



## **ISSUE**

The issue is whether appellant has met her burden of proof to establish disability for the periods March 7 through 21, April 28 through May 12, and May 13 through June 9, 2017, causally related to her accepted October 31, 2016 employment injuries.

## **FACTUAL HISTORY**

On October 31, 2016 appellant, then a 50-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date a machine door struck her on the side of her face while in the performance of duty. Her attending physician, Dr. Kathleen Jenkins, Board-certified in occupational medicine, found that she was totally disabled from work for the period November 1 through 8, 2016. Dr. Jenkins released appellant to return to light-duty work on November 9, 2016 with a lifting restriction of 15 pounds.

On January 4, 2017 OWCP accepted appellant's claim for head contusion, benign paroxysmal vertigo, and cervical spine sprain. On January 19, 2017 Dr. Jenkins released appellant to return to full-duty work. On February 17, 2017 appellant accepted a light-duty position with restrictions of kneeling, bending, and stooping for 4 hours, twisting, pulling, pushing, and simple grasping from 10 to 15 pounds 8 hours a day, and fine manipulation up to 15 pounds 8 hours a day.

On March 2, 2017 Dr. Jenkins examined appellant due to headache and neck strain. She reported that appellant had returned to work and had experienced neck spasms, headaches, and dizziness after working 12-hour shifts 5 to 6 days a week. Dr. Jenkins found increased muscle spasms on the right side with intermittent headaches. She also found spasms in the left flank and lower back. Dr. Jenkins restricted appellant to lifting and carrying no more than 10 pounds beginning March 2, 2017. In a note dated March 7, 2017, Dr. Joanna Ramirez, a Board-certified internist, reported that appellant was experiencing acute right-sided low back pain. She found that appellant was totally disabled from work through March 21, 2017.

On March 23, 2017 Dr. Jenkins noted appellant's history of injury and removal from work for two weeks due to lower back pain. She reported that appellant had returned to light-duty work, but still experienced slight spasms in her neck. Dr. Jenkins opined that the cause of appellant's problems was related to work activities.

On April 5, 2017 appellant underwent a cervical magnetic resonance imaging (MRI) scan which demonstrated disc herniations at C3-4, C4-5, C5-6, and C6-7 with diffuse canal stenosis and moderate bilateral foraminal stenosis at the C6 nerve roots.

On April 17, 2017 appellant filed a claim for compensation (Form CA-7) for leave without pay (LWOP) for the period March 4 through 27, 2017. The employing establishment indicated that appellant used LWOP from March 7 through 21, 2017.

In an April 25, 2017 development letter, OWCP informed appellant that it had not received evidence to support her claimed wage-loss for the period March 4 through 27, 2017. It advised her of the type of evidence needed to establish her disability claim and afforded her 30 days to submit the necessary evidence.

On April 17, 2017 Dr. Jenkins completed a duty status report (Form CA-17) and opined that appellant had a lifting restriction of 10 pounds due to multiple level cervical disc herniations and radiculopathy. In an April 17, 2017 note, she described appellant's history of injury and diagnosed contusion of the head, benign paroxysmal vertigo, cervical sprain, and cervical disc disorder with radiculopathy. Dr. Jenkins attributed these conditions to appellant's work activities and found that she should perform restricted duty. On April 25, 2017 appellant accepted a light-duty job within Dr. Jenkins' lifting restrictions.

On April 28, 2017 Dr. Jenkins completed a Form CA-17 and opined that appellant was totally disabled due to cervical herniated discs. She noted that appellant was injured on October 31, 2016 when she was hit in the face with a door.

On May 12, 2017 appellant filed a Form CA-7 and requested LWOP from April 28 through May 12, 2017. In a May 22, 2017 development letter, OWCP informed her that it had not received evidence to support her claimed wage loss for the period April 28 through May 12, 2017. It advised appellant of the type of evidence needed to establish her disability claim and afforded her 30 days to submit the necessary evidence.

In an April 28, 2017 note, Dr. Jenkins provided a history of injury and repeated her diagnoses. She attributed appellant's conditions to her employment. Dr. Jenkins found that appellant was totally disabled and noted that appellant felt that her condition was worsening.

On June 20, 2017 appellant filed a Form CA-7 requesting LWOP from May 13 through June 9, 2017.<sup>4</sup> In a June 28, 2017 development letter, OWCP informed her that it had not received evidence to support her claimed wage loss for the period May 13 through June 9, 2017. It advised appellant of the type of evidence needed to establish her disability claim and afforded her 30 days to submit the necessary evidence.

On June 23, 2017 Dr. Jenkins completed a Form CA-17 and indicated that appellant could return to work on that date lifting and carrying no more than five pounds. She provided a treatment note of the same date finding that appellant's neurological examination, sensation, and reflexes were normal. Dr. Jenkins found that appellant had improved since she stopped work with fewer muscle spasms. She repeated her diagnoses of head contusion, benign paroxysmal vertigo, cervical sprain, and cervical disc disorder with radiculopathy. Dr. Jenkins concluded that appellant's conditions were work related and released her to return to restricted duty on June 23, 2017.

