

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

F.S., Appellant	)	
	)	
and	)	<b>Docket No. 18-0098</b>
	)	<b>Issued: August 13, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
San Leandro, CA, Employer	)	
	)	

*Appearances:*  
Sylvia R. Johnson, for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On October 16, 2017 appellant, through his representative, filed a timely appeal from a June 15, 2017 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 the claim.<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> The record provided to the Board includes evidence received after OWCP issued its June 15, 2017 decision. The Board's jurisdiction is limited to the evidence in the case record that was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1). Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant met his burden of proof to establish total disability for the period October 14 through December 16, 2015 causally related to his accepted employment injury.

## **FACTUAL HISTORY**

On September 19, 2015 appellant, then a 51-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that, on August 29, 2015, he collapsed at work while preparing to leave for his street mail route. He alleged that, when he fell, he hit his head on the desk and landed on his back. Appellant claimed injuries to his head, chest, heart, and left elbow. He was admitted to the hospital on August 29, 2015 for syncope and atrial fibrillation with rapid ventricular rate and was discharged on August 31, 2015. The employing establishment paid continuation of pay (COP) for the period August 30 to October 13, 2015. OWCP initially accepted appellant's claim for syncope and collapse.

On October 19, 2015 appellant was admitted to the hospital for a left-sided heart catheterization procedure. He was discharged on October 20, 2015.<sup>4</sup>

On November 3, 2015 appellant filed a claim for wage-loss compensation (Form CA-7) for disability during the period August 29 to November 16, 2015.

In support of his claim, appellant submitted work status reports dated September 24, October 8, 9, and 14 and November 2, 2015 and an October 14, 2015 disability note from Dr. Seema K. Pursnani, a Board-certified internist. Dr. Pursnani placed him on temporary total disability status from August 29, 2015 and continuing. In her October 8, 2015 note, she found appellant medically competent to return to full-duty capacity on October 30, 2015. On October 14, 2015 Dr. Pursnani advised that, due to a recent hospitalization and continued medical care, appellant had been unable to work since August 29, 2015. She recommended that he remain off work until November 2, 2015. In a November 2, 2015 note, Dr. Pursnani placed appellant off work from November 2 through 16, 2015.

By development letter dated November 20, 2015, OWCP advised appellant that he was not entitled to wage-loss compensation for the period August 30 through October 13, 2015 as he had received COP from the employing establishment for that same period. For the period October 14 through November 16, 2015 and continuing, appellant was advised that the medical reports of record were insufficient to establish his disability claim. OWCP requested that he submit additional evidence to establish that he was disabled from work during the claimed period as a result of his accepted employment injury. It afforded appellant 30 days to submit the additional information.

In a November 6, 2015 report, Dr. Pursnani placed appellant off work from November 2 through 16, 2015. She clarified that appellant was previously off work from September 2 through November 2, 2015.

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<sup>4</sup> Dr. Joseph Aloysius Walsh, a Board-certified internist, performed the catheterization procedure.

In a November 16, 2015 note, Dr. Elmer Chang, a Board-certified internist, placed appellant off work from November 16 through 30, 2015. In a December 4, 2015 report, he returned appellant to modified work activity from December 4 through 11, 2015.

Appellant returned to work on or about December 17, 2015 before again stopping work.<sup>5</sup>

In a December 17, 2015 report, Dr. Jaishree S. Acharya, a Board-certified internist, described appellant's symptoms of neck pain and numbness radiating down the left upper extremity after the August 29, 2015 fainting episode and fall at work. Dr. Acharya noted that appellant had been seeing his personal physician for workup regarding his syncopal episode and had returned to modified duty. The cardiac workup revealed coronary artery disease and appellant underwent stent placement. Appellant had been off work since August 29, 2015 to take care of his heart condition. Physical findings were normal except for appellant's report of tenderness on examination. Dr. Acharya indicated that the cervical spine x-ray had no evidence of fracture or malalignment, but multilevel cervical spondylosis. The head computerized tomography (CT) scan showed no acute intracranial abnormality. The magnetic resonance imaging (MRI) scan of the cervical spine showed mild-to-moderate multilevel degenerative changes. Dr. Acharya diagnosed cervical radiculopathy, cervical sprain, and head contusion, which she opined were consistent with the fall and the head contusion during the fall. Appellant was referred to physical therapy.

In a work status report of December 16, 2015, January 5 and 22, 2016, Dr. Acharya placed appellant on modified duty. In January 5 and 28, and February 1, 2016 reports, she noted that appellant was working without restrictions. In a February 11, 2016 report, Dr. Acharya noted that appellant was working with restrictions.

On January 7, 2016 appellant filed a Form CA-7 claim for wage-loss compensation for disability from October 14 to December 17, 2015.

