Appellant related that on March 10, 2007 a different supervisor told her that she had to report the incident, and this led to her collapse on March 14, 2007.

Hospital discharge instructions indicated that appellant was admitted on March 14 and discharged on March 15, 2007. Dr. Khan completed a hospital history and physical on March 14, 2007. He noted that appellant reported a similar episode in 1996, underwent stress at work, and was admitted following a loss of consciousness at work. Dr. Khan's impression was syncope *versus* seizure.

Dr. Nishith Majmundar, a Board-certified neurologist, saw appellant in consultation on March 14, 2007. He repeated the medical history, described examination findings, and indicated that she had some grip weakness in both upper extremities. Dr. Majmundar noted that a magnetic resonance imaging (MRI) scan of the cervical spine did not show pathology with something behind the T3-4 vertebral body, with a concern of meningioma *versus* trauma. He further noted that a magnetic resonance angiogram and MRI scans of the brain were negative. Dr. Majmundar advised that the episode was possibly syncope rather than a seizure.

Dr. Jeremy Wang, a Board-certified neurosurgeon, also saw appellant in consultation on March 15, 2007. He diagnosed syncope *versus* seizure and noted additional studies were scheduled. In a discharge summary dated March 15, 2007, Dr. Khan noted that

electroencephalogram and thoracic spine MRI scan were normal. Discharge diagnoses were syncope, hypertension, and sinusitis.<sup>4</sup>

On March 30, 2007 Dr. O. Leroy Johnson, a Board-certified internist, advised that appellant was under his care. In an April 13, 2007 report, he noted her complaint of extreme depression with anxiety, headaches, neck, and upper back pains with paresthesias to her hands and forearms, and his review of hospital records. Dr. Johnson advised that appellant had been under his care since she relocated to Houston, TX, following Hurricane Katrina and was suffering from PTSD. He concluded that her subjective symptoms were not related to any physiological disease process.

Statements from three coworkers confirmed that appellant fell backward and fainted at work on March 14, 2007.

By decision dated May 17, 2007, OWCP noted that appellant had not responded to its April 4, 2007 letter and denied the claim. Appellant appealed to the Board.

By order dated December 27, 2007, the Board noted that she had responded to OWCP's April 30, 2007 development letter and had thereafter submitted additional medical evidence prior to the issuance of its May 17, 2007 decision. The Board remanded the case to OWCP to properly consider all relevant evidence, to be followed by an appropriate decision.<sup>5</sup>

On February 7, 2008 OWCP accepted major depression, single episode, and unspecified. No additional evidence was received between OWCP's May 17, 2007 decision and this acceptance.<sup>6</sup>

In an August 12, 2008 report, Dr. Dan K. Eidman, a Board-certified orthopedic surgeon, advised that appellant had symptoms following a work injury on March 14, 2007 when she sustained blunt trauma to the neck and back. He diagnosed cervical and lumbar radiculopathy.

On October 9, 2008 Linda K. Nelson, a social worker, noted that she began treating appellant on August 25, 2008 for symptoms of PTSD, major depressive disorder, and agoraphobia with panic disorder.

On January 23, 2009 OWCP additionally accepted brachial neuritis or radiculitis and thoracic or lumbosacral neuritis or radiculitis.

Dr. Eidman submitted reports on January 26 and March 9, 2009 describing appellant's neck and back conditions. He reviewed MRI scans and recommended physical therapy. A February 3, 2009 MRI scan of the cervical spine demonstrated no herniation, central canal

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<sup>4</sup> Copies of the diagnostic test reports are found in the case record.

<sup>5</sup> Docket No. 07-1910 (issued December 27, 2007).

<sup>6</sup> Appellant has a separate claim, adjudicated by OWCP under File No. xxxxxx480, accepted for bilateral carpal tunnel syndrome. Under that claim, she received wage-loss compensation beginning September 7, 2007. The instant claim was adjudicated under File No. xxxxxx554. File No. xxxxxx480 is not presently before the Board.

stenosis, or remarkable foraminal narrowing. A lumbar spine MRI scan that day demonstrated posterior protrusions at L3-4 and L4-5.

On August 2, 2009 Dr. J. Robert Barnes, a Board-certified psychiatrist, noted that he began treating appellant on January 30, 2009 for major depression, panic disorder with agoraphobia, and PTSD which she reported began when she was sexually harassed at work.

Dr. Eidman continued to treat appellant. On September 29, 2010 he recommended a chronic pain management program. In an October 6, 2010 report, Dr. Eidman described appellant's treatment to date and current complaints of neck and lower back pain. Following physical examination, he diagnosed cervical radiculopathy, lumbar radiculopathy, chronic pain syndrome, depressive disorder, and sleep disturbance. Dr. Eidman recommended therapy to reduce pain and stress.