By decision dated August 10, 2017, OWCP denied appellant's claim for wage-loss compensation for the period March 7 through 21, 2017. It found that no medical evidence was received to establish that her claim was causally related to the accepted work-related medical conditions.

By decision dated August 11, 2017, OWCP denied appellant's claim for wage-loss compensation for the period April 28 through May 12, 2017, finding that no medical evidence was

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<sup>4</sup> The Board notes that appellant subsequently filed Form CA-7s requesting wage-loss compensation for the period January 16 through September 30, 2017 and April 28, 2018 and continuing. These periods of claimed disability, however, are not presently before the Board.

received to establish that her claim was causally related to the accepted work-related medical conditions.

On August 25, 2017 appellant requested a review of the written record from OWCP's Branch of Hearings and Review of the August 10 and 11, 2017 OWCP decisions.

By decision dated August 28, 2017, OWCP denied appellant's claim for LWOP for the period May 13 through June 9, 2017. It found no medical evidence was received to support that her claim for LWOP was causally related to the accepted work-related medical conditions.

OWCP subsequently received an August 17, 2017 Form CA-17 from Dr. Mark A. Seldes, a Board-certified family practitioner, who found that appellant could perform light-duty work on August 18, 2018 lifting no more than two pounds. Dr. Seldes diagnosed cervical disc injury with radiculopathy secondary to trauma.

On September 4, 2017 appellant accepted a light-duty mail processing clerk position at the employing establishment.

In a report dated September 27, 2017, Dr. Seldes examined appellant due to her cervical spine and head contusions. He diagnosed contusion of the right side of the face and head, benign paroxysmal vertigo, cervical sprain, herniated cervical disc with radiculopathy, and cervical spinal stenosis at C3-4, C4-5, C5-6, and C6-7.

In an October 16, 2017 development letter, OWCP noted that appellant had requested that her claim be expanded to include additional conditions. It requested supporting medical evidence and afforded her 30 days for a response.

In a November 6, 2017 note, Dr. Seldes described appellant's history of injury, initial medical treatment, and diagnoses. He explained that when she was struck by the machine door, she was hit on the right side of her face causing her head to quickly move to the left and flex back which caused significant pressure and injury to her cervical spine. Dr. Seldes opined that the injuries to appellant's cervical spine including cervical radiculopathy, cervical spine stenosis, and right carpal tunnel syndrome were caused by the machine door striking her face and eye moving her neck quickly laterally on October 31, 2016. In a December 14, 2017 report, he examined her due to increased neck pain after working 60 hours a week. Dr. Seldes recommended that appellant work only 40 hours a week.

By decision dated January 11, 2018, OWCP's hearing representative found that appellant had not met her burden of proof to establish wage loss for the periods March 7 through 21, 2017 and April 28 through May 12, 2017. She found that appellant had not submitted probative medical evidence based on specific examination findings which clearly concluded that she was disabled for the claimed periods as a result of her work-related injuries.

In a note dated January 2, 2018, Dr. Theodore P. Vlahos, a Board-certified orthopedic surgeon, described appellant's history of injury on October 31, 2016. He found that as a result of this injury she sustained chronic unresolved cervical strain/sprain with disc herniations C3-4, C4-5, C5-6 and C6-7 resulting in cervical radiculitis. Dr. Vlahos found that the mechanism of the blow to the head was consistent with the formation of disc herniations or the activation of disc herniations, making previously asymptomatic degenerative conditions into symptomatic herniations.

On February 12, 2018 OWCP expanded acceptance of appellant's claim to include cervical disc disorder with radiculopathy at C3-4, C4-5, C5-6, and C6-7.

In a February 12, 2018 note, Dr. Seldes found that appellant could continue to work full time with restrictions. On February 28, 2018 he again found that she could continue to work full time with restrictions.

On March 22, 2018 appellant requested reconsideration of the August 10, 11, and 28, 2017 OWCP decisions denying wage-loss compensation. She provided Dr. Seldes' February 12 and 28, 2018 Form CA-17s which included restrictions for lifting and for using the left arm only to reach above the shoulder up to three hours a day. Dr. Seldes noted that appellant could not work overtime.

In a March 28, 2018 note, Dr. Seldes reported that appellant was working six days a week and requested to be limited to five days a week. He limited her work to eight hours a day, five days a week.

On May 1, 2018 Dr. Robert C. Nucci, a Board-certified orthopedic surgeon, examined appellant and recommended cervical endoscopic discectomy. On May 8, 2018 he opined that she was totally disabled until after her surgery. On May 30, 2018 Dr. Nucci performed a percutaneous anterior cervical discectomy at C5-6.

By decision dated June 21, 2018, OWCP denied modification of its August 10, 11, and 28, 2017 decisions. It found that there was no medical evidence received to support that appellant's claim for LWOP was causally related to the accepted work-related medical conditions.

