



## **ISSUE**

The issue is whether appellant has met her burden of proof to establish that she was disabled from employment for the period January 7 through February 2, 2018 causally related to her November 22, 2017 employment injury.

## **FACTUAL HISTORY**

On November 30, 2017 appellant, then a 50-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 22, 2017 she injured her left leg stepping down from the back of her truck when delivering a package while in the performance of duty. She stopped work on November 22, 2017. OWCP accepted the claim for left leg gastrocnemius muscle strain.

On November 30, 2017 appellant came under the treatment of Dr. Rueben Nair, a Board-certified orthopedist, for a left calf injury occurring on November 22, 2017. Dr. Nair diagnosed left medial gastrocnemius myotendinous sprain and advised that appellant could work light duty only for the next three weeks. He also recommended physical therapy. In a December 7, 2017 duty status report (Form CA-17), Dr. Nair reiterated that, effective November 30, 2017, appellant was able to work full-time light-duty work. He also noted appellant's physical restrictions.

In a December 26, 2017 follow-up report, Dr. Nair continued to diagnose left medial gastrocnemius myotendinous sprain. He noted findings on examination of the left lower extremity of minimal tenderness to palpation over the gastrocnemius muscle belly and musculotendinous junction, no defect along the Achilles, and distally neurovascularly intact. Dr. Nair emphasized the importance of physical therapy, noting that appellant had only gone twice. He also advised her to return for follow up in four weeks.

In a December 27, 2017 duty status report (Form CA-17), Dr. Nair indicated that appellant was totally disabled from work.

In a report dated January 30, 2018, Dr. Nair noted that appellant finished physical therapy with improvement in her left calf injury. He noted no tenderness with palpation of the gastroc muscle belly, no defect along the Achilles, and distally neurovascularly intact. Dr. Nair diagnosed left medial gastrocnemius myotendinous sprain. He opined that appellant was doing well and could return to work full duty and he would see her on an as-needed basis. In a return to work slip dated January 30, 2018, Dr. Nair returned appellant to work without restrictions on February 1, 2018. Similarly, in a duty status report (Form CA-17) dated January 31, 2018, he diagnosed a muscle strain of the calf and opined that she could return to her regular work effective February 1, 2018.

On March 2, 2018 appellant filed a wage-loss compensation claim (Form CA-7) disability benefits from January 7 to February 2, 2018.

In a letter dated March 16, 2018, OWCP requested that appellant provide additional factual information to establish disability for work during the period January 7 through February 2, 2018. It afforded her 30 days to submit the requested information. No response was received.

By decision dated September 13, 2018, OWCP denied appellant's claim for wage-loss compensation for the period January 7 through February 2, 2018. It found that the medical evidence of record was insufficient to establish that appellant was disabled due to her employment injury.

On October 10, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on February 12, 2019.

By decision dated March 15, 2019, OWCP's hearing representative affirmed the September 13, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the preponderance of the evidence.<sup>4</sup> For each period of disability claimed, the employee has the burden of proof to establish that she was disabled from work as a result of the accepted employment injury.<sup>5</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>6</sup>

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>7</sup> Disability is thus 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 a federal employment injury, but who nevertheless 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 in FECA.<sup>8</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 their disability and entitlement to compensation.<sup>9</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish that she was disabled from employment for the period January 7 through February 2, 2018 causally related to her November 22, 2017 employment injury.

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<sup>4</sup> See *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018).

<sup>5</sup> *Id.*

<sup>6</sup> 20 C.F.R. § 10.5(f); *B.O.*, *supra* note 4; *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>7</sup> 20 C.F.R. § 10.5(f); see *B.K.*, Docket No. 18-0386 (issued September 14, 2018).

<sup>8</sup> *Id.*

<sup>9</sup> *A.W.*, Docket No. 18-0589 (issued May 14, 2019).

Dr. Nair initially found appellant able to perform full-time, light-duty work effective November 30, 2017. However, in a December 27, 2017 Form CA-17, he reported that she was totally disabled due to her left calf injury and advised that she continue with physical therapy. Dr. Nair did not provide medical rationale for his opinion that appellant was totally disabled or explain what had changed since his November 30, 2017 opinion that she could perform full-time light-duty work. A medical report must include rationale explaining how the physician reached his conclusion regarding disability.<sup>10</sup> The Board has found that medical opinions unsupported by rationale regarding the period of disability claimed are of little probative value.<sup>11</sup>

Similarly, in a January 30, 2018 report, Dr. Nair diagnosed left medial gastrocnemius myotendinous sprain and returned appellant to work full duty. In a return to work slip dated January 30, 2018 and Form CA-17 dated January 31, 2018, he indicated that she could return to full duty on February 1, 2018. However, Dr. Nair, did not explain how appellant's accepted employment injury changed from November 30, 2017 when he returned her to full-time light duty, to December 27, 2017 when he opined that she was totally disabled, to January 30, 2018 when he returned her to work regular duty.<sup>12</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.

The issue of whether a claimant's disability from work is related to an accepted condition must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>13</sup> The Board finds that appellant has not submitted a medical report from Dr. Nair which provides a medical explanation as to why she was incapable of working for the claimed period when she was previously found capable of working following her accepted employment injury. Without such rationalized medical evidence, appellant has not met her burden of proof.<sup>14</sup>

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 that she was disabled from employment for the period January 7 to February 2, 2018 causally related to her November 22, 2017 employment injury.

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<sup>10</sup> *T.J.*, Docket No. 18-0619 (issued October 22, 2018).

<sup>11</sup> *C.R.*, Docket No. 17-0648 (issued August 15, 2018).

<sup>12</sup> *P.M.*, Docket No. 17-1131 (issued January 29, 2018).

<sup>13</sup> *See G.B.*, Docket No. 16-1033 (issued December 5, 2016).

<sup>14</sup> *See K.A.*, Docket No. 17-1718 (issued February 12, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 15, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board