



commencing November 6, 2015, causally related to her accepted October 25, 2012 employment injury.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as presented in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On October 29, 2012 appellant, then a 45-year-old loan servicing assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries to multiple parts of her body when she slipped and fell on a wet floor while at work on October 25, 2012. OWCP accepted that appellant sustained a cervical strain, left hip and thigh sprains, lumbar sprain, disorder of the coccyx, left hip and thigh contusions, unspecific disorder of the cervical discs, and chronic pain syndrome.<sup>4</sup>

Appellant stopped work on December 1, 2013. Beginning on December 17, 2013, she filed several claims for compensation (Form CA-7) alleging disability from December 1, 2013 to February 8, 2014 due to her accepted work conditions. In support of her disability claim, appellant submitted a December 5, 2013 report in which Dr. John Dickason, a Board-certified orthopedic surgeon, indicated that she could not perform her usual job as she needed to take 10-minute breaks every 2 hours.

In a January 9, 2014 report, Dr. Mahe T. Nadeem, an attending Board-certified physical medicine and rehabilitation physician, indicated that appellant could perform her regular work “with rest breaks.” In January 17 and February 19, 2014 reports, Dr. Nadeem diagnosed neck sprain, hip and thigh sprains, and hip and thigh contusions, and noted that appellant could return to work “with restrictions.”

By decisions dated February 13 and March 28, 2014, OWCP found that appellant had not met her burden of proof to establish disability from December 1, 2013 to February 8, 2014 because she had not submitted rationalized medical evidence in support of her claim.

Appellant filed additional claims for compensation alleging disability between February 9 and August 9, 2014 due to her accepted work conditions.

In a May 14, 2014 report, Dr. Nadeem indicated that, upon physical examination on that date, appellant exhibited limitation of cervical and lumbar range of motion. He noted that, based on this physical examination, appellant had restrictions of no lifting, carrying, pushing, and pulling; no sustained grasping/gripping activity; no constant/repetitive wrist and hand activity; no constant bending, squatting, and twisting; and no prolonged sitting/standing posture.

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<sup>3</sup> Docket No. 16-0527 (issued July 26, 2016).

<sup>4</sup> Appellant stopped work on October 25, 2012 and returned to work on November 7, 2012 in her usual job.

In a form report (Form CA-20) dated June 19, 2014, Dr. Mike Shah, an attending Board-certified physical medicine and rehabilitation physician, listed the date of injury as October 25, 2012 and indicated that appellant was totally disabled from June 19 to August 19, 2014 and partially disabled thereafter.

Dr. Shah noted in a report dated August 4, 2014, that appellant reported pain in her neck which radiated into her upper extremities. He listed her accepted conditions in the present case, indicated that her “injuries are work related,” and noted that she had been totally incapacitated since June 19, 2014. Dr. Shah recommended keeping appellant off work “to allow her to get stronger and complete her therapy program.”

Appellant requested reconsideration of her disability claim and, by decisions dated October 2 and 14, 2014, OWCP found that she had not met her burden of proof to establish disability from December 1, 2013 to August 9, 2014 because she had not submitted sufficient medical evidence in support of her claim.<sup>5</sup>

On January 26, 2015 appellant returned to work for the employing establishment in a position which allowed her to lie down for 5 to 10 minutes every 2 hours.

Appellant filed a claim for compensation alleging four hours of disability on June 4, 2015 and two hours of disability on June 16, 2015 due to attending doctor’s appointments on those dates in order to treat her work-related conditions.

By decision dated December 15, 2015, OWCP found that appellant had not met her burden of proof to establish disability from December 1, 2013 to August 9, 2014 because she had not submitted sufficient medical evidence in support of her claim. It indicated that the medical evidence submitted by appellant did not contain adequate medical rationale.

By separate decision also dated December 15, 2015, OWCP found that appellant had not met her burden of proof to establish disability on June 4 and 16, 2015 because she had not submitted sufficient medical evidence in support of her claim. It indicated that appellant did not show that she was treated for an accepted work injury on these dates.