On October 6, 2010 Kristie Yeagley, a social worker, performed a psychological evaluation. She continued to submit counselling notes.

On January 22, 2013 Dr. Eidman noted appellant's continued complaint of cervical and low back pain and tenderness. A cervical MRI scan that day demonstrated disc protrusions at C2 through C7 with bilateral facet arthrosis and multi-level anterior spondylosis. A lumbar MRI scan on January 22, 2013 demonstrated disc protrusions at L3-4 and L4-5 with minimal foraminal stenosis and multi-level facet arthrosis.

In a January 28, 2013 report, Ms. Nelson noted appellant's continued treatment for PTSD, major depressive disorder, and agoraphobia with panic disorder.

Under the instant claim, OWCP paid appellant compensation for intermittent wage loss from December 17, 2012 to February 8, 2013 for medical and therapy appointments.

In a March 15, 2013 report, Dr. Eric R. George, Board-certified in plastic and hand surgery, advised that appellant reached maximum medical improvement on June 8, 2011 with regard to her hands and carpal tunnels with no evidence of permanent impairment. He advised that he could not provide an opinion regarding her neck and back complaints. On April 27, 2013 Dr. George reported that nerve studies indicated that appellant had, at most, a mild slowing of the carpal tunnel and provided medication.<sup>7</sup>

In a claim for compensation (Form CA-7), signed by appellant on November 6, 2014 and submitted to OWCP on May 20, 2015, she requested compensation for wage loss during the period March 14, 2007 to November 16, 2014.<sup>8</sup> The employing establishment indicated that she was removed from employment on June 11, 2007.

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<sup>7</sup> Appellant also submitted unsigned notes from unidentified health care providers dated September 6, 2011 to September 26, 2013.

<sup>8</sup> On October 20, 2013 OWCP terminated appellant's monetary compensation under File No. xxxxxx480. By decision dated March 25, 2015, issued under File No. xxxxxx480, the Board affirmed OWCP's October 20, 2013 termination decision. Docket No. 14-2083 (issued March 25, 2015).

On June 3, 2015 Ms. Nelson described appellant's treatment since August 26, 2008. She advised that appellant's diagnoses were the result of abusive treatment and harassment at the employing establishment, and also noted appellant's report that she had seizure-like episodes since the events at the employing establishment.

By letter dated June 19, 2015, OWCP requested that the employing establishment provide information regarding appellant's removal from employment. The employing establishment forwarded a June 6, 2007 notice of decision indicating that she was to be removed from her position on June 11, 2007. The notice indicated that on April 16, 2007 appellant was sent a notice of proposed termination, citing an event in which she struck a supervisory transportation security officer (STSO) in the face and called him a bitch. The decision noted that at a May 23, 2007 meeting she admitted that she struck the STSO with a closed fist because he obscenely remarked to her and approached her. The decision concluded that workplace violence was a serious offense and would not be tolerated. A Notification of Personnel Action (Form SF-50) indicated that appellant had been removed from employment for workplace violence and inappropriate language, effective June 11, 2007.

In a July 15, 2015 letter, OWCP informed appellant of the evidence necessary to develop her claim for compensation in this case, File No. xxxxxx554.

In response to a July 15, 2015 development letter from OWCP, appellant thereafter submitted a November 18, 2014 report in which Dr. John W. Bick, a psychiatrist, noted treating her since August 5, 2009 for symptoms of severe anxiety and depression. Dr. Bick advised that, despite treatment with medication and psychotherapy, she remained severely impaired and could not return to work in any capacity due to her psychiatric problems.<sup>9</sup>

By decision dated August 15, 2015, OWCP denied appellant's claim for wage-loss compensation for the period March 14, 2007 to November 6, 2014. It noted that she had received monetary compensation under File No. xxxxxx480 and had also been terminated for cause.

Appellant timely requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She also requested that her two claims be administratively combined and asserted that she had not been released for work by a physician regarding either her neck and back injuries or her mental health condition. In support, appellant submitted unsigned, unidentified treatment notes.