In a March 4, 2016 report, Dr. Acharya diagnosed neck sprain, cervical radiculopathy, and a head contusion. She indicated that appellant could continue to perform modified work and that there was no indication for him to be off work due to his work injury. Dr. Acharya noted that appellant chose to stay home and was taking online classes. She also noted that appellant's second set of physical therapy was helping and that the numbness, which traveled down into the left upper extremity, had almost completely resolved. Based on the history and mechanism of injury, Dr. Acharya opined that appellant's syncopal episode from atrial fibrillation and coronary artery disease was not caused or aggravated by factors of employment. She further opined that appellant's cervical strain with radiculopathy was consistent with the fall and the head contusion. In her April 1, 2016 report, Dr. Acharya indicated that appellant was off on Family Medical Leave Act (FMLA) and considering transferring care to Dr. Richard A. Nolan, a Board-certified orthopedic surgeon, Dr. Nolan.

In a March 4, 2016 report, Dr. Nolan noted the history of appellant's employment injury. He provided an impression of left cerebral concussion, musculoligamentous strain of the cervicothoracic spine, left cervicobrachial syndrome, and bilateral cervical radiculitis. Dr. Nolan

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<sup>5</sup> On January 31, 2017 OWCP began paying appellant disability compensation on the supplemental rolls retroactive to March 4, 2016. It began paying appellant wage-loss compensation on the periodic rolls beginning May 2, 2017 for the period beginning April 25, 2017.

indicated that appellant sustained significant injury to his cranium and cervical spine due to the employment incident. He explained that appellant's persistent cervical symptoms were a result of the direct and sudden blow to his cranium which forced his neck into unexpected positioning. Dr. Nolan opined that appellant was totally disabled from work as a result of the work injury. He recommended electromyography (EMG) and MRI scan tests. Dr. Nolan also referred appellant to physical therapy.

OWCP also received progress notes pertaining to appellant's cardiac condition dated August 3 and October 20, 2015, along with a copy of the November 17, 2015 MRI scan of cervical spine, which had indicated mild-to-moderate multilevel degenerative changes, most prominently affecting C5-6 and C6-7.

By decision dated April 6, 2016, OWCP denied appellant's claim for wage-loss compensation for the period commencing August 29, 2015. It found that the medical evidence of record failed to establish that he was disabled from work during the period claimed due to his work-related medical condition. OWCP noted that the medical evidence which opined that appellant should be on temporary total disability status failed to provide objective findings and medical rationale to substantiate his disability status.

In a separate April 6, 2016 decision, OWCP expanded the acceptance of appellant's claim to include: contusion of unspecified part of head; strain of muscle, fascia, and tendon at neck level; and aggravation cervical spinal stenosis.<sup>6</sup>

On May 4, 2016 appellant's representative requested an oral hearing before an OWCP hearing representative.

OWCP received copies of appellant's August 29, 2015 chest and cervical spine x-rays, an August 30, 2015 echocardiogram, and an August 31, 2015 computerized tomography (CT) scan of the head. Also received was Dr. Acharya's December 16, 2015 report in which she opined that appellant was able to perform modified duty. Dr. Acharya noted that appellant's syncopal episode was diagnosed as paroxysmal atrial fibrillation, which she opined was nonindustrial in nature. She opined that the cervical strain, head contusion, and radiculopathy were consistent with the fall.

By decision dated August 1, 2016, OWCP expanded the acceptance of appellant's claim to include an aggravation of cervical disc degeneration and aggravation of cervical spinal stenosis.

A hearing was held on March 31, 2017. Appellant testified that he was off work from August 29, 2015 and had three stents placed in his arteries on October 19, 2015. He returned to work on December 17, 2015.

By decision dated June 15, 2017, an OWCP hearing representative affirmed the prior decision. She found that the medical evidence of record was insufficient to establish total disability during the claimed period causally related to the accepted conditions.

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<sup>6</sup> On March 4 and May 10, 2016 appellant requested that his treating physician be changed to Dr. Nolan due to his difficulty obtaining treatment at Kaiser Permanente. In an April 11, 2016 letter, OWCP denied appellant's request to change physicians for his work-related injury.

## LEGAL PRECEDENT

Under FECA,<sup>7</sup> the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>8</sup> Whether a particular injury causes an employee to be disabled from work 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>9</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work. When a physician's statements consist only of a repetition of the employee's complaints that excessive pain caused an inability to work, without making an objective finding of disability, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>10</sup> The Board will not require OWCP to pay compensation for disability without any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>11</sup>

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>12</sup> To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.<sup>13</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 claimant.<sup>14</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>15</sup>

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<sup>7</sup> *Supra* note 2.

<sup>8</sup> See *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>9</sup> See *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

<sup>10</sup> *G.T.*, 59 ECAB 447 (2008); see *Huie Lee Goal*, 1 ECAB 180, 182 (1948).

<sup>11</sup> *Id.*

<sup>12</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>13</sup> See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>14</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>15</sup> *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

## ANALYSIS

The Board finds that appellant has not submitted sufficient medical opinion evidence to establish total disability for the period October 14, 2015 through December 16, 2015 causally related to his accepted employment conditions.

