

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

_____)	
T.O., Appellant)	
)	
and)	Docket No. 17-1177
)	Issued: November 2, 2018
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Charleston, SC, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 8, 2017 appellant filed a timely appeal from a January 18, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence to OWCP after the January 18, 2017 decision was issued. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability for the period November 11, 2016 to January 17, 2017, causally related to her January 25, 2016 employment injury.

FACTUAL HISTORY

On January 31, 2016 appellant, then a 31-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that she injured her neck, back, and shoulder while in the performance of duty on January 25, 2016. She stated that while trying to assist a patient from falling, he fell on her. The employing establishment indicated that it received conflicting accounts of the January 25, 2016 incident, noting that another nurse reported that appellant was assisting a patient with moving his legs closer to a walker when appellant fell to her knees. The patient reportedly did not fall. Appellant stopped work the date of the alleged injury and received continuation of pay (COP).

After further development of the record, OWCP initially denied the claim because appellant failed to establish the medical component of fact of injury. By decision dated April 1, 2016, OWCP noted that the only medical evidence received was a February 18, 2016 work status report consisting of diagnostic codes (M54.2 and M65.811). It explained that appellant had not submitted a narrative medical report with a firm diagnosis as previously requested by OWCP.

Appellant returned to work on April 4, 2016.³

By two separate decisions dated July 12, 2016, OWCP vacated its April 1, 2016 decision and accepted appellant's claim for cervical spine ligament(s) sprain.

OWCP paid appellant compensation for intermittent wage loss (50 hours) for the period April 4 through September 21, 2016.

On November 21, 2016 appellant filed a claim for compensation (Form CA-7) for temporary total disability for the period November 11, 2016 to January 17, 2017.

In support of her claim, appellant submitted a November 17, 2016 work status report from Dr. Shailesh M. Patel, a Board-certified physiatrist, who indicated the date of injury as January 25, 2016 and diagnosed cervical radiculopathy. Dr. Patel checked a box indicating that appellant's injury was work related and took her off work until a follow-up with rheumatology. He found that appellant had not yet reached maximum medical improvement.

In a November 23, 2016 claim development letter, OWCP requested additional medical evidence establishing appellant's disability for work during the period claimed and afforded her 30 days to respond to its inquiries. It noted that the claim was only accepted for cervical strain and a rheumatologist was not a specialist for the accepted medical condition.

³ Appellant had received COP from January 29 through April 2, 2016.

In response appellant submitted a November 15, 2016 cervical magnetic resonance imaging (MRI) scan report which demonstrated mid-cervical mild disc bulges and cervical stenosis (C5-6, C6-7).

In November 17, 2016 follow-up treatment notes, Dr. Patel noted that on January 25, 2016 appellant sustained an injury at work. He indicated that she had been diagnosed with a cervical strain and her injury had escalated to cervical radiculopathy. Dr. Patel explained that this was caused over time by the nerve root being pinched or irritated by a herniated disc. He found that appellant continued to have diffuse muscular pain throughout the neck, upper back, and shoulder. Appellant also reported paresthesias into the arm on the right side. Dr. Patel noted that all of the diagnostic testing, including recent MRI scan, had been positive and that an epidural steroid injection had not offered any improvement. He recommended a neurological consultation if appellant's paresthesias continued. Dr. Patel diagnosed cervical radiculitis and cervical radiculopathy and opined that appellant's conditions were work related. He also noted that she should be off work and that she should follow up in two months.

In a November 28, 2016 work status report, Dr. Patel continued to diagnose cervical radiculopathy and advised that appellant was to remain off work due to her work-related injury.

On December 15, 2016 Dr. Patel diagnosed cervical radiculitis and full-thickness rotator cuff tear.