The Board notes that, while OWCP was adjudicating appellant’s initial claims for disability (December 1, 2013 to August 9, 2014, and on June 4 and 16, 2015), appellant filed additional claims for compensation for intermittent periods of work stoppage commencing November 6, 2015.<sup>6</sup> By decision dated February 22, 2016, OWCP denied appellant’s claim for intermittent periods of disability commencing November 6, 2015 due to her October 25, 2012

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<sup>5</sup> OWCP denied modification of its February 13 and March 28, 2014 decisions.

<sup>6</sup> OWCP paid compensation for 1.5 hours due to appellant’s attendance at a November 6, 2015 medical appointment related to her October 25, 2012 employment injury. Therefore, with respect to November 6, 2015, appellant has effectively claimed compensation for the remainder of the day.

employment injury. It found that she failed to submit medical evidence sufficient to establish her claim.<sup>7</sup>

Appellant appealed both of OWCP's December 15, 2015 decisions to the Board and, by decision dated July 26, 2016,<sup>8</sup> the Board affirmed both OWCP December 15, 2015 decisions. The Board found that OWCP properly denied appellant's claim for employment-related disability from December 1, 2013 to August 9, 2014, and on June 4 and 16, 2015.

On July 17, 2017 appellant, through counsel, requested reconsideration of the decisions which served to deny all her claimed periods of disability due to the October 25, 2012 employment injury, *i.e.*, December 1, 2013 to August 9, 2014, on June 4 and 16, 2015, and intermittent periods commencing November 6, 2015.

In support of her disability claim, appellant submitted an October 29, 2015 report from Dr. Shah who indicated that appellant presented complaining that she was "having pain all over" and that she had anxiety attacks. She reported that she had neck pain which radiated into both arms down to the wrists, occasional numbness/tingling in her hands, lower back pain which radiated into both legs, and occasional numbness/tingling and weakness in her hips. Dr. Shah indicated that the employing establishment had not addressed some of his recommendations regarding an ergonomic workstation and work restrictions, noting that this was a circumstance "which may very well worsen her symptoms as well as increase the frequency of unscheduled medical leaves."

In a November 6, 2015 report, Dr. Sat Katar S. Khalsa, an attending clinical psychologist, reported the findings of the psychological evaluation he performed on that date. He summarized the medical evidence of record and noted that appellant presented for the evaluation with complaints of severe pain in her neck, low/mid back, shoulders, arms, and hands. Dr. Khalsa detailed the findings of various psychological tests he conducted, including the behavioral assessment of pain/medical quick screen. He advised that the results of his evaluation suggested that appellant was experiencing symptoms of anxiety, depression, fear and avoidance of activity, self-perceptions of disability, and preoccupation with persistent, debilitating pain.<sup>9</sup> Appellant complained of average pain levels of 7 on a scale of 0 to 10 and she expressed her belief in the need for additional medical treatment and narcotic medication to manage her pain. Dr. Khalsa indicated that, therefore, it appeared prudent to provide a course of health and behavior interventions to improve appellant's pain coping, self-relaxation, and problem solving skills. He noted that appellant should be allowed to telework from home as a reasonable accommodation for chronic pain syndrome which clearly had been aggravated by her return to work in January 2015. Dr. Khalsa felt that telework would facilitate reduction of appellant's pain and emotional

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<sup>7</sup> On February 13, 2017 appellant, through counsel, requested reconsideration of OWCP's February 22, 2016 decision and, by decision dated May 12, 2017, OWCP denied modification of its February 22, 2016 decision.

<sup>8</sup> *See supra* note 3.

<sup>9</sup> Dr. Khalsa indicated that appellant had the diagnoses of neck pain, hip/thigh sprain, hip/thigh contusion, coccyx disorder, cervical disc disease, lumbar region sprain, and chronic pain syndrome.

symptoms from the severe range down to the moderate or mild range, improve productivity and optimal functioning, and prevent further worsening of her medical condition.

