



## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish her remaining claims for intermittent disability for the period February 16 through April 21, 2018 causally related to her accepted May 10, 2005 employment injury; and (2) whether she has met her burden of proof to establish recurrence of disability commencing April 25, 2018 causally related to her accepted May 10, 2005 employment injury.

## **FACTUAL HISTORY**

On May 10, 2005 appellant, then a 34-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that she was injured that day when her vehicle was rear-ended by a truck while in the performance of duty. OWCP accepted the claim for lumbar sprain and strain, neck sprain and strain, contusion of right hip and thigh, displacement of lumbar intervertebral disc without myelopathy, myalgia and myositis, reaction to spinal or lumbar puncture, pulmonary embolism and infarction, and psychogenic pain. Appellant did not initially stop work. OWCP paid her wage-loss compensation on the supplemental rolls as of March 3, 2007 and on the periodic rolls as of December 23, 2007. However, appellant began receiving intermittent compensation on the supplemental rolls again as of February 15, 2009, following her acceptance of a part-time modified limited-duty job offer. The record reflects that appellant did not receive wage-loss compensation from December 21, 2014 to March 1, 2018. Appellant stopped work again on April 25, 2018. She returned to work beginning May 3, 2018, with intermittent wage-loss due to restrictions.

On September 21, 2018 appellant filed a wage-loss compensation claim (Form CA-7) for intermittent disability during the period February 3 to September 14, 2018.<sup>4</sup> Appellant also claimed on a Form CA-7a intermittent disability from work commencing April 25, 2018.

OWCP subsequently received medical evidence. In an April 24, 2018 progress report, Jennifer Han, a certified nurse practitioner noted that appellant was seen for left hip pain, which extended to the left knee. She reviewed appellant's physical examination findings and reported an impression of lumbar or lumbosacral intervertebral disc degeneration. In May 22, 2018 progress notes, Ms. Han noted appellant's complaints of bilateral hip and back pain. She also noted an impression of chronic bilateral low back pain with bilateral sciatica, and degeneration of the lumbar or lumbosacral intervertebral disc.

A June 20, 2018 report indicated that Dr. Daniel Hurley, a Board-certified physiatrist, performed a C4-5 facet injection and that a right C5-6 block was discontinued due to respiratory distress. Appellant's diagnoses were cervical facet syndrome/spondylo-anthropathy, cervicalgia, and cervical disc disease.

---

<sup>4</sup> In corresponding time analysis forms (Form CA-7a) appellant claimed that she used leave without pay as follows: 3.19 hours on February 16, 2018; 4.18 hours on March 1, 2018; 0.1 hours on March 5, 2018; 4.35 hours on March 16, 2018; 3.07 hours on March 26, 2018; 0.1 hours on March 27; 3.45 hours on March 30, 2018; 8 hours on March 31, 2018; 8 hours on April 2, 2018; 3.69 hours on April 4, 2018; 4.12 hours on April 6, 2018; 3.03 hours on April 9, 2018; 3.49 hours on April 11, 2018; 2.13 hours on April 12, 2018; 3.12 hours on April 16, 2018; 8 hours on April 18, 2018; 8 hours on April 19, 2018; 3.99 hours on April 20, 2018; 8 hours on April 21, 2018; 3.7 hours on April 24, 2018 and 8 hours on June 21, 2018.

In a progress report dated August 17, 2018, Ms. Han noted that appellant was treated for bilateral hip and neck pain. She related impressions of chronic low back pain without sciatica, degeneration of lumbar or lumbosacral intervertebral disc, cervicalgia, lumbar degenerative disc disease, myofascial pain, and spinal stenosis of the lumbar regions without neurogenic claudication.

By development letter dated October 5, 2018, OWCP informed appellant that it had authorized payment for partial disability on March 1, 26, and 30, April 4, 6, 9, 11, 12, 16, 20, and 24, and June 21, 2018.<sup>5</sup> It further informed her, however, of deficiencies with regard to her remaining claims for wage-loss compensation, total disability due to a worsening of her accepted employment-related conditions, and intermittent disability due to medical restrictions. OWCP advised appellant of the type of medical evidence needed to support her claims and afforded her 30 days to submit the requested evidence.

OWCP subsequently received additional medical evidence.

In an October 31, 2018 medical note, Kathleen Bienia, a certified physician assistant, indicated that appellant was treated on April 21, May 25, October 8 and 31, 2018.

In a November 1, 2018 work excuse note, Deanna DiMichele, a registered oncology/hematology nurse, advised that appellant underwent diagnostic laboratory work on February 16, 2018.

