United States Department of Labor
Employees' Compensation Appeals Board

S.J., Appellant	)	
	)	**Docket No. 17-0783**
and	)	**Issued: April 9, 2018**
	)	
DEPARTMENT OF VETERANS AFFAIRS, HEALTH CARE SYSTEM, Fargo, ND, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 24, 2017 appellant filed a timely appeal from a November 16, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she was totally disabled beginning August 9, 2013 due to her accepted employment injuries.

FACTUAL HISTORY

On June 20, 2013 appellant, then a 51-year-old industrial hygienist, filed a traumatic injury claim (Form CA-1) alleging that she sustained a closed head injury, broken left fibula, left ankle sprain, and contusion of her head and right side on June, 18, 2016 when she fell on the sidewalk

[1] 5 U.S.C. § 8101 *et seq.*

hitting her head and side as well as twisting her ankle. The employing establishment indicated that she was in the performance of duty when the June 18, 2016 incident occurred. On August 2, 2013 OWCP accepted appellant's claim for concussion without loss of consciousness, left ankle sprain, and fracture of the left tibia.

In an August 7, 2013 note, Peggy Maasjo, a nurse practitioner,[2] released appellant to return to light-duty work three days a week working four-hour shifts. Appellant was to avoid working on the computer for more than 30 minutes at a time and stop working if her headache worsened. She also had a lifting restriction of 15 pounds.

On August 9, 2013 appellant resigned from the employing establishment effective that date. She filed an August 30, 2013 claim for compensation (Form CA-7) requesting wage-loss compensation from August 9, 2013 to September 27, 2014. Appellant's supervisor indicated that appellant returned to work on August 9, 2013 in a limited-duty job working three days a week four hours a day with no more than 30 minutes on the computer. Appellant was to return to work on August 9, 2013, but resigned within two hours of her return to work and was paid sick leave, but used 1.25 hours of leave without pay. She later requested wage-loss benefits through October 25, 2013.

In a November 21, 2013 letter, OWCP noted that appellant returned to work on August 9, 2013 and was given a light-duty assignment to accommodate her job restrictions, but resigned from her position on that date. It requested that she provide a statement explaining the reasons for her resignation, a copy of the job offer provided her on August 9, 2013, and a copy of the notification of personnel action indicating the reason for her resignation. OWCP also requested medical evidence supporting appellant's disability for work.

On November 27, 2013 the employing establishment indicated that appellant returned to work at noon on August 9, 2013 and resigned shortly thereafter due to another issue. It provided appellant's date-of-injury job description including her physical requirements of carrying sampling equipment and extended periods of standing and walking while performing surveys.

In an undated memorandum, appellant requested a transitional work assignment due to a work-related injury. Her supervisor indicated that appellant's current position had been modified to accommodate medical restrictions. Appellant's supervisor added a handwritten note dated November 27, 2013 indicating that she "was going to have [appellant] do administrative work during this transitional time." An August 9, 2013 notification of personnel action indicated that appellant gave no reason for her resignation.

[2] When Ms. Maasjo submitted this note in August 2013, it was not medical evidence as she is not a physician under FECA. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA. *See* 5 U.S.C. § 8101(2); *Charles H. Tomaszewski*, 39 ECAB 461 (1988). Thus, their opinions will not suffice for purposes of establishing entitlement to FECA benefits. *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a nurse practitioner will be considered medical evidence only if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013). This note was signed by Dr. Steven Nordmark on January 15, 2016, at which point it became medical evidence.

In a December 10, 2013 letter, appellant reported that she made arrangements to return to work on August 9, 2013 based on conversations with Ms. Maasjo, regarding her ongoing ankle and brain injuries. She arrived at the employing establishment at 12:30 p.m. and attempted to log into her computer, but was denied access. Appellant noted that some files were missing from the filing cabinets. Her supervisor instructed appellant to accompany her to human resources and once there informed her that she was the subject of an administrative investigation. Appellant was accused of forging a contractor's signature on maintenance documents. She denied these allegations. Appellant noted that her mental and health limitations prohibited her from being able to complete her defense. She alleged, "I was not able to think clearly, extremely confused, and intimidated. I felt my only option was to resign." Appellant asserted that no light-duty assignment or paperwork was discussed, provided, or initiated during her time at the employing establishment on August 9, 2013. She alleged that her ankle injury healed as of September 2013, but that she continued to experience brain injury problems including memory loss, vomiting, headache, sleeplessness, dizziness, and poor spatial recognition.