OWCP initially accepted that appellant's fall on August 29, 2015 resulted in syncope and collapse. Appellant received COP for the period August 30 through October 13, 2015. OWCP later expanded acceptance of the claim to include the additional conditions of contusion of unspecified part of head, strain of muscle, fascia, and tendon at neck level, aggravation cervical spinal stenosis, and aggravation other cervical disc degeneration, unspecified.

Appellant filed CA-7 forms claiming wage-loss compensation due to total disability up until December 17, 2015. He returned to work on December 17, 2015 and then stopped work. OWCP retroactively paid appellant wage-loss compensation for total disability beginning March 4, 2016. Appellant continues to receive wage-loss compensation on the periodic rolls. Thus, the issue is whether he has established total disability for the period from October 14, 2015 through December 16, 2015.

The evidence reflects that, following the August 29, 2015 work incident, appellant underwent a cardiac workup of his syncopal episode. The workup revealed coronary artery disease and appellant underwent stent placement to treat his cardiac condition on October 19 and 20, 2015. Dr. Pursnani placed appellant on temporary total disability status from August 29 until November 16, 2015. However, he provided no explanation in his disability slips or notes pertaining to how appellant's cardiac condition was causally related to the August 29, 2015 employment incident and/or why appellant was totally disabled until November 16, 2015. Medical evidence that provides a conclusion, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>16</sup> It is the employee's burden of proof to provide rationalized medical evidence sufficient to establish causal relationship for conditions not accepted by OWCP as being employment related, not OWCP's burden to disprove such relationship.<sup>17</sup> Because Dr. Pursnani failed to provide any medical rationale for his conclusion regarding total disability, his opinion is of diminished probative value.<sup>18</sup>

Dr. Chang, in his note of November 16, 2015, placed appellant off work from November 16 through 30, 2015. In his December 4, 2015 report, he opined that appellant could perform modified work activity from December 4 through 11, 2015. However, Dr. Chang's opinion is of diminished probative value as he did not offer any rationalized medical explanation regarding the cause of appellant's condition or provide any rationale for his conclusion relative to disability.<sup>19</sup>

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<sup>16</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>17</sup> *See O.G.*, Docket No. 17-1501 (issued January 5, 2018).

<sup>18</sup> *S.B.*, Docket No. 13-1162 (issued December 12, 2013).

<sup>19</sup> *Id.*

In her December 17, 2015 report, Dr. Acharya noted that appellant had been off work since August 29, 2015 to take care of his heart condition. She indicated that appellant had been seeing his personal physician and that his cardiac workup revealed coronary artery disease for which he had stent placement. In work status reports dated December 16, 2015 and January 5 and 22, 2016, and also in subsequent reports, Dr. Acharya placed appellant on modified duty. Based on the history and mechanism of injury, she opined that appellant's syncopal episode from atrial fibrillation and coronary artery disease, which was later diagnosed as paroxysmal atrial fibrillation, was not caused or aggravated by factors of employment. Dr. Acharya further opined that cervical radiculopathy, cervical sprain, and head contusion were consistent with the fall and the head contusion during the fall. She indicated that appellant was capable of performing modified work and noted, in her March 4, 2016 report, that appellant chose to stay home and take online classes. As Dr. Acharya indicated that appellant could continue modified work, her reports failed to establish total disability from work during the claimed period.<sup>20</sup>

Dr. Nolan submitted several reports in which he found that appellant was temporarily totally disabled as a result of his work-related conditions. His first report of record was March 4, 2016. As noted, OWCP paid appellant retroactive total disability compensation beginning March 4, 2016. Thus, Dr. Nolan's reports do not establish disability during the remaining claimed period of disability.

OWCP also received a number of diagnostic reports. However, medical evidence of diagnostic testing is of limited probative value as it fails to provide a physician's reasoned opinion on causal relationship between appellant's work incident and the diagnosed conditions.<sup>21</sup>

For each period of disability claimed, the employee has the burden of proof to establish disability from work as a result of the accepted employment injury.<sup>22</sup> Because appellant has not submitted any reasoned medical opinion evidence sufficient to establish that he suffered from employment-related residuals or disability for the claimed period as a result of his accepted employment-related conditions, the Board finds that appellant has not met his burden of proof to establish his claim for disability compensation.<sup>23</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>20</sup> See *M.C.*, Docket No. 16-1238 (issued January 26, 2017).

<sup>21</sup> See *M.S.*, Docket No. 17-1044 (issued February 2, 2018).

<sup>22</sup> See *supra* note 12.

<sup>23</sup> The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation. *L.L.*, Docket No. 13-2146 (issued March 12, 2014). See also *William A. Archer*, 55 ECAB 674, 679 (2004).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish total disability for the period October 14 through December 16, 2015 causally related to his accepted employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2018  
Washington, DC

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

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

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