In a January 19, 2016 report, Dr. Khalsa indicated that he was responding to a request from an OWCP claims examiner and listed results from several psychological tests, including the brief psychiatric rating scale, global assessment of functioning test, and psychiatric impairment rating scale.<sup>10</sup> He noted that chronic pain syndrome constituted an accepted emotional condition and opined that appellant's present condition was not due to exposure to new employment factors.

In a duty status report (Form CA-17) dated February 15, 2016, Dr. Shah listed the diagnoses due to the October 25, 2012 employment injury as cervical strain, left hip and thigh sprains, disorder of the coccyx, left hip and thigh contusions, and unspecific disorder of the cervical discs. He indicated that appellant had work restrictions of lifting up to five pounds for four hours per day, sitting for six hours, standing for a half hours, walking for a half hour, pushing/pulling for a half hour, simple grasping for four hours, fine manipulation for four hours, and reaching above the shoulders for a half hour.<sup>11</sup> In an attending physician's report (Form CA-20) dated June 30, 2016, Dr. Shah listed the diagnoses due to the October 25, 2012 employment injury as cervical strain, left hip and thigh sprains, disorder of the coccyx, left hip and thigh contusions, unspecific disorder of the cervical discs, and lumbar sprain. He indicated that appellant had been totally disabled on June 30, 2016, but could return to regular work on July 1, 2016.

In a November 10, 2016 initial visit report, Dr. Juan L. Zamora, a Board-certified family practitioner, noted that appellant had been referred to him by Dr. Shah. He provided physical examination findings and diagnosed chronic pain syndrome, unspecified disorder of the cervical discs, sacrococcygeal disorder, cervical sprain, lumbar sprain, thigh contusion, and hip contusion.

In a December 16, 2016 report, Dr. Shah detailed physical examination findings, including cervical, paraspinal, and lumbar spine muscle spasms, and diagnosed neck sprain, left hip/thigh sprain, left hip/thigh contusion, disorder of coccyx, cervical disc disorder, and lumbar sprain. He indicated that, when her symptoms were stable, appellant could work with restrictions outlined in a functional capacity evaluation.<sup>12</sup> Dr. Shah advised that appellant was presently going through a flare-up of symptoms as evinced by the observed cervical, paraspinal, and lumbar spine muscle spasms and, therefore, he recommended that appellant undergo myofascial release therapy.<sup>13</sup> On January 4, 2017 he calculated that appellant had 10 percent permanent impairment of her left lower

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<sup>10</sup> In a December 21, 2015 informational letter, OWCP advised appellant that Dr. Khalsa's November 6, 2015 report was insufficient to establish her disability claim.

<sup>11</sup> Appellant also submitted pain counseling reports dated between March and July 2016 from Michael Perez, a licensed master social worker.

<sup>12</sup> Dr. Shah did not specify the date of the functional capacity evaluation and the record does not contain one that was produced around the time of his December 16, 2016 report.

<sup>13</sup> Myofascial release therapy includes applying deep pressure to areas of muscle spasm in order to decrease pain. Dr. Shah also produced follow-up notes dated December 6, 2016 and March 2, 2017.

extremity under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>14</sup>

In an August 10, 2017 disability note, Dr. Shah found that appellant was incapacitated from work for the period August 10 to 13, 2017 and indicated that she could return to work on August 14, 2017.

By decision dated October 12, 2017, OWCP denied modification of its May 22, 2017 decision denying appellant's claim for intermittent periods of employment-related disability commencing November 6, 2015. It found that appellant failed to submit medical evidence sufficient to establish her disability claim for this period.

By decision dated October 24, 2017, OWCP denied modification of its prior decisions denying appellant's claim for employment-related disability from December 1, 2013 to August 9, 2014, and on June 4 and 16, 2015. It determined that she failed to submit medical evidence sufficient to establish her disability claim for this period.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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>15</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>16</sup> This meaning, for brevity, is expressed as disability for work.<sup>17</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>18</sup>

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<sup>14</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>15</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>16</sup> *See* 20 C.F.R. § 10.5(f).

<sup>17</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002); *see also A.M.*, Docket No. 09-1895 (issued April 23, 2010).