In a November 7, 2018 report, Dr. Hurley advised that appellant had baseline L4-5 listhesis, spondyloarthropathy neck, and lumbar left scoliosis tilt. He indicated that her back and neck were chronic conditions. Dr. Hurley reported that he first evaluated appellant on March 1, 2018 due to her chronic conditions. He noted that she was seen by a nurse practitioner on April 24 and 25, 2018 due to an increase in left hip pain as a result of aggressive physical therapy. Appellant noted that she had tightness in her left low back. Dr. Hurley advised that she was placed off work from April 25 through May 2, 2018 and then placed on half days thereafter to facilitate a more rapid recovery. He noted that May 3, 2018 documentation revealed that appellant had persistent nerve root tension signs in her left leg and that she received facet blocks by Dr. Matthew Co, an osteopath specializing in physical medical and rehabilitation, on May 7, 2018. Dr. Hurley indicated that he saw her on June 7, 2018 for cervical facet blocks and that he was limited to only one cervical facet joint due to her limited respiratory status. He indicated that appellant had severe respiratory compromise following a June 20, 2018 cervical injection procedure and opined that, given her state, she could not work in any capacity.

Physical therapy notes dated September 6 through October 8, 2018 were also received.

---

<sup>5</sup> Fiscal worksheets of record dated October 9, 2018 indicate that OWCP authorized payment for the following dates/hours: March 1, 2018 -- 4 hours; March 26, 2018 -- 3.07 hours; March 30, 2018 -- 3.45 hours; April 4, 2018 -- 3.69 hours; April 6, 2018 -- 4 hours; April 9, 2018 -- 3.03 hours; April 11, 2018 -- 3.49 hours; April 12, 2018 -- 2.13 hours; April 16, 2018 -- 3.12 hours; April 20, 2018 -- 3.99 hours; April 24, 2018 -- 3.7 hours; and June 21, 2018 -- 8 hours.

By decision dated December 3, 2018, OWCP denied appellant's remaining claims for compensation for intermittent disability for the period February 16 through April 21, 2018 causally related to her accepted May 10, 2005 employment injury.

By separate decision also dated December 3, 2018, OWCP denied appellant's claim for a recurrence of disability commencing April 25, 2018 causally related to her accepted May 10, 2005 employment injury.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>6</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>7</sup> The term disability is defined as incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>8</sup> Disability is not synonymous with a physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA.<sup>9</sup>

Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.<sup>10</sup> Findings on examination are generally needed to support a physician's opinion that an employee is disabled from work.<sup>11</sup> When the physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she was unable to work, without objective findings of disability being shown, the physician has not presented a medical opinion, supported by medical rationale, on the issue of disability or a basis for payment of compensation.<sup>12</sup>

---

<sup>6</sup> *Supra* note 2.

<sup>7</sup> *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *G.T.*, Docket No. 07-1345 (issued April 11, 2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> See *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>9</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

<sup>10</sup> *B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

<sup>11</sup> *B.R.*, Docket No. 18-0339 (issued January 24, 2019); *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>12</sup> See *B.R., id.*; *Fereidoon Kharabi*, 52 ECAB 291 (2001).

OWCP's procedures provide that wages lost for compensable medical examination or treatment may be reimbursed.<sup>13</sup> A claimant who has returned to work following an accepted injury or illness may need to undergo examination, testing, or treatment and such employee may be paid compensation for wage loss while obtaining medical services or treatment, including a reasonable time spent traveling to and from the medical provider's location.<sup>14</sup> Wage loss is payable only if the examination, testing, or treatment is provided on a day which is a scheduled workday and during a scheduled tour of duty. Wage-loss compensation for medical treatment received during off-duty hours is not reimbursable.<sup>15</sup> The evidence should establish that a claimant attended an examination or treatment for the accepted work injury on the dates claimed in order for compensation to be payable. For a routine medical appointment, a maximum of four hours may be allowed. However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain medical care.<sup>16</sup>

### ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish her remaining claims for intermittent disability for the period February 16 through April 21, 2018 causally related to her accepted May 10, 2005 employment injury.

In support of her claim, appellant submitted a June 20, 2018 report from Dr. Hurley, who indicated that he performed a C4-5 facet injection and that a right C5-6 block was discontinued due to respiratory distress. Appellant's diagnoses were noted as cervical facet syndrome/spondyloarthropathy, cervicgia, and cervical disc disease. In a November 7, 2018 report, Dr. Hurley, advised that appellant had baseline L4-5 listhesis, spondyloarthropathy neck, and lumbar left scoliosis tilt. He indicated that her back and neck were chronic conditions. Dr. Hurley reported that he first evaluated appellant on March 1, 2018 due to her chronic conditions. He noted that she was seen by a nurse practitioner on April 24 and 25, 2018 due to an increase in left hip pain as a result of aggressive physical therapy. Appellant noted that she had tightness in her left low back. Dr. Hurley advised that she was placed off work from April 25 through May 2, 2018 and then placed on half days thereafter to facilitate a more rapid recovery. He noted that May 3, 2018 documentation revealed that appellant had persistent nerve root tension signs in her left leg and that she received facet blocks by Dr. Matthew Co, an osteopath specializing in physical medical and rehabilitation, on May 7, 2018. Dr. Hurley indicated that he saw her on June 7, 2018 for cervical facet blocks and that he was limited to only one cervical facet joint due to her limited respiratory status. He indicated that appellant had severe respiratory compromise following a June 20, 2018 cervical injection procedure and opined that, given her state, she could not work in any capacity. While Dr. Hurley noted in general terms that appellant was unable to work, he did

---

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013).