In a January 3, 2017 report, Dr. Patel continued to diagnose cervical radiculitis and cervical radiculopathy. He reiterated appellant's assertions that her injury occurred while she was assisting a combative patient with an excessive amount of weight (approximately 350 to 400 pounds) from falling on his face and hurting himself. Appellant stated that she got behind the patient applying her arms around him to help him up and then he fell back on her causing her to fall with the patient landing on top of her body. She struggled to remove the patient off her using her arms and muscles. Once appellant was able to do so, she immediately felt an enormous amount of burning, pain, weakness, and also stiffness to her cervical region (neck), upper back, and shoulders. Dr. Patel opined that appellant's cervical conditions were caused by the impact that her body sustained when the patient caused her to fall with his body weight and pressure being applied on top of hers. He further opined that she strained to remove the massive patient from her body causing tendinitis due to overexertion and cervical radiculopathy. Dr. Patel found that a herniated disc at C5-6 caused the nerve root impingement from the impact appellant sustained when the patient fell on her. He took appellant off work until she visited a surgeon and neurologist for consultation.

By decision dated January 18, 2017, OWCP denied appellant's claim for disability for the period November 11, 2016 to January 17, 2017 because the medical evidence of record failed to establish total disability due to the accepted employment injury.

LEGAL PRECEDENT

Section 8102(a) of FECA⁴ sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: "The United States shall pay compensation as

⁴ 5 U.S.C. § 8102(a).

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.”⁵ This meaning, for brevity, is expressed as disability for work.⁶ For each period of disability claimed, an employee has the burden of proof to establish that he or she was disabled for work as a result of the accepted employment injury.⁷ 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.⁸

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 his or her federal employment, but who nonetheless 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 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 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.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability for the period November 11, 2016 to January 17, 2017, causally related to her January 25, 2016 employment injury.

OWCP accepted that she sustained a cervical sprain, however, appellant bears the burden of proof to establish through medical evidence that she was disabled during the claimed time period and that her disability was causally related to the accepted injury.¹⁰ The Board finds that appellant has not submitted rationalized medical evidence explaining how the January 25, 2016 employment injury disabled her from all work during the period November 11, 2016 to January 17, 2017.

In his reports, Dr. Patel diagnosed cervical radiculitis and cervical radiculopathy and opined that appellant’s cervical conditions were work related. He indicated that on January 25, 2016 she sustained an injury at work. Dr. Patel noted that appellant had been diagnosed with a cervical strain and her injury had escalated to cervical radiculopathy. He explained that this was caused over time by the nerve root being pinched or irritated by a herniated disc. In a January 3, 2017 report, Dr. Patel further explained that appellant’s cervical conditions were caused by the

⁵ 20 C.F.R. § 10.5(f); *see also* *William H. Kong*, 53 ECAB 394 (2002).

⁶ *See Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁷ *See William A. Archer*, 55 ECAB 674 (2004).

⁸ *See Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁹ *Id.*

¹⁰ *See supra* note 9. *See also V.P.*, Docket No. 09-337 (issued August 4, 2009).

impact that her body sustained when the patient caused her to fall with his body weight and pressure being applied on top of hers. He opined that she strained to remove the massive patient from her body causing tendinitis due to overexertion and cervical radiculopathy. Dr. Patel also found that a herniated disc at C5-6 caused the nerve root impingement from the impact appellant sustained when the patient fell on her. Dr. Patel advised that she was to remain off work due to her cervical radiculopathy sustained from a work-related injury. Although he opined that appellant was totally disabled for work, his opinion is conclusory in nature and fails to explain in detail how the accepted medical condition of sprain of ligaments of the cervical spine was responsible for her disability and why she could not perform her federal employment during the period claimed.¹¹ Consequently, the Board finds that Dr. Patel's reports are insufficient to establish appellant's claim that she was totally disabled for the period November 11, 2016 to January 17, 2017 causally related to her employment injuries.

The Board finds that appellant has not submitted sufficiently rationalized medical opinion evidence establishing that she was disabled during the period November 11, 2016 to January 17, 2017 causally related to the employment injury. Thus, appellant has not met her burden of proof to establish that she is entitled to compensation for total 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 total disability for the period November 11, 2016 to January 17, 2017, causally related to her January 25, 2016 employment injury.

¹¹ See *J.J.*, Docket No. 15-1329 (issued December 18, 2015).

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2018
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