On August 17, 2018 appellant requested reconsideration of the June 21, 2018 OWCP decision. In support of this request, she contended that she was totally disabled from March 7 through 31, 2017 based on Dr. Ramirez's findings. Appellant alleged that Dr. Jenkins found that she was totally disabled from April 28 through June 23, 2017. She also contended that Dr. Seldes supported her disability for work from August 17 through November 17, 2017. Appellant resubmitted Dr. Ramirez' March 7, 2017 note, Dr. Jenkins' April 28 and October 30, 2017 notes as well as her April 28, 2017 Form CA-17, and Dr. Seldes' August 17, 2017 Form CA-17.

On September 6, 2018 Dr. Nucci released appellant to light-duty work on September 10, 2018. Appellant reported to work and the employing establishment had no work available for her within her restrictions. On September 19, 2018 she accepted a light-duty position at the employing establishment.

By decision dated November 14, 2018, OWCP denied modification of its June 21, 2018 decision.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>5</sup> 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.<sup>6</sup>

Under FECA, the term disability means “the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.”<sup>7</sup> The question of whether an employee is disabled from work is an issue that must be resolved by competent medical evidence.<sup>8</sup> The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.<sup>9</sup>

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>10</sup> The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>11</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability for the periods March 7 through 21, April 28 through May 12, and May 13 through June 9, 2017, causally related to her accepted October 31, 2016 employment injuries.

On March 2, 2017 Dr. Jenkins determined that appellant could perform restricted duty of lifting and carrying to 10 pounds. On March 7, 2017 Dr. Ramirez reported that appellant was experiencing acute right-sided low back pain. She found that appellant was totally disabled through March 21, 2017. On March 23, 2017 Dr. Jenkins noted appellant’s history of injury and removal from work for two weeks due to lower back pain. These reports did not attribute appellant’s disability for work to her accepted injuries. Instead, Drs. Jenkins and Ramirez indicated that appellant was disabled beginning March 7, 2017 due to low back pain. The Board has held that the mere diagnosis of “pain” does not constitute the basis for payment of

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *See C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> 20 C.F.R. § 10.5(f).

<sup>8</sup> *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also R.C.*, 59 ECAB 546, 551 (2008).

<sup>9</sup> *Id.*; *see T.A.*, Docket No. 18-0431 (issued November 7, 2018); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>10</sup> *See S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>11</sup> *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

compensation.<sup>12</sup> Furthermore, the Board has held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition or offer a specific opinion as to whether the accepted employment incident caused or aggravated the claimed condition.<sup>13</sup> These notes do not provide a firm diagnosis or an opinion on the causal relationship between appellant's accepted injuries and her disability from work. Thus these notes are insufficient to establish appellant's claim for disability due to LWOP from March 4 through 27, 2017.

On April 28, 2017 Dr. Jenkins found that appellant was totally disabled due to cervical herniated discs. She noted that appellant was hit in the face with a door and attributed appellant's current condition to her accepted employment injuries. Dr. Jenkins noted that appellant felt that her condition was worsening. When a physician's statements regarding an employee's ability to work consist only of recitation of the employee's complaints that he or she was in too much pain to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability.<sup>14</sup> A mere conclusion without the necessary rationale is insufficient to meet a claimant's burden of proof.<sup>15</sup> Without medical rationale supporting disability, Dr. Jenkins' notes are insufficient to meet appellant's burden of proof.<sup>16</sup> Her reports, therefore, do not establish that appellant was disabled from work during the claimed period due to her accepted cervical conditions.

In support of her March 22, 2018 request for reconsideration, appellant provided Dr. Seldes' February 12 and 28, 2018 Form CA-17s which included restrictions for lifting and for using the left arm only to reach above the shoulder up to three hours a day. However, these reports are of limited probative value in addressing appellant's claimed period of disability from March 7 through June 9, 2017 as they occur after the alleged period and do not specifically address or attribute the period of claimed disability to the accepted conditions.<sup>17</sup> Evidence that does not address appellant's accepted conditions and dates of disability is insufficient to establish her claim.<sup>18</sup>

None of the other medical evidence of record addresses appellant's claimed period of intermittent total disability for work from March 7 through June 9, 2017.

As the medical evidence of record is insufficient to establish that appellant was disabled from work for the period March 7 through June 9, 2017 due to her accepted cervical conditions, the Board finds that appellant has not met her burden of proof.

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<sup>12</sup> *T.G.*, Docket No. 18-1064 (issued April 26, 2019); *Robert Broome*, 55 ECAB 339 (2004).

<sup>13</sup> *C.R.*, *supra* note 6; *J.M.*, Docket No. 16-0306 (issued May 5, 2016).

<sup>14</sup> *B.F.*, Docket No. 19-0123 (issued May 13, 2019); *P.D.*, Docket No. 14-0744 (issued August 6, 2014); *G.T.*, 59 ECAB 447 (2008).

<sup>15</sup> *B.F.*, *id.*; *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

<sup>16</sup> *B.F.*, *supra* note 14; *S.H.*, Docket No. 18-1398 (issued March 12, 2019).

<sup>17</sup> *R.G.*, Docket No. 18-0027 (issued May 13, 2019).

<sup>18</sup> *T.L.*, Docket No. 18-0934 (issued May 8, 2019).

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 disability for the periods March 7 through 21, April 28 through May 12, and May 13 through June 9, 2017, causally related to her accepted October 31, 2016 employment injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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