

FACTUAL HISTORY

On September 8, 2020 appellant, then a 60-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 25, 2020 she injured her neck due to a motor vehicle accident (MVA) while in the performance duty. She stopped work on August 26, 2020 and returned to work on August 31, 2020.

In a letter dated December 17, 2020, Cathy Shine, a nurse practitioner, diagnosed vestibular migraine, cervicgia, disorder of labyrinth, bilateral tinnitus, and dizziness. She indicated that appellant was totally disabled from work.

In a letter dated January 25, 2021, Ms. Shine diagnosed vestibular migraine, cervicgia, and dizziness, and released appellant to return to work four hours per day, effective February 10, 2021, with no lifting greater than 10 pounds. In a supplemental letter of even date, she opined that appellant's neck pain, vestibular migraines, and dizziness stemmed from her job duties including constant turning of her head and heavy lifting. Ms. Shine released appellant to return to full-duty work without restrictions, effective February 24, 2021.²

In a report dated April 28, 2021, Dr. F. Michael Saigh, a Board-certified family practitioner, noted that appellant related complaints of neck and lower back pain, which she attributed to an MVA while working on August 25, 2020. He reviewed her medical records and performed a physical examination, which revealed spasm in the cervical and thoracolumbar musculature. Dr. Saigh diagnosed sprains of the ligaments of the cervical and lumbar spines and pelvis, myospasm, and subluxation of the C3-C4 and C6-C7 vertebrae. He opined that the August 25, 2020 MVA caused sprains of the pelvis and cervical and lumbar spines. In a separate undated letter, Dr. Saigh opined that appellant's cervical subluxations were preexisting conditions.

On August 6, 2021 OWCP accepted the claim for neck and lumbar sprains.

On October 5, 2021 appellant filed claims for compensation (Form CA-7) for intermittent disability for the period December 19, 2020 through February 26, 2021.

In a development letter dated October 8, 2021, OWCP informed appellant that the evidence submitted was insufficient to establish entitlement to compensation for the period December 19, 2020 through February 26, 2021. It requested that she submit medical evidence from her physician explaining how her employment-related conditions caused or contributed to her inability to work during the claimed period.

In a narrative report dated October 26, 2021 by Dr. Kelley Parnell, a neurologist with a Board-certification in sleep medicine, noted appellant's history of migraines, a July 2020 right shoulder injury, and difficulty turning her head and looking down due to a MVA in August 2020. She reviewed magnetic resonance imaging (MRI) scans of the cervical spine, which revealed degenerative changes at C5-C6. Dr. Parnell recommended that appellant remain off work from December 14, 2020 through February 24, 2021 due to dizziness and headaches. She opined that

² Appellant retired from federal service, effective March 27, 2021.

the MVA “probably” exacerbated appellant’s preexisting vestibular migraines and was concerned that appellant would exacerbate her neck pain if she returned to full-duty work.

By decision dated December 13, 2021, OWCP denied appellant’s claim for compensation, finding that she had not submitted sufficient medical evidence to establish intermittent disability from work during the claimed period due to the accepted conditions.

On February 24, 2022 appellant requested reconsideration of OWCP’s December 13, 2021 decision. In support of her request, she submitted duplicate copies of Ms. Shine’s January 25 and February 23, 2021 letters, as well as Dr. Parnell’s October 26, 2021 report.

By decision dated March 1, 2022, OWCP denied appellant’s request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ 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.⁴ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁵ 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.⁶ 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.⁷

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.⁸

³ See *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); see also *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989); *Nathaniel Milton*, 37 ECAB 712 (1986).

⁴ 20 C.F.R. § 10.5(f).

⁵ See *H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁶ See *H.B.*, *id.*; *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

⁷ See *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

⁸ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

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.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work, during the period December 19, 2020 through February 26, 2021, causally related to her accepted August 25, 2020 employment injury.

In support of her claim for disability, appellant submitted an October 26, 2021 narrative report from Dr. Parnell, recommending appellant remain off work from December 14, 2020 through February 24, 2021 due to dizziness and headaches. However, he did not provide an opinion on causal relationship between the claimed disability and the accepted employment injury. The Board has held that medical evidence that does not offer an opinion on causal relationship is of no probative value.¹⁰ Therefore, the October 26, 2021 report is insufficient to meet appellant's burden of proof.

The April 28, 2021 report by Dr. Saigh did not offer an opinion as to whether appellant was disabled from work due to the accepted employment injuries. Therefore, this report is of no probative value and is insufficient to establish appellant's claim for compensation.¹¹

The remaining medical evidence record submitted prior to the December 13, 2021 merit decision consisted of work excuse letters by Ms. Shine, which were not signed or cosigned by a physician. This Board has long held that certain healthcare providers such as physician assistants and nurses are not considered physicians as defined under FECA.¹² Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹³ Consequently, these reports are insufficient to meet appellant's burden of proof.

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work during the claimed period as a result of the accepted

⁹ *J.B.*, Docket No. 19-0715 (issued September 12, 2019).

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

¹¹ *Id.*

¹² Section 8101(2) of FECA provides that 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *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 B.V.*, Docket No. 21-0742 (issued December 14, 2021) (nurse practitioners are not considered physicians as defined by FECA); *K.A.*, Docket No. 18-0999 (issued October 4, 2019).

¹³ *K.A., id.*; *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id.*

employment injury.¹⁴ Because appellant has not submitted rationalized medical opinion evidence to establish employment-related intermittent disability during the claimed period due to her accepted August 25, 2020 employment injury, 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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.¹⁵ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.¹⁶ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.¹⁷

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (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.¹⁸ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹⁹

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 alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously

¹⁴ See *D.W.*, Docket No. 21-0778 (issued February 4, 2022); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004).

¹⁵ 5 U.S.C. § 8128(a).

¹⁶ 20 C.F.R. § 10.607.

¹⁷ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

¹⁸ *Id.* at § 10.606(b)(3); see *L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

¹⁹ *Id.* at § 10.608.

considered. Consequently, appellant 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).²⁰

The Board further finds that appellant did not submit relevant and pertinent new evidence in support of her reconsideration request under 20 C.F.R. § 10.606(b)(3). In support of her request, appellant resubmitted the October 26, 2021 narrative report by Dr. Parnell, and the work excuse letters by Ms. Shine. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.²¹ As appellant did not provide relevant and pertinent evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board, therefore, 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish intermittent disability from work during the period December 19, 2020 through February 26, 2021, causally related to her accepted August 25, 2020 employment injury. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

²⁰ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

²¹ *R.G.*, Docket No. 21-0098 (issued May 19, 2021); *J.V.*, Docket No. 19-0990 (issued August 26, 2020); *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *A.A.*, Docket No. 18-0031 (issued April 5, 2018); *Eugene F. Butler*, 36 ECAB 393 (1984).

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2021 and March 1, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 18, 2022
Washington, D.C.

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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