



## **FACTUAL HISTORY**

On July 29, 2015 appellant, then a 55-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that she was injured on July 28, 2015 when she was struck on the head by a bundle of mail that fell off a conveyor belt while at work. She stopped work on July 28, 2015, returned to limited-duty work on July 29, 2015, and intermittently stopped work thereafter.

OWCP accepted that appellant sustained postconcussion syndrome.<sup>3</sup> In a report dated September 16, 2015, Dr. Fazal Rahim, an attending Board-certified neurologist, indicated that appellant complained of headaches, neck pain, difficulty thinking and concentrating, and disturbed sleep and mood after “something [sic] fell on her head.” He provided a diagnosis of postconcussion syndrome, noting that appellant’s symptoms were typical and suggestive of postconcussion syndrome and that “some of the symptoms can last for six months.” Dr. Rahim released appellant to work on September 21, 2015.

In a form entitled, “Certification of Health Care Provider for Family Member’s Serious Health Condition (Family Medical and Leave Act) (Form WH-380-F), completed on September 16, 2015, Dr. Rahim diagnosed headaches and postconcussion syndrome and indicated that appellant could not engage in prolonged sitting, standing, lifting, pushing, pulling, and exposure to lights/noise. He noted that the “approximate date condition commenced” was August 14, 2015 and that the “probable duration of condition” was August 14, 2015 to August 15, 2016. Dr. Rahim further noted in another portion of the form that the estimated “beginning and ending dates for the period of incapacity” was August 14 to September 21, 2015.<sup>4</sup> He reported that he treated appellant on August 14 and 28, and September 16, 2015.

In a report dated October 5, 2015, Dr. Rahim diagnosed postconcussion syndrome and recommended that appellant remain on limited-duty work until November 9, 2015. He indicated that she could perform desk work, but was to avoid prolonged standing, lifting, pushing, and pulling.

Appellant received disability on the daily roll for complete work stoppage between September 15 and 18, 2015, for a total of 5.9 hours for attending medical appointments on September 21, 23, and 28, 2015, and for 4.0 hours for attending a medical appointment on October 5, 2015.<sup>5</sup>

---

<sup>3</sup> Appellant first sought medical treatment on July 31, 2015 at which time she was diagnosed by a physician with postconcussion syndrome in the emergency department of St. Vincent’s Hospital. She advised medical personnel that a bundle of magazines weighing four to five pounds fell from a distance of 20 feet and hit her on the head on July 28, 2015. Appellant indicated that there was no loss of consciousness at the time of injury and complained of headaches without nausea, vomiting, or blurred vision. The findings of a July 31, 2015 computerized tomography (CT) scan of appellant’s head contained an impression of “no acute abnormality.” The record contains an undated Attending Physician’s Report (Form CA-20) in which a person with an illegible signature noted treatment date of August 7, 2015 and noted that appellant was being referred to a neurologist for postconcussion syndrome.

<sup>4</sup> Dr. Rahim indicated that appellant might “get episodic headaches and flare-up of pain” one or two times per month.

<sup>5</sup> In late-September and early-October 2015, appellant had filed claim forms (entitled, Claim for Compensation -- Form CA-7) for disability on these dates.

On October 27, 2015 appellant filed CA-7 forms for intermittent dates of total disability during the period September 27 to October 26, 2015. For the dates of claimed total disability, she provided notations such as “headache, dizziness, muscle fatigue” in the portion of the forms entitled, “Reason for Leave Use.”

In a letter dated November 10, 2015, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

In a letter dated December 9, 2015, and received by OWCP on December 14, 2015, counsel discussed the light-duty work appellant performed after her July 28, 2015 injury and asserted that the record already contained medical evidence supporting her disability claim.

By decision dated December 29, 2015, OWCP denied appellant’s claim for additional intermittent total disability compensation, finding that she failed to submit medical evidence establishing that the claimed intermittent dates of total disability from September 27 to October 26, 2015 were causally related to the accepted July 28, 2015 work injury.<sup>6</sup>

Appellant submitted a number of documents previously submitted, including medical records from her July 31, 2015 emergency room visit. In a December 10, 2015 letter, OWCP asked Dr. Rahim to indicate whether appellant could return to full duty on November 9, 2015. In an undated response received by OWCP on January 21, 2016, Dr. Rahim checked a box marked “Yes” indicating that appellant could return to full duty on November 9, 2015.

Appellant requested a telephone hearing with an OWCP hearing representative regarding the December 29, 2015 decision. During the hearing held on September 15, 2016, she testified regarding the nature of the July 28, 2015 work injury noting that she was hit in the head with a bundle of mail weighing four and half pounds and that the force of the hit almost knocked her off her feet. Appellant indicated that, even though her head was hurting, she tried to continue working. She testified regarding the time she took off work and noted that she had returned to her regular duty. Counsel argued that the medical evidence of record established appellant’s disability claim for intermittent dates between September 27 and October 26, 2015, including a report that indicated that the probable duration of the injury was from August 14, 2015 to August 15, 2016. He noted that appellant experienced periodic flare-ups of her condition.

By decision dated November 30, 2016, OWCP’s hearing representative affirmed OWCP’s December 29, 2015 decision denying appellant’s claim for additional intermittent dates of total disability from September 27 to October 26, 2015 due to the July 28, 2015 work injury.<sup>7</sup> The hearing representative found that appellant failed to submit probative medical evidence establishing work-related disability for these dates.