Dr. Kenneth Stone, a clinical psychologist, examined appellant on December 16, 2013. He diagnosed depressive disorder. Dr. Stone found evidence of cognitive problems and reported appellant's symptoms of memory problems and headaches. He found that she was disabled and attributed her disability to cognitive defects including memory and executive functioning, and daily headaches rather than depression.

On February 22, 2014 appellant completed a statement and asserted that her claim was initially approved as a quick close case. She contacted the claims examiner who changed her claim to open for the conditions of closed fracture of the fibula, second degree ankle sprain with ruptured tendons, and a severe concussion. Appellant asserted that she was not able to continue working, that she was not offered light duty, and that she resigned from the employing establishment in August 2013. She asserted that she had ongoing issues with short-term memory loss, and atypical dementia. Appellant alleged that she could not drive properly, remember verbal instructions, and had difficulty performing any new task. She noted that she had a difficult time finding and keeping sustainable work.

On March 10, 2014 Dr. Stone diagnosed depressive disorder and on March 27, 2014 he opined that appellant had a traumatic brain injury. He found that this condition significantly interfered with appellant's ability to obtain and maintain gainful employment. Dr. Stone found that appellant's memory, attention, and concentration were significantly impaired. He determined that appellant struggled with many basic functions. Dr. Stone noted, "As such, I do not believe either [appellant's] sleep or her mood difficulties are sufficient to account for her current cognitive difficulties and do believe that she suffers with some type of brain injury. I also am assuming this occurred with her accident on June 18, 2013."

In a June 19, 2014 telephone memorandum, a claims examiner reported that the employing establishment confirmed that it did not provide appellant with the undated memorandum on August 9, 2013 indicating that her current position had been modified to accommodate her work restrictions when she returned to work on August 9, 2013. Instead, the employing establishment discussed issues not related to workers' compensation and, after the discussion, she resigned from her job. Appellant did not work the day she resigned.

By decision dated February 25, 2015, OWCP denied appellant's claim for compensation. It found that she resigned for reasons unrelated to her accepted employment injuries. OWCP noted that the medical evidence of record failed to establish appellant's disability for all work was due to the accepted June 18, 2013 employment injuries.

On January 15, 2016 Dr. Steven Nordmark, a Board-certified internist, countersigned a series of Ms. Maasjo's treatment notes. He countersigned a June 24, 2013 note, describing appellant's history of injury, including that appellant was conducting a nursing home inspection, walked out of the building, rolled her left ankle, fell, and hit her right forehead on a cement sidewalk. Dr. Nordmark noted appellant's symptoms and diagnosed severe concussion, still symptomatic, and fractured left malleolus. He found that appellant was totally disabled. Dr. Nordmark countersigned Ms. Maasjo's July 1, 2013 note and found that appellant remained disabled. He countersigned Ms. Maasjo's August 7, 2013 note[3] and indicated that appellant could provisionally return to work part-time four-hour shifts, three days a week for two weeks. Lifting was restricted to 15 pounds and appellant could work on a computer for no more than 30 minutes at a time. She was to stop work if she had recurrent headaches or more memory problems. In an August 13, 2013 note, appellant reported that she returned to work on August 9, 2013 and was accused of forging a signature. She felt entirely overwhelmed and developed an instant headache. Appellant excused herself and turned in her badge and keys. In driving home, she hit her mailbox and then the rear door of her van hit her on the head, after she lifted it. Appellant had a contusion on the frontal area, but did not lose consciousness. Dr. Nordmark diagnosed a relapse of her concussion symptoms and found that she was totally disabled for two weeks. In a November 6, 2013 note, he indicated that appellant was totally disabled as a direct result of her June 18, 2013 employment injury with a cognitive disorder related to her head injury. A December 10, 2013 note diagnosed benign position vertigo and history of a concussion in June 2013 with persistent memory issues and headaches.

