

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

_____)	
J.M., Appellant)	
)	
and)	Docket No. 19-1169
)	Issued: February 7, 2020
U.S. POSTAL SERVICE, LAS VEGAS)	
PROCESSING & DISTRIBUTION CENTER,)	
Las Vegas, NV, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On April 30, 2019 appellant filed a timely appeal from a December 3, 2018 merit decision and an April 19, 2019 nonmerit 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 to consider the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish total disability from work for the period September 17 to October 12, 2018 causally related to the accepted August 2, 2018 employment injury; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 9, 2018 appellant, then a 27-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 2, 2018 she sustained an electrical shock to her

¹ 5 U.S.C. § 8101 *et seq.*

entire body when she plugged heavy equipment into an electrical outlet while in the performance of duty. She stopped work on August 2, 2018.

Immediately, following the injury, appellant was treated by Dr. Christian F. Young, Board-certified in emergency medicine, who diagnosed an electrical injury with headache. Dr. Young released her from care and returned her to full duty. As appellant continued to experience headaches and dizziness, she sought treatment on August 6, 2018 from Dr. Gilberto Ruiz, Board-certified in emergency medicine. Dr. Ruiz obtained a magnetic resonance imaging (MRI) scan of her brain that was within normal limits. He diagnosed electric shock, cephalgia, mild dehydration, and possible hypertension.

Appellant received continuation of pay from the employing establishment for the period August 6 to 8, 2018. She returned to modified-duty work on August 9 and 10, 2018, then again stopped work.

Dr. Angelo Lambos, a Board-certified internist, submitted reports dated from August 9 to 24, 2018 diagnosing an “electrocution” injury, dizziness, and headache. He restricted appellant to modified work.

In an August 29, 2018 report, Dr. Paul Reehal, Board-certified in sports medicine, held appellant off work from August 29 to September 3, 2018 due to severe headaches and dizziness. He returned her to modified-duty work effective September 4, 2018.

In a September 4, 2018 report, Dr. Cornell Calinescu, Board-certified in emergency medicine and family practice, diagnosed recurrent headaches. He administered medication and discharged appellant.

On September 9, 2018 OWCP accepted the claim for “electrocution, initial encounter,” headache, and “dizziness and giddiness.”

In a report dated September 14, 2018, Dr. Shankar Dixit, a Board-certified neurologist, diagnosed sequelae of electrocution, headache, blurred vision, and possible cervical radiculopathy.

On October 16, 2018 appellant filed a wage-loss compensation claim (Form CA-7) for the period September 17 through October 12, 2018.

In a development letter dated October 23, 2018, OWCP notified appellant that the evidence submitted was insufficient to establish that the accepted conditions had totally disabled her from work for the claimed period. It advised her of the type of additional evidence needed to establish her claim, including a medical report from her physician explaining how and why the accepted injury would have disabled her for work from September 17 through October 12, 2018. Appellant was afforded 30 days to submit the necessary evidence.

In response, appellant provided a second September 14, 2018 report from Dr. Dixit holding her off from work for 30 days.²

On October 17, 2018 OWCP obtained a second opinion regarding the nature and extent of appellant’s injury-related conditions from Dr. Mouchir Harb, Board-certified in neurology and

² An October 3, 2018 electromyography and nerve conduction velocity study demonstrated mild axonal neuropathy of the left radial motor nerve.

pain medicine. Dr. Harb reviewed the medical record and a statement of accepted facts. He noted that, as he was “not clear about the severity of the electrocution,” he could not address whether appellant’s headaches or dizziness were causally related to the accepted August 2, 2018 employment injury. Dr. Harb returned her to full-duty work effective November 1, 2018.

In an October 24, 2018 report, Dr. Dixit noted that appellant reported frequent headaches and visual disturbances. He administered trigger point injections to the bilateral occiput and trapezii.

By decision dated December 3, 2018, OWCP denied appellant’s claim for wage-loss compensation finding that the medical evidence of record was insufficient to establish total disability from work for the period September 17 to October 12, 2018 causally related to the accepted August 2, 2018 employment injury.

On January 22, 2019 appellant requested reconsideration and submitted additional evidence.

An August 15, 2018 computerized tomography scan of appellant’s head demonstrated no acute intracranial process. A November 4, 2018 cervical MRI scan demonstrated a mild disc protrusion at C6-7.