<sup>14</sup> *Id.* at Chapter 2.901.19a; *M.B.*, Docket No. 19-1049 (issued October 21, 2019).

<sup>15</sup> *Id.* at Chapter 2.901.19a(2).

<sup>16</sup> *Id.* at Chapter 2.901.19c.

not specifically address the dates of disability claimed. As such, his reports are of no probative value and are insufficient to establish the claim.<sup>17</sup>

Appellant also submitted April 17 and 24, and May 22, 2018 progress reports from Ms. Han, a certified nurse practitioner, an October 31, 2018 medical note from Ms. Bienia, a certified physician assistant, and a November 1, 2018 work excuse note from Ms. DiMichele, a registered nurse. Physical therapy notes dated September 6 through October 8, 2018 were also received. The Board has held, however, that certain healthcare providers such as physician assistants are not considered physicians as defined under FECA.<sup>18</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Thus, this evidence is of no probative value and is insufficient to establish appellant's claim.

As noted, OWCP's procedures provide that that wages lost for compensable medical examination or treatment may be reimbursed.<sup>19</sup> The evidence should establish that a claimant attended an examination or treatment for the accepted work injury on the dates claimed in order for compensation to be payable. For a routine medical appointment, a maximum of four hours may be allowed.<sup>20</sup> In support of appellant's claim for compensation, appellant submitted a nurse report dated November 18, 2018 which noted that she underwent lab work on February 16, 2019. This report, however, does not address whether the noted lab work was for treatment of an accepted condition.<sup>21</sup>

As the medical evidence of record is insufficient to establish that appellant was disabled from work on the remaining dates claimed due to her accepted conditions, the Board finds that she has not met her burden of proof.

### **LEGAL PRECEDENT -- ISSUE 2**

OWCP's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition,

---

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

<sup>18</sup> Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also J.R.*, Docket No. 20-0496 (issued August 13, 2020) (physical therapists are not considered physicians under FECA); *J.D.*, Docket No. 16-1752 (issued March 1, 2017) (a nurse is not considered a physician as defined under FECA); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (a physician assistant is not considered a physician as defined under FECA).

<sup>19</sup> *Supra* note 14.

<sup>20</sup> *Supra* note 17.

<sup>21</sup> *See K.A.*, Docket No. 19-0679 (issued April 6, 2020); *V.H.*, Docket No. 19-0807 (issued December 3, 2019).

which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment.<sup>22</sup>

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>23</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>24</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability, commencing April 25, 2018, causally related to her accepted May 10, 2005 employment injury.

OWCP received a June 20, 2018 report from Dr. Hurley, which noted that he had performed a C4-5 facet block that day. The Board notes, however, that this report has no probative value with respect to the underlying issue of this case because it does not contain an opinion that appellant was disabled as of April 25, 2018 due to the accepted 2005 employment injury. 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.<sup>25</sup>

In his November 7, 2018 report, Dr. Hurley elaborated that appellant was seen by a nurse practitioner on April 24 and 25, 2018 due to increase in left hip pain and tightness in her left low back due to a physical therapist's manipulation. He advised that she was placed off of work for the period April 25 through May 2, 2018 and then placed on half days thereafter. However, Dr. Hurley did not provide a rationalized medical opinion supporting a recurrence of total disability commencing April 25, 2018. He did not explain why appellant could not work commencing April 25, 2018 due to a worsening of her accepted conditions. A mere conclusory opinion is insufficient to establish a recurrence of disability.<sup>26</sup>

Appellant also submitted April 17 and 24, and May 22, 2018 progress reports from Ms. Han, a certified nurse practitioner, an October 31, 2018 medical note from Ms. Bienia, a certified physician assistant, and a November 1, 2018 work excuse note from Ms. DiMichele, a registered nurse. Physical therapy notes dated September 6 through October 8, 2018 were also

---

<sup>22</sup> 20 C.F.R. § 10.5(x).

<sup>23</sup> See *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

<sup>24</sup> *Id.*

<sup>25</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>26</sup> *P.R.*, Docket No. 20-0596 (issued October 6, 2020).

received. As explained above, however, the Board has held that certain healthcare providers such as physician assistants are not considered physicians as defined under FECA.<sup>27</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Thus, this evidence is of no probative value and is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a recurrence of disability, commencing April 25, 2018, due to a worsening of her accepted employment conditions, 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 her remaining claims intermittent disability for the period February 16 through April 21, 2018 causally related to her accepted May 10, 2005 employment injury. The Board further finds that appellant has not met

---

<sup>27</sup> *Supra* note 19.



her burden of proof to establish a recurrence of total disability commencing April 25, 2018 causally related to her accepted May 10, 2005 employment injury.

**ORDER**

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

Issued: March 30, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board