---

<sup>6</sup> Appellant had already been compensated for four hours of disability due to attending a medical appointment on October 5, 2015.

<sup>7</sup> It was acknowledged that appellant supported four hours of disability on October 5, 2015 due to attending a medical appointment.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>8</sup> has the burden of proof 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 within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>9</sup> In general, the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.<sup>10</sup> This meaning, for brevity, is expressed as disability for work.<sup>11</sup>

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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>12</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from September 27 to October 26, 2015 due to her July 28, 2015 work injury.

OWCP accepted that on July 28, 2015 appellant sustained postconcussion syndrome due to being hit in the head with a bundle of mail. Appellant filed CA-7 forms for intermittent dates of disability during the period September 27 to October 26, 2015. For the dates of claimed disability, she provided notations such as “headache, dizziness, muscle fatigue” in the portion of the forms entitled, “Reason for Leave Use.”<sup>13</sup> In decisions dated December 29, 2015 and November 30, 2016, OWCP denied appellant’s claim for additional dates of total disability, noting that she had not submitted adequate medical evidence in support thereof.

In support of her disability claim, appellant submitted a form report completed on September 16, 2015 in which Dr. Rahim, an attending physician, diagnosed headaches and postconcussion syndrome and indicated that she could not engage in prolonged sitting, standing, lifting, pushing, pulling, and exposure to lights/noise. Dr. Rahim noted that the “approximate date condition commenced” was August 14, 2015 and that the “probable duration of condition” was August 14, 2015 to August 15, 2016. However, he did not indicate that his statement

---

<sup>8</sup> *Supra* note 1.

<sup>9</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>10</sup> *See* 20 C.F.R. § 10.5(f).

<sup>11</sup> *Roberta L. Kaamoana*, 54 ECAB 150 (2002); *see also A.M.*, Docket No. 09-1895 (issued April 23, 2010).

<sup>12</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>13</sup> Appellant had already been compensated for four hours of disability due to attending a medical appointment on October 5, 2015.

regarding “probable duration of condition” constituted an opinion on any particular period of total disability due to the July 28, 2015 work injury.

The Board further notes that there is no indication that Dr. Rahim examined appellant on or about the dates of additional intermittent total disability claimed by her between September 27 and October 26, 2015, other than the October 5, 2015 examination for which she has received four hours of disability compensation. The Board has held that the absence of a physical examination by a physician may affect the weight to be given a medical report, but does not necessarily render it incompetent as medical evidence.<sup>14</sup> Whether a particular injury causes an employee disability from employment and the duration of that disability are medical issues which must be resolved by competent medical evidence and such medical evidence must include findings on examination and the physician’s opinion, supported by medical rationale, showing how the injury caused the employee disability from his or her particular work.<sup>15</sup> Appellant has not submitted such probative medical evidence containing a reasoned medical opinion regarding the specific dates of additional intermittent total disability that she claimed.

Dr. Rahim noted in another portion of his September 16, 2015 report that the estimated “beginning and ending dates for the period of incapacity” were August 14 to September 21, 2015. This statement of disability does not support appellant’s present claim because it does not relate to the claimed dates of total disability, *i.e.*, intermittent dates of total disability during the period September 27 to October 26, 2015.<sup>16</sup>

In a report dated October 5, 2015, Dr. Rahim diagnosed postconcussion syndrome and recommended that appellant remain on limited-duty work until November 9, 2015. In a December 10, 2015 letter, OWCP asked Dr. Rahim to indicate whether appellant could return to full duty on November 9, 2015. In an undated response received by OWCP on January 21, 2016, Dr. Rahim checked a box marked “Yes” indicating that appellant could return to full duty on November 9, 2015. He did not opine in these reports that appellant had total disability for the claimed intermittent dates of disability between September 27 and October 26, 2015.

For these reasons, the Board finds that appellant has not established additional intermittent disability between September 27 and October 26, 2015 due to her July 28, 2015 work injury and OWCP properly denied her claim.

On appeal counsel argues that the fact that appellant did not go to a physician on or about the claimed dates of additional intermittent total disability should not prejudice her claim. However, the Board has noted that appellant’s failure to be examined on or around the claimed dates of additional total disability does, in fact, affect the probative value of the submitted

---

<sup>14</sup> See generally *Melvina Jackson*, 38 ECAB 443, 447-52 (1987).

<sup>15</sup> See *R.R.*, Docket No. 14-1415 (issued December 29, 2014); *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>16</sup> Dr. Rahim indicated that appellant might “get episodic headaches and flare-up of pain” one or two times per month. However, he did not document any disabling flare-ups of the July 28, 2015 work injury during the dates of additional intermittent disability claimed by appellant between September 27 and October 26, 2015. In another report dated September 16, 2015, Dr. Rahim indicated that some of the symptoms of postconcussion syndrome “can last for six months,” but he did not provide any specific opinion on periods of total disability due to the July 28, 2015 work injury.

medical evidence. Moreover, appellant has not submitted any medical evidence specifically addressing total disability for the claimed additional intermittent periods between September 27 and October 26, 2015.

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 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 additional intermittent total disability between September 27 and October 26, 2015 due to her July 28, 2015 work injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 30, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 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