



## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to her accepted July 25, 2014 employment injury; and (2) whether she has met her burden of proof to establish disability from work for the period November 14, 2014 through May 31, 2016 causally related to her accepted July 25, 2014 employment injury.

## **FACTUAL HISTORY**

On July 29, 2014 appellant, then a 44-year-old claims examiner, filed a traumatic injury claim (Form CA-1) alleging that on July 25, 2014 she sustained injury to her head, neck, back, and hips when she fell while in the performance of duty. She stopped work on July 25, 2014.

In a November 21, 2014 report, Dr. Padmaja Yatham, a Board-certified anesthesiologist, noted that appellant chiefly complained of low and mid-back pain, and neck pain. She reported physical examination findings and diagnosed cervical facet joint pain, cervical radiculitis, neck pain, and cervical nerve root pain. On January 26, 2015 Dr. Yatham diagnosed cervical spine pain, cervical radiculitis, and displacement of cervical intervertebral disc without myelopathy. The findings of an April 18, 2015 magnetic resonance imaging (MRI) scan of appellant's thoracic spine showed disc herniations at multiple levels.

Appellant submitted documents that contained notations about healthcare appointments at a rehabilitation facility, which took place between June 23 and March 21, 2016. The notes indicated that appellant received treated for cervical conditions, including herniated cervical discs and cervicalgia. The documents were not signed.

By decision dated December 4, 2015, OWCP accepted appellant's claim for cervical strain, head trauma, and contusions of her back and hips.

In the February 23, 2016 report, Dr. Cesar Lassalle, a Board-certified anesthesiologist, diagnosed cervical facet joint pain, cervical spine pain, cervical radiculitis, displacement of cervical intervertebral disc without myelopathy, and lumbar pain. A March 1, 2016 MRI scan of the cervical spine showed defects between C3-4 and C5-6, including a central disc protrusion at C5-6.

In the March 3 and May 17, 2016 reports, Dr. Stanley Haimes, a Board-certified occupational medicine physician, diagnosed lumbar pain with radiation down both legs, cervical pain, and thoracic spine pain. In his March 3, 2016 report, he indicated that appellant would be off work until March 7, 2016 due to muscle spasms caused by his examination.

Appellant submitted March 21 and April 18, 2016 reports in which Dr. Lassalle diagnosed cervical facet joint pain, cervical spine pain, cervical radiculitis, displacement of cervical intervertebral disc without myelopathy, and lumbar pain.

On August 17, 2016 appellant filed a claim for compensation (Form CA-7) for intermittent disability for the period November 14, 2014 through May 31, 2016.<sup>3</sup>

In an August 22, 2016 development letter, OWCP notified appellant of the deficiencies of her disability claim. It advised her of the type of evidence needed. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated December 12, 2016, OWCP denied appellant's claim for compensation for intermittent periods of disability for the period November 14, 2014 through May 31, 2016. By separate decision dated December 12, 2016, it denied her claim for compensation for disability on December 7, 2015. In both decisions, OWCP found that appellant failed to submit sufficient probative medical evidence supporting her claim. By decision dated January 9, 2017, it denied modification of its December 12, 2016 decisions.

On January 9, 2018 appellant, through counsel, requested reconsideration of the January 9, 2017 decision. By decision dated March 1, 2018, OWCP denied modification of its January 9, 2017 decision.

In a March 23, 2018 report, Dr. Robert Reppy, an osteopath and Board-certified family medicine physician, referenced appellant's preexisting service-connected disability for lumbar and cervical conditions and discussed the medical evidence of record, including a March 1, 2016 MRI scan with findings of central disc protrusion at C5-6 and disc degeneration and diffuse bulge with central disc protrusion at L4-5. He related these conditions to the July 25, 2014 employment injury and noted:

“Based on the comparisons of [MRI scans], the history of the July 25, 2014 fall as explained by the patient and radiating symptoms from the fall that were not previously present and are correlated with the March 1, 2016 [MRI scan] and physical examination, it is my opinion that the work-related accident is the cause of the C5-6 central disc protrusion and the L4-5 annular bulge with disc protrusion.”

Dr. Reppy further opined that appellant would be totally disabled until the acceptance of her claim was expanded to include the new findings. Appellant also submitted March 23, 2018 and February 15, 2019 reports from Dr. Reppy which contained similar content.

Appellant submitted additional medical reports, including October 30, 2018 and January 29, 2019 reports, in which Dr. Lassalle diagnosed cervical facet joint pain, regional pain problem, lumbar spine pain, and lower back/bilateral hip contusions.

By decision dated April 29, 2019, OWCP denied modification of its March 1, 2018 decision regarding disability and appellant's expansion claim.

On April 29, 2020 appellant, through counsel, requested reconsideration. She submitted July 11 and October 28, 2019 reports from Dr. Lassalle, which discussed appellant's contemporary

---

<sup>3</sup> Appellant also claimed leave buy back for December 7, 2015 on the same form.

medical condition and July 12 and October 30, 2019 reports from Juan Estrada, a nurse practitioner. Appellant also submitted diagnostic testing reports from 2018 and 2019.

By decision dated May 29, 2020, OWCP denied modification of its April 29, 2019 decision.

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

When 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.<sup>4</sup> The medical evidence required to establish causal relationship between a specific condition, and the employment injury is rationalized medical opinion evidence. 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.<sup>5</sup>

The Board has held that when the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable.<sup>6</sup> However, the normal progression of untreated disease cannot be stated to constitute “aggravation” of a condition merely because the performance of normal work duties reveals the underlying condition.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to her accepted July 25, 2014 employment injury.

