

radiculopathy as causally related to the accepted December 13, 2012 employment injury; and (2) whether appellant has met her burden of proof to establish that she was totally disabled for the period commencing January 26, 2013 causally related to her accepted December 13, 2012 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On December 19, 2012 appellant, then a 49-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury on December 13, 2012 due to stress caused by excessive amounts of mail to sort by herself while in the performance of duty. She stopped working on December 14, 2012. Appellant subsequently filed wage-loss compensation claims (Form CA-7) for intermittent periods of disability commencing January 26, 2013.

OWCP subsequently accepted that appellant sustained a syncopal episode while sorting mail while in the performance of duty. However, by decision dated May 17, 2013, it denied the claim for the additional condition of cervical radiculopathy because the medical evidence submitted was insufficient to establish that the diagnosed condition was causally related to the accepted December 13, 2012 employment injury.

On May 21, 2013 Dr. Scott R. Eisenberg, a Board-certified cardiologist, diagnosed syncope and family history of coronary artery disease (CAD) and noted that appellant had past medical history that was significant for syncope. He advised appellant to avoid employment stress which clearly precipitated her syncopal episode and noted that she was now at risk for recurrent similar or worse events. In a duty status report (Form CA-17) dated May 21, 2013, Dr. Eisenberg released appellant to full-time, full-duty work without restrictions effective June 1, 2013.

On November 18, 2013 Dr. Eisenberg reiterated his diagnoses and advised appellant to continue her current medications.

On February 4, 2014 appellant, through counsel, requested reconsideration of the May 17, 2013 decision and submitted a narrative statement asserting that she was requesting medication for her accepted condition, wage-loss compensation for the time she was off work due to her accepted condition, and expansion of her claim to include additional medical conditions caused by her employment injury.

Appellant submitted a July 18, 2013 report from Dr. Eisenberg who again reiterated his diagnoses and opined that the level of stress appellant experienced leading up to her syncopal episode while at work precipitated the event.

By decision dated July 31, 2014, OWCP denied modification of its prior decision.

³ *Order Remanding Case*, Docket No. 15-1693 (issued April 1, 2016); Docket No. 16-1620 (issued May 10, 2017).

On September 23, 2014 appellant, through counsel, requested reconsideration and submitted a July 15, 2013 report from Dr. Eisenberg who noted that appellant returned to work on June 1, 2013.

In a duty status report (Form CA-17) dated May 22, 2014, Dr. Eisenberg provided restrictions of: no lifting or carrying more than 50 pounds intermittently; standing and walking for one to two hours per day, but not prolonged; no climbing, kneeling, bending, stooping, twisting, pulling, or pushing; and not work in an environment greater than 72 degrees in temperature.

By decision dated May 4, 2015, OWCP denied appellant's request for reconsideration without conducting a merit review.

On August 5, 2015 appellant, through counsel, appealed the May 4, 2015 nonmerit decision to the Board. By order issued on April 1, 2016, the Board found that appellant was entitled to a merit review, due to OWCP's delay in adjudicating her reconsideration request, and remanded the case for an appropriate final decision on her claim for compensation.

By decision dated May 5, 2016, OWCP denied modification of its prior decision, finding that the medical evidence submitted was insufficient to establish disability for the periods January 26 to February 8, 2013 and May 4 to 31, 2013 due to the accepted employment injury. It further found that appellant's additional condition of cervical radiculopathy remained denied.

Appellant, through counsel, requested an appeal and, by decision dated May 10, 2017, the Board affirmed OWCP's May 5, 2016 decision.