In a February 22, 2016 decision, an OWCP hearing representative denied appellant's claim for wage-loss compensation for the period March 14, 2007 to November 6, 2014. The hearing representative noted that major depression, single episode, brachial neuritis or radiculitis, and thoracic or lumbosacral neuritis or radiculitis, were accepted under this claim, File No. xxxxxx554. The hearing representative also indicated that, under File No. xxxxxx480, OWCP accepted bilateral carpal tunnel syndrome, and that under File No. xxxxxx480 appellant received wage-loss compensation from September 7, 2007 through October 19, 2013, and thus would not be entitled to wage-loss compensation under File No. xxxxxx554 for that period. Regarding the

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<sup>9</sup> Beginning on November 12, 2013, appellant continued to submit unsigned, unidentified treatment notes.

conditions accepted under the instant claim, File No. xxxxxx554, the hearing representative found the medical evidence submitted was insufficient to establish disability from work for the periods claimed due to the effects of the March 14, 2007 employment injury.

### **LEGAL PRECEDENT**

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus 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 a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>10</sup> Furthermore, whether a particular injury causes an employee to be disabled from 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>11</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>12</sup> 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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>13</sup> 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 causal relationship.<sup>14</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish that she had employment-related disability from March 14, 2007 to November 6, 2014 causally related to the accepted conditions of major depression, single episode, brachial neuritis or radiculitis, and thoracic or lumbosacral neuritis or radiculitis. The Board notes that, under File No. xxxxxx480, accepted for bilateral carpal tunnel syndrome, appellant received wage-loss compensation from September 7, 2007 to October 20, 2013.

The issue of disability from work can only be resolved by competent medical evidence.<sup>15</sup> The issue of whether a claimant’s disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate

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<sup>10</sup> See 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>11</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>12</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>13</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>14</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>15</sup> *R.C.*, 59 ECAB 546 (2008).

factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>16</sup> A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.<sup>17</sup>

Appellant submitted a number of unsigned, unidentified treatment notes. The Board has long held that medical reports lacking proper identification cannot be considered as probative evidence in support of a claim.<sup>18</sup> Likewise, the reports from counselor Ms. Thompson,<sup>19</sup> and social workers, Ms. Nelson, and Ms. Yeagley,<sup>20</sup> do not constitute probative medical evidence. A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in section 8102(2) of FECA.<sup>21</sup> Section 8101(2) provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.<sup>22</sup>

The diagnostic studies of record, including MRI scans and other diagnostic studies, did not provide a cause of any diagnosed conditions, and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>23</sup>

As to the period March 14 to September 7, 2007, none of the physicians who provided reports during this period commented on appellant's ability to work. Dr. Majmundar and Dr. Wang, who saw her in consultation on March 14 and 15, 2007, and Dr. Khan who prepared the discharge summary, did not comment regarding disability. Dr. Johnson, who submitted a March 30, 2007 report, likewise did not comment on any work-related disability. Appellant, therefore, did not establish that she was entitled to wage-loss compensation for the period claimed.<sup>24</sup>

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<sup>16</sup> See *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>17</sup> *Thaddeus J. Spevack*, 53 ECAB 474 (2002).

<sup>18</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>19</sup> A professional counselor is not included in the definition of the term "physician" under FECA. See *E.R.*, Docket No. 17-0350 (issued March 9, 2017).

<sup>20</sup> Social workers are not physicians as defined under FECA. See *M.W.*, Docket No. 16-0877 (issued March 17, 2017).

<sup>21</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

<sup>22</sup> 5 U.S.C. § 8101(2); see *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>23</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>24</sup> *Id.*

As to the period October 20, 2013 to November 6, 2014, in a November 18, 2014 report, Dr. Bick advised that he had treated appellant since August 5, 2009 for symptoms of severe anxiety and depression. He advised that despite treatment with medication and psychotherapy, she remained severely impaired and could not return to work in any capacity due to her psychiatric problems. Dr. Bick, however, did not relate appellant's condition to the March 14, 2007 employment injury. In fact, he did not discuss any cause of her diagnosed emotional condition. There is no additional probative medical evidence from a physician discussing the period of claimed compensation from October 20, 2013 to November 6, 2014. In this case, none of the medical reports contain any explanation relating appellant's diagnosed conditions to the accepted conditions caused by the March 14, 2007 employment injury.<sup>25</sup>

As appellant did not submit sufficient rationalized medical opinion evidence to establish that she was disable from work during for the periods claimed due to her accepted conditions, she failed to establish that the claimed disability was employment related. She was thus not entitled to wage-loss compensation for these periods.<sup>26</sup>

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 that she was totally disabled for any period between March 14, 2007 and November 6, 2014, causally related to accepted conditions.

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<sup>25</sup> See *S.B.*, Docket No. 13-1162 (issued December 12, 2013).

<sup>26</sup> *N.R.*, Docket No. 14-0114 (issued April 28, 2014).



**ORDER**

**IT IS HEREBY ORDERED THAT** the February 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 9, 2017  
Washington, DC

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

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

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