United States Department of Labor
Employees' Compensation Appeals Board

E.B., Appellant	)	
and	)	**Docket No. 20-0477**
	)	**Issued: January 3, 2023**
U.S. POSTAL SERVICE, DENVER AIRPORT MAIL CENTER, Denver, CO, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On December 31, 2019 appellant filed a timely appeal from October 22, 2019 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish permanent impairment of a scheduled member entitling him to a schedule award; and (2) whether appellant

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

has met his burden of proof to establish total disability from work for the period December 19, 1999 through April 30, 2019 causally related to his accepted December 19, 1999 employment injury.

FACTUAL HISTORY

On December 19, 1999 appellant, then a 45-year-old casual mailhandler, filed a traumatic injury claim (Form CA-1) alleging on that date he ran into a post on the dock injuring his head while in the performance of duty. He sought treatment in the emergency room and was released to return to work on December 21, 1999 with no restrictions.

Appellant's December 3, 1999 temporary Christmas Appointment at the employing establishment began on December 6, 1999 and ended effective December 31, 1999.

In notes dated December 22 and 29, 1999 and January 18 and 27, 2000, Dr. Clement Hanson, an osteopath Board-certified in Public Health and General Preventative Medicine, reported appellant's history of nonwork-related motor vehicle accidents in 1976, 1978, 1990, 1991, as well as in March 1998, which caused compression fractures to the lower lumbar vertebrae, and his history of multiple skull fractures in 1973 from a nonwork-related assault which was treated with bone graft surgery. He noted that appellant sustained a significant trauma to his head on December 19, 1999 when he was loading mail onto a transport trailer and struck his left upper forehead on a pipe that was fixed to the loading ramp. Appellant had a loss of consciousness. Dr. Hanson diagnosed closed head trauma with probable post-concussion syndrome, cervical spine strain with suspected myofascial pain syndrome of the right shoulder, and possible post-traumatic stress syndrome due to the December 19, 1999 employment injury. In his February 7, 2000 note, he provided an additional diagnosis of paresthesias of the right middle and right ring fingers, rule out cervical disc protrusion at C7 as well as work restrictions including maximum lifting, pushing, pulling, and carrying of 20 pounds, no reaching above the chest or head and no working on platforms or heights.

In a letter dated January 14, 2000, the employing establishment noted that appellant had returned to regular full-duty work on December 21, 1999.

On February 10, 2000 appellant accepted a limited-duty assignment as a mailhandler working eight hours a day with restrictions of lifting no more than 20 pounds.

In a February 25, 2000 report, Dr. John T. Sacha, a Board-certified physiatrist, described appellant's December 19, 1999 employment injury as running into a metal pipe, hitting his head and developing head and neck pain. He noted appellant's previous head and craniofacial surgeries as a result of the 1973 assault and that on December 19, 1999 appellant had struck the pipe at the location of his frontal defect from this assault. Dr. Sacha described the 1973 assault as an attack of multiple blows of a lead pipe to the head resulting in facial and cranial fractures. As a result of the December 19, 1999 incident, appellant sustained a loss of consciousness and had no memory of approximately 30 minutes following the incident. Dr. Sacha also noted that appellant was working at the employing establishment performing light duty from December 24, 1999 through February 15, 2000. He also reported that on February 15, 2000 appellant sustained a work-related

left foot injury including multiple fractures.[3] As a result of the December 19, 1999 employment incident, Dr. Sacha diagnosed closed head injury, mild with headaches, and cervical strain. He opined that closed head injuries could be cumulative and that a very mild head injury, after a prior severe one, could result in significant symptoms and difficulties. Dr. Sacha recommended traumatic brain injury training.

On March 6, 2000 OWCP accepted the December 19, 1999 traumatic injury claim for contusions of the face, scalp, and neck as well as cervical sprain.

In March 13 and 27, 2000 as well as April 11 and 25, 2000 treatment notes, Dr. Hanson reported that the employing establishment had provided appellant with modified light-duty work. He also reported that appellant had an additional crush injury of his left foot with possible cuboid avulsion fracture due to a February 15, 2000 work injury. Dr. Hanson provided additional work restrictions due to the left foot injury including sitting for 10 minutes after 1 hour of standing and walking, wearing an air splint on the left ankle, and maximum 20 pounds lift, push, pull, and carry. He reviewed a cervical magnetic resonance imaging (MRI) scan which demonstrated foraminal stenosis bilaterally at C3-4, and C5-6 with no focal disc protrusion. Dr. Hanson diagnosed closed head injury with suspected post-concussion syndrome and post-traumatic headache, sprain injury of the cervical spine and right shoulder, and MRI scan findings of foraminal stenosis at C3-4 and C5-6. On April 25, 2000 he found that appellant could lift, push, pull, and carry up to 30 pounds.