In a December 5, 2018 report, Dr. Dixit returned appellant to modified-duty work with lifting limited to 50 pounds to prevent exacerbation of neck pain and headaches.

By decision dated April 19, 2019, OWCP denied reconsideration of the merits of appellant’s claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.⁴ 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.⁵ 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.⁶

Under FECA, the term disability means an incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁷ Disability is, thus, not

³ *Supra* note 1.

⁴ *J.J.*, Docket No. 18-1692 (issued July 16, 2019); *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *A.L.*, Docket No. 19-0285 (issued September 24, 2019); *J.J.*, *id.*; *see also Dominic M. Descaled*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308 (1982).

⁶ *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel A. Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

⁷ 20 C.F.R. § 10.5(f); *see e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999).

synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁸ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish total disability for the period September 17 to October 12, 2018, causally related to the accepted August 2, 2018 employment injury.

Appellant submitted reports from several physicians in support of her claim. In an August 2, 2018 report, Dr. Young diagnosed an electrical injury and discharged her from care with no restrictions. Dr. Ruiz diagnosed electric shock and headache on August 6, 2018. Similarly, Dr. Lambos diagnosed an electrocution injury with headache in reports from August 9 to 24, 2018. Dr. Reehal held appellant off work from August 29 to September 3, 2018 due to headaches and dizziness, and Dr. Calinescu diagnosed recurrent headaches on September 4, 2018. As none of these physicians provided an opinion regarding whether appellant was totally disabled from work during the claimed period due to the accepted injury, their reports are of no probative value and are insufficient to establish the claim.¹⁰ Additionally, Dr. Harb, the second opinion physician, did not directly address the claimed period of disability in his October 17, 2018 report and thus his report is also insufficient to establish the wage-loss compensation claim.

Dr. Dixit opined in his September 14, 2018 reports, that appellant should remain off work for 30 days due to sequelae of the electrocution injury, headache, blurred vision, and possible cervical radiculopathy. While he opined that the accepted injury totally disabled her from work for the claimed period, he did not provide rationale explaining how the accepted employment injury resulted in disability. Therefore, Dr. Dixit's September 14, 2018 reports are of limited probative value and insufficient to establish the claim.¹¹

On appeal appellant contends that OWCP should have accepted her wage-loss claim in reliance on Dr. Dixit's opinion. As explained above, Dr. Dixit's reports are insufficient to meet 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.

⁸ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ *A.L.*, *supra* note 5; *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *A.L.*, *supra* note 5.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.¹²

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹³

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁴ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁵ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant has not established that OWCP erroneously applied or interpreted a specific point of law or advanced a new and relevant legal argument not previously considered. Thus, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

On January 22, 2019 appellant requested reconsideration of OWCP's December 3, 2018 decision denying her wage-loss compensation claim for total disability for the period September 17 to October 12, 2018. In support of her request she provided August 15 and November 4, 2018 imaging studies, and Dr. Dixit's December 5, 2018 report. The Board notes that OWCP denied appellant's wage-loss compensation claim because the medical evidence of record did not contain sufficient medical rationale to establish that the accepted August 2, 2018 injury had totally disabled her for work for the claimed period. The imaging studies, therefore, are irrelevant to the issue of total disability in this case as they do not address the claimed period of disability. The Board notes that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁷ Likewise, Dr. Dixit's December 5, 2018 report did not address the claimed period of disability and is irrelevant to the issue of whether appellant was

¹² 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

¹³ 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁴ *Id.* at § 10.607(a).

¹⁵ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁶ *Id.* at § 10.608(b); *L.C.*, Docket No. 18-0787 (issued September 26, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁷ *L.C.*, *id.*, 16; *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

totally disabled for work for the claimed period due to the accepted August 2, 2018 employment injury.

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁸

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish total disability from work for the period September 17 to October 12, 2018, causally related to her August 2, 2018 employment injury. The Board also finds that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 19, 2019 and December 3, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 7, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁸ *L.C.*, *supra* note 16; *A.F.*, Docket No. 18-1154 (issued January 17, 2019); *see A.R.*, Docket No. 16-1416 (issued April 10, 2017); *A.M.*, Docket No. 16-0499 (issued June 28, 2016); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).