<sup>18</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues, which must be proved by a preponderance of reliable, probative, and substantial medical evidence.<sup>19</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from December 1, 2013 to August 9, 2014, on June 4 and 16, 2015, and for intermittent periods commencing November 6, 2015, causally related to her accepted October 25, 2012 employment injury.

OWCP accepted that, due to an October 25, 2012 fall at work, appellant sustained a cervical strain, left hip and thigh sprains, lumbar sprain, disorder of the coccyx, left hip and thigh contusions, unspecific disorder of the cervical discs, and chronic pain syndrome. Appellant initially filed several claims for compensation alleging disability from December 1, 2013 to August 9, 2014, and on June 4 and 16, 2015, causally related to her October 25, 2012 employment injury. The Board addressed this portion of appellant's disability claim in a July 26, 2016 decision which affirmed OWCP's denial of disability for these periods. Appellant also filed a claim for compensation forms claiming disability for intermittent periods commencing November 6, 2015, causally related to her October 25, 2012 employment injury. OWCP's October 12 and 24, 2017 decisions collectively denied all the above-noted periods of claimed disability, *i.e.*, December 1, 2013 to August 9, 2014, on June 4 and 16, 2015, and intermittent periods commencing November 6, 2015.

Preliminarily, the Board notes that it is unnecessary to reconsider the medical evidence submitted prior to the issuance of OWCP's December 15, 2015 decisions because the Board has already considered this evidence in its July 26, 2016 decision and found it was insufficient to establish appellant's claim for disability from December 1, 2013 to August 9, 2014, and on June 4 and 16, 2015, causally related to her October 25, 2012 employment injury.

The Board further finds that the evidence appellant submitted after the issuance of OWCP's December 15, 2015 decisions fails to establish employment-related disability from December 1, 2013 to August 9, 2014, and on June 4 and 16, 2015. In addition, the evidence of record fails to establish employment-related disability for intermittent periods commencing November 6, 2015.

In an October 29, 2015 report, Dr. Shah indicated that appellant presented complaining that she was "having pain all over" and that she had anxiety attacks. Appellant reported that she had neck pain which radiated into both arms down to the wrists, occasional numbness/tingling in her hands, lower back pain which radiated into both legs, and occasional numbness/tingling and weakness in her hips. Dr. Shah indicated that the employing establishment had not addressed some of his recommendations regarding an ergonomic workstation and work restrictions, noting that this was a circumstance "which may very well worsen her symptoms as well as increase the frequency of unscheduled medical leaves."

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<sup>19</sup> *W.D.*, Docket No. 09-658 (issued October 22, 2009).

The Board finds that the submission of this report does not establish appellant's claim for employment-related disability from December 1, 2013 to August 9, 2014, on June 4 and 16, 2015, and for intermittent periods commencing November 6, 2015 because the report is of no probative value on this matter due to its lack of an opinion on disability. Although Dr. Shah mentioned potential future work stoppages, he did not provide any opinion that appellant stopped work during the periods of claimed disability due to the October 25, 2012 employment injury. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>20</sup>

In a November 6, 2015, Dr. Khalsa, an attending clinical psychologist, reported the findings of the psychological evaluation, he performed on that date. He advised that the results of his evaluation suggested that appellant was experiencing symptoms of anxiety, depression, fear and avoidance of activity, self-perceptions of disability, and preoccupation with persistent, debilitating pain. Dr. Khalsa recommended a course of health and behavior interventions to improve appellant's pain coping, self-relaxation, and problem solving skills. He noted that appellant should be allowed to telework from home as a reasonable accommodation for chronic pain syndrome.<sup>21</sup> In a January 19, 2016 report, Dr. Khalsa provided additional discussion of results of the November 6, 2015 psychological evaluation.