On February 2, 2016 Dr. Nordmark countersigned a June 18, 2014 note from Ms. Maasjo diagnosing anxiety state, post-contusion syndrome, depressive disorder, tinnitus, insomnia sleep disturbance, and history of traumatic brain injury. He requested that OWCP include these conditions as accepted due to appellant's June 18, 2013 employment injury. Dr. Nordmark also countersigned a March 27, 2014 note from Ms. Maasjo, and found that appellant had a brain injury based on her current cognitive difficulties. On February 2, 2016 he countersigned a June 14, 2014 note from Ms. Maasjo indicating that appellant was totally disabled due to her June 18, 2013 employment injury.

Appellant requested reconsideration on February 4, 2016. She noted that she was not requested to provide a reason for her resignation. Appellant argued that she was not offered suitable work and that the employing establishment did not intend to offer her light duty. She asserted that she was not mentally competent to participate in the August 9, 2013 investigative meeting due to her brain injury. Appellant alleged that she remained disabled due to her June 18, 2013 injuries. She resubmitted Dr. Stone's March 27 2014 report.

[3] *See supra* note 2.

In a letter dated July 13, 2016, the employing establishment noted that appellant had received disability retirement benefits and requested that traumatic brain injury be accepted as due to her employment injury.

In an August 22, 2016 note, Dr. Eugeniu V. Muntean, a Board-certified neurologist, opined that the additional conditions of anxiety state, postconcussion syndrome, chronic migraine, depressive disorder, tinnitus, insomnia sleep disturbance, and vertigo were "a direct result of the head injury [appellant] sustained at work on June 18, 2013." In a report dated October 12, 2016, he opined "These disorders are in direct correlation with an impairment of cognitive, physical, and psychosocial functions, associated with her traumatic brain injury." Dr. Muntean noted in October 2015 that appellant was unable to understand or remember complex instructions, remember rules and regulations, drive vehicles, or machinery, prepare complex reports, analyze data, prepare and present classes, handle money, or handle emergency situations.

By decision dated November 16, 2016, OWCP denied modification of the February 25, 2015 decision finding that appellant was released to return to part-time work on August 9, 2013, but after an investigative meeting she resigned from her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.[5]

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establish that she can perform the light-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[6]

In cases where employment has in fact been terminated for misconduct and disability is subsequently claimed, the Board has noted that in general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving

[4] *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury, but no loss of wage-earning capacity).

[6] *Terry R. Hedman*, 38 ECAB 222 (1986).

at the time of such injury.[7] Where employment is terminated, disability benefits would be payable if the evidence of record established that the claimant was terminated due to injury-related physical inability to perform assigned duties or the medical evidence of record established that the claimant was unable to work due to an injury-related disabling condition.[8] The Board has held that, when a claimant stops work for reasons unrelated to her accepted employment injury, she has no disability within the meaning of FECA.[9]

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.[10] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[11] Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[12] Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 claimant.[13] Neither the 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.[14]

ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish that she was totally disabled beginning August 9, 2013 due to her accepted employment injuries.

[7] *See V.M.* Docket No 16-0062 (issued May 18, 2016); *Ralph Dennis Flanagan,* Docket No. 94-1569 (issued May 28, 1996).

[8] *Id.*

[9] *E.S.*, Docket No. 11-0657 (issued February 9, 2012); *see John W. Normand,* 39 ECAB 1378 (1988).

[10] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[11] *H.G.*, Docket No. 14-0143 (issued April 16, 2014).

[12] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[13] *Leslie C. Moore*, 52 ECAB 132 (2000).

[14] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

OWCP accepted appellant's claim for concussion without loss of consciousness,[15] left ankle sprain, and left tibia fracture. Appellant's physician, Dr. Nordmark, indicated on January 15, 2016 that appellant could return to part-time work on August 7, 2013 for four hours a day, three days a week for two weeks. He restricted lifting to 15 pounds and computer work to 30 minutes at a time. If she had recurrent headaches or more memory problems, appellant was to stop work.

The record establishes that appellant reported to the employing establishment on August 9, 2013 to return to part-time light-duty work, but did not perform any work duties on that date. She arrived at the employing establishment at 12:30 p.m. and shortly thereafter attended a meeting where she was informed that she was the subject of an administrative investigation. Appellant was accused of forging a contractor's signature on maintenance documents. She denied these allegations. Appellant asserted that her mental and health limitations prohibited her from being able to complete her defense. She alleged, "I was not able to think clearly, extremely confused, and intimidated. I felt my only option was to resign." Appellant submitted a letter of resignation on August 9, 2013, effective that date. The August 9, 2013 notification of personnel action indicated that appellant gave no reason for her resignation.