On May 8, 2018 appellant, through counsel, requested reconsideration and submitted a May 4, 2018 report from Dr. Eisenberg who noted that appellant had spent several days in the hospital due to her syncopal episode on December 13, 2012. He indicated that a tilt table test was performed on May 9, 2013 and it showed positive results for both vasodepressor and cardio inhibitory response. Dr. Eisenberg opined that it was most likely the extreme emotional distress she felt that day that precipitated her episode and that regardless of the trigger, the mechanism of syncope was similar in the various vasovagal syncope syndromes. He explained that the nucleus tractus solitarii of the brainstem was activated directly or indirectly by the triggering stimulus, resulting in simultaneous enhancement of parasympathetic nervous system (vagal) tone and withdrawal of sympathetic nervous system tone. Dr. Eisenberg further indicated that this resulted in a spectrum of hemodynamic responses, such as radio inhibitory response, characterized by a drop in heart rate, or a vasodepressor response, caused by a drop in blood pressure (to as low as 80/20) without much change in heart rate. He reported that he had originally sent appellant back to full duty, but when she was seen again and described her work conditions he placed restrictions on her duty status. Dr. Eisenberg also noted that extreme emotional distress, temperature changes, and prolonged standing and sitting had been known to cause an episode to occur.

Appellant subsequently submitted a series of 18 duty status reports (CA-17 forms) dated July 23, 2013 through March 6, 2018 from Dr. Eisenberg who continued to diagnose syncope and provided work restrictions.

By decision dated November 14, 2018, OWCP denied modification of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴ To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence.⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional condition of cervical radiculopathy as causally related to the accepted December 13, 2012 employment injury.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's May 5, 2016 decision because the Board considered that evidence in its May 10, 2017 decision and found that it was insufficient to establish her claim. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.⁷ The Board will, therefore, not review the evidence addressed in the prior appeal.

In his May 4, 2018 medical report, Dr. Eisenberg noted that appellant had spent several days hospitalized as a result of the accepted syncopal episode on December 13, 2012. He also submitted CA-17 forms that noted the diagnosed conditions. However, Dr. Eisenberg did not provide an opinion in any of his medical reports as to whether appellant's cervical radiculopathy was causally related to the accepted syncopal episode of December 13, 2012. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.⁸ As Dr. Eisenberg does not offer an opinion on causal relationship, it is of no probative value and, thus, insufficient to establish the expansion of the acceptance of appellant's claim.

As appellant has not submitted rationalized medical evidence sufficient to establish that the acceptance of her should be expanded to include the additional condition of cervical

⁴ *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁶ *T.K.*, *id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *See B.R.*, Docket No. 17-0294 (issued May 11, 2018).

⁸ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

radiculopathy causally related to the accepted December 13, 2012 employment injury, she has not met her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA⁹ 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 December 13, 2012 employment injury.¹⁰

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.¹¹ The question of whether an employee is disabled from work is an issue that must be resolved by competent medical evidence.¹² The employee is responsible for providing sufficient medical evidence to justify payment of compensation sought.¹³

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.¹⁴ 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.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish that she was totally disabled for the period commencing January 26, 2013 causally related to her accepted employment injury.

Although Dr. Eisenberg opined in multiple reports that appellant was totally disabled for work for the claimed period he failed to explain how the accepted syncopal episode was responsible for appellant's disability and why she could not perform her federal employment during the period claimed. Without medical rationale supporting disability, Dr. Eisenberg's

⁹ *Supra* note 2.

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

¹¹ 20 C.F.R. § 10.5(f).

¹² *A.T.*, Docket No. 19-0410 (issued August 13, 2019).

¹³ *Id.*; *see T.A.*, Docket No. 18-0431 (issued November 7, 2018); *see also Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁴ *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).

¹⁵ *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

reports are insufficient to meet appellant's burden of proof.¹⁶ His reports, therefore, do not establish that appellant was disabled from work during the claimed period due to her accepted syncopal episode.

As the medical evidence of record is insufficient to establish that appellant was disabled from work for the period commencing January 26, 2013 due to her accepted syncopal episode, the Board finds that she has not met her burden of proof.

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 that the acceptance of her claim should be expanded to include the additional condition of cervical radiculopathy as causally related to the accepted December 13, 2012 employment injury. The Board further finds that appellant has not met her burden of proof to establish that she was totally disabled for the period commencing January 26, 2013 causally related to her accepted employment injury.

¹⁶ *Id.*

ORDER

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

Issued: December 2, 2019
Washington, DC

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

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

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