Appellant submitted a March 23, 2018 report from Dr. Reppy, who referenced appellant’s preexisting service-connected disability for lumbar and cervical conditions and discussed the medical evidence of record, including a March 1, 2016 MRI scan with findings of central disc protrusion at C5-6 and disc degeneration and diffuse bulge with central disc protrusion at L4-5. Dr. Reppy related these conditions to the July 25, 2014 employment injury and noted:

“Based on the comparisons of [MRI scans], the history of the July 25, 2014 fall as explained by the patient and radiating symptoms from the fall that were not previously present and are correlated with the March 1, 2016 [MRI scan] and

---

<sup>4</sup> *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>5</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>6</sup> *C.H.*, Docket No. 17-0488 (issued September 12, 2017).

<sup>7</sup> *Id.*

physical examination, it is my opinion that the work-related accident is the cause of the C5-6 central disc protrusion and the L4-5 annular bulge with disc protrusion.”

Dr. Reppy further opined that appellant would be totally disabled until her claim was expanded to include the new findings. Appellant also submitted March 23, 2018 and February 15, 2019 reports from Dr. Reppy that contained similar content.

The Board finds, however, that these reports of Dr. Reppy do not establish appellant’s expansion claim. Dr. Reppy’s reports are of limited probative regarding this issue because he did not provide adequate medical rationale in support of his opinion on causal relationship. He did not describe the July 25, 2014 employment injury in any detail or explain how it could have caused medical conditions other than those already accepted by OWCP. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.<sup>8</sup> Therefore, these reports are insufficient to establish appellant’s expansion claim.

Appellant submitted reports of attending physicians, including those of Dr. Yatham, Dr. Lassalle, and Dr. Haimes, which contained diagnosed medical conditions that were not accepted by OWCP. These reports are of no probative value regarding the expansion issue because these physicians did not relate the additional diagnosed conditions to the accepted July 25, 2014 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>9</sup> Therefore, these reports also are insufficient to establish appellant’s expansion claim.

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant’s claimed additional diagnosed conditions and the accepted July 25, 2104 employment injury, the Board finds that appellant 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.

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

An employee seeking benefits under FECA 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>10</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are

---

<sup>8</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>9</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>10</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>11</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>12</sup> Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>13</sup> 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>14</sup> 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 loss of wages.<sup>15</sup>

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 claimed disability and the accepted employment injury.<sup>16</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>17</sup>

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

The Board finds that appellant has not met her burden of proof to establish disability from work for the period November 14, 2014 through May 31, 2016 causally related to her accepted July 25, 2014 employment injury.

Appellant submitted a number of medical reports prepared during the period of claimed intermittent disability, *i.e.*, November 14, 2014 and May 31, 2016, including reports of Dr. Yatham, Dr. Lassalle, and Dr. Haimes. However, these reports are of no probative value regarding appellant’s disability because these physicians did not provide an opinion that appellant

---

<sup>11</sup> 20 C.F.R. § 10.5(f); *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *N.M.*, Docket No. 18-0939 (issued December 6, 2018); *R.C.*, 59 ECAB 546, 551 (2008).

<sup>12</sup> 20 C.F.R. § 10.5(f).

<sup>13</sup> *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>14</sup> *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

<sup>15</sup> *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

<sup>16</sup> *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>17</sup> *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

had disability during the claimed period due to the conditions accepted in connection with the July 25, 2014 employment injury, *i.e.*, cervical strain, head trauma, and contusions of her back and hips. As noted above, 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>18</sup>

Appellant submitted documents that contained notations about health care appointments at the a rehabilitation facility, which took place between June 23 and September 22, 2015. The notes indicated that appellant was being treated for cervical conditions, including herniated cervical discs and cervicalgia. The documents were not signed. These reports are of no probative value on the disability issue because the Board has held that unsigned reports cannot be considered probative medical evidence because they lack proper identification.<sup>19</sup>

Appellant submitted the findings of diagnostic testing that were obtained during the claimed period of disability. However, diagnostic studies, standing alone, lack probative value on causal relationship as they do not address whether employment factors caused the claimed diagnosed condition/period of disability.<sup>20</sup> Appellant also submitted July 12 and October 30, 2019 reports from Mr. Estrada, a nurse practitioner. The Board has held, however, that health care providers such as nurses, physician assistants, physical therapists are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.<sup>21</sup> Therefore, these reports are of no probative value and are insufficient to meet appellant's burden of proof.

As the medical evidence of record does not contain a rationalized opinion establishing causal relationship between appellant's claimed disability and the accepted July 25, 2104 employment injury, the Board finds that appellant 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 expand the acceptance of her claim to include additional conditions causally related to her accepted July 25, 2014 employment injury. The Board further finds that appellant has not met her burden of proof to

---

<sup>18</sup> See *supra* note 9.

<sup>19</sup> *R.C.*, Docket No. 18-1639 (issued February 26, 2019); *see also* *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>20</sup> *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

<sup>21</sup> Section 8101(2) (this subsection defines a physician as 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 Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *P.S.*, Docket No. 17-0598 (issued June 23, 2017) (nurse practitioners are not physicians under FECA); *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).)

establish disability from work for the period November 14, 2014 through May 31, 2016 causally related to her accepted July 25, 2014 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 29, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 2022  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board