The Board notes that the medical evidence suggests that appellant was capable of performing light-duty work on August 9, 2013. The Board has held that when a claimant stops work for reasons unrelated to the accepted work injury, she has no disability within the meaning of FECA.[16] In this case, appellant resigned without no offered reasons. Her voluntary resignation does not establish total disability on or about August 9, 2013 because it had nothing to do with her ability to perform work.[17] Disability benefits are only payable if the evidence establishes that the claimant was unable to work at some point thereafter due to a work-related disabling condition.[18]

Appellant has not submitted medical evidence establishing that she was disabled due to her accepted employment injuries on or after August 9, 2013. The medical evidence of record addresses appellant's disability for work due to additional conditions not accepted by OWCP including Dr. Stone's diagnosis of cognitive problems and traumatic brain injury. Dr. Muntean also diagnosed additional conditions not accepted by OWCP including anxiety state, postconcussion syndrome, chronic migraine, depressive disorder, tinnitus, insomnia sleep disturbance, and vertigo. He opined that these conditions were "a direct result of the head injury [appellant] sustained at work on June 18, 2013" and were "associated with her traumatic brain injury." Where an employee claims conditions not accepted or approved by OWCP were due to an employment injury, appellant bears the burden of proof to establish that the condition is causally related to the work injury.[19] Neither Dr. Stone nor Dr. Muntean explained the reasons why she

[15] The Board notes that the medical evidence consistently supports that appellant briefly lost consciousness on June 18, 2016.

[16] *See M.T.*, Docket No. 17-1240 (issued November 14, 2017); *D.G.*, Docket No. 16-0216 (issued July 7, 2016); *Carolyn R. Gray*, Docket No. 05-1700 (issued June 20, 2006); *John W. Normand*, *supra* note 9.

[17] *See* 20 C.F.R. § 10.5(f); *E.S.*, *supra* note 9; *see also D.G.*, *id*; *Lester Covington*, 47 ECAB 539, 542 (1996); *Major W. Jefferson, III*, 47 ECAB 295, 298 (1996).

[18] *M.T.*, *supra* note 16.

[19] *L.N.*, Docket No. 16-0137 (issued October 14, 2016); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

was totally disabled due to her accepted conditions. Neither physician explained how and why the additional conditions were causally related to the accepted employment injuries. A physician's opinion on causal relationship between a claimant's employment injury and additional conditions or disability is not conclusive 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.[20]

Appellant also submitted a series of notes from Dr. Nordmark. In the countersigned August 13, 2013 note, Dr. Nordmark diagnosed a relapse of her concussion symptoms and found that she was totally disabled for two weeks. On January 15, 2016 he diagnosed benign position vertigo and history of a concussion in June 2013 with persistent memory issues and headaches. Dr. Nordmark indicated that appellant was totally disabled as a direct result of her June 18, 2013 employment injury with a cognitive disorder related to her head injury. He also diagnosed the additional conditions of diagnosing anxiety state, postcontusion syndrome, depressive disorder, tinnitus, insomnia sleep disturbance, and history of traumatic brain injury. While Dr. Nordmark attributed appellant's additional diagnosed conditions to her accepted employment injury, these reports are of limited probative value without rationale to explain how and why the additional conditions resulted from her accepted work injury and further explaining how these conditions resulted in total disability on and after August 9, 2013 due to her accepted employment injuries.[21]

Although appellant alleged that she was disabled on and after August 9, 2013, due to her accepted employment injuries, the medical evidence of record does not establish that her claimed disability was related to her accepted employment injuries. The Board finds that she has failed to submit rationalized medical opinion evidence establishing that her disability on or after August 9, 2013 was causally related to her accepted employment injury, and thus, she has not met her burden of proof.[22]

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she was totally disabled beginning August 9, 2013 due to her accepted employment injuries.

[20] *L.N., id.*

[21] *M.T., supra* note 16.

[22] *L.N., supra* note 19.

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2016 decision of the Office of Workers' Compensation Programs is affirmed.[23]

Issued: April 9, 2018
Washington, DC

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

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

[23] Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.