The Board notes that, although Dr. Khalsa noted that appellant should engage in telework, he did not provide a clear opinion that appellant was disabled by the October 25, 2012 employment incident during the claimed periods of disability, *i.e.*, December 1, 2013 to August 9, 2014, on June 4 and 16, 2015, and intermittent periods commencing November 6, 2015. Given this lack of an opinion on specific periods of disability, his report is of no probative value regarding appellant's disability claim.<sup>22</sup> The Board notes that Dr. Khalsa's recommendation that appellant telework from home appears to be essentially prophylactic in nature, *i.e.*, designed to prevent future injury. It is well established that the possibility of future injury constitutes no basis for the payment of compensation.<sup>23</sup>

In a February 15, 2015 duty status report, Dr. Shah listed the diagnoses due to the October 25, 2012 employment injury as cervical strain, left hip and thigh sprains, disorder of the coccyx, left hip and thigh contusions, and unspecific disorder of the cervical discs. He indicated that appellant had various work restrictions, including lifting up to five pounds for four hours per day, sitting for six hours, standing for a half hour, walking for a half hour, and pushing/pulling for a half hour. In a June 30, 2016 attending physician's report, Dr. Shah again listed diagnoses due

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<sup>20</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>21</sup> Dr. Khalsa felt that telework would facilitate reduction of appellant's pain and emotional symptoms from the severe range down to the moderate or mild range, improve productivity and optimal functioning, and prevent further worsening of her medical condition.

<sup>22</sup> See *supra* note 20.

<sup>23</sup> *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).

to the October 25, 2012 employment injury.<sup>24</sup> He indicated that appellant had been totally disabled on June 30, 2016, but could return to regular work on July 1, 2016.

Although Dr. Shah denoted periods of partial and total disability in these reports, the Board notes that the reports are of limited probative value because he did not provide adequate medical rationale in support of his opinion on disability. Dr. Shah mentioned some of the conditions accepted as due to the October 25, 2012 employment injury, but he did not provide any explanation of why they caused disability for the specified dates. He did not explain how objective findings on physical examination and diagnostic testing supported his opinion on disability. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.<sup>25</sup>

In a December 16, 2016 report, Dr. Shah detailed physical examination findings, including cervical, paraspinal, and lumbar spine muscle spasms, and diagnosed neck sprain, left hip/thigh sprain, left hip/thigh contusion, disorder of coccyx, cervical disc disorder, and lumbar sprain. He advised that appellant was presently going through a flare-up of symptoms as evinced by the observed cervical, paraspinal, and lumbar spine muscle spasms and, therefore, he recommended that appellant undergo myofascial release therapy. Although he mentioned a worsening of symptoms, Dr. Shah did not provide an opinion on disability and this report is of no probative value with respect to appellant's disability claim.<sup>26</sup>

Appellant also submitted pain counseling reports dated between March and July 2016 from Mr. Perez, a licensed master social worker. However, these reports have no probative value with respect to appellant's disability claim because the Board has held that the report of a nonphysician, such as a social worker, does not constitute probative medical evidence under FECA.<sup>27</sup>

On appeal counsel argues that the medical evidence submitted by appellant supports her claim for employment-related disability from December 1, 2013 to August 9, 2014, on June 4 and 16, 2015, and for intermittent periods commencing November 6, 2015. However, the Board finds the submitted evidence fails to establish appellant's disability claim.

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.

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<sup>24</sup> Dr. Shah added the diagnosis of lumbar sprain to the above-noted diagnoses.

<sup>25</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>26</sup> See *supra* note 20. Dr. Shah also produced follow-up notes dated December 6, 2016 and March 2, 2017, and a permanent impairment rating report dated January 4, 2017. In a November 20, 2016 report, Dr. Zamora diagnosed chronic pain syndrome, unspecified disorder of the cervical discs, sacrococcygeal disorder, cervical sprain, lumbar sprain, thigh contusion, and hip contusion. The Board notes that these reports are of no probative value on the underlying issue of this case because they do not contain an opinion on disability. See *id.*

<sup>27</sup> *R.S.*, Docket No. 16-1303 (issued December 2, 2016); *L.L.*, Docket No. 13-829 (issued August 20, 2013). See 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish disability from December 1, 2013 to August 9, 2014, on June 4 and 16, 2015, and for intermittent periods commencing November 6, 2015, causally related to her accepted October 25, 2012 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 24 and 12, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 26, 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