Appellant underwent nerve conduction velocity (NCV) testing on May 5, 2000. Dr. Sacha reviewed this test on May 8, 2000 and diagnosed carpal tunnel syndrome. He found that this condition was not likely to be related to the December 19, 1999 employment injury. Dr. Sacha further found that appellant's accepted closed head injury had completely resolved and did not require further treatment as appellant was back at his baseline. In regard to appellant's neck, he diagnosed mild myogenic thoracic outlet syndrome based on the physical findings of tight scalenes muscles as well as positive Adson's maneuver and thoracic stress tests.

On May 30, 2000 the employing establishment offered appellant a permanent rehabilitation job offer at the employing establishment which he accepted on August 8, 2000.

In May 23, and June 6, 7, 13 and 19, 2000 notes, Dr. Hanson reported that the employing establishment accommodated appellant with modified light duty and that appellant was working as a mail clerk from 10:00 p.m. until 7:00 a.m. He found that appellant could reduce his work restrictions to reflect a weight restriction in the right arm only of 30 pounds for lifting, pushing, pulling, and carrying. Dr. Hanson noted that he had conferred with Dr. Sacha and that the two of them agreed that appellant was at maximum medical improvement regarding his December 19, 1999 head injury and neck symptoms. He provided a form report and continued to provide additional restrictions due to appellant's left foot injury.

On June 16, 2000 Dr. Sacha diagnosed cervical strain with myogenic thoracic outlet which was significantly improved and closed head injury. He opined that appellant did not require further neck treatment.

[3] OWCP File No. xxxxxx806.

In a July 18, 2000 report, Dr. Hanson provided appellant's cervical range of motion and listed his impairment in accordance with the third edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.*[4] He found that appellant had 10 percent whole person impairment due to his cervical spine injury and discharged him from treatment. Dr. Hanson concluded that appellant's work restrictions of lifting, pushing, pulling, and carrying no more than 30 pounds were permanent.

On July 6, 2000 appellant filed a claim for compensation (Form CA-7) requesting a schedule award.

Appellant resigned effective August 3, 2000. He indicated that he was resigning due to unfair treatment, retaliation, and discrimination based on disability and two work-related injuries.

On October 19, 2000 the employing establishment noted that appellant was hired as a Christmas casual employee with a temporary appointment of 30 days. Appellant's start date was December 6, 1999. The employing establishment reported that it had continued to accommodate his restrictions until his voluntary resignation on August 3, 2000.

In October 12 and 21, 2000 notes, Dr. Hanson examined appellant for a "maintenance visit" for his closed head injury and repeated his previous findings and conclusions.

On November 16, 2000 appellant submitted a claim for compensation (Form CA-7) for the period February 12 through June 2, 2000. Time analysis forms (Form CA-7a) for the periods February 12 through April 8, 2000 and April 29 through June 2, 2000 indicated that appellant was sent home, as there was no work available, after working less than eight hours a day intermittently from February 12 through June 2, 2000 for a total of 267 hours.

In a December 28, 2000 development letter, OWCP requested rationalized medical documentation that appellant was disabled for work due to his accepted employment injuries for the days and hours requested. It afforded 30 days for a response.

By decision dated February 14, 2001, OWCP denied appellant's claim for compensation for the period February 12 through June 6, 2000. On February 21, 2001 appellant requested an oral hearing from an OWCP hearing representative.

By decision dated October 26, 2001 and finalized October 30, 2001, OWCP's hearing representative affirmed the February 14, 2001 decision.

On November 9, 2012 appellant filed an occupational disease claim (Form CA-2) alleging a brain injury, head injury, major neck and back injury as a result of the December 19, 1999 employment injury.

Appellant provided a series of time analysis forms (Form CA-7a) for the period July 25 through August 12, 2000 indicating that he used leave without pay as he was laid off due to injury.

[4] A.M.A., *Guides*, 3rd ed. (1988).

In a letter received by OWCP on November 6, 2017, appellant alleged that he was hit in the head by a pipe hanging off a deck ramp and that he was currently experiencing neck pain, headaches, neck cramps, and memory loss.

On May 25, 2018 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation from December 9, 1999 to the present. He also requested a schedule award.

On June 11, 2018 appellant alleged that he had sustained a traumatic brain injury on December 19, 1999 which impaired his mental abilities. He noted that he had been receiving social security disability compensation for more than 10 years. Appellant alleged that his employment injury resulted in post-traumatic stress disorder, exhaustion, nightmares, flashbacks, and paralysis of his neck. He also noted his left foot injury in February 2000.

In a June 8, 2018 development letter, OWCP requested medical evidence establishing disability from work for the entire period claimed. It afforded 30 days for a response.

On June 13, 2018 appellant filed a notice of recurrence (Form CA-2a) alleging that he was laid off due to lack of work as a result of the December 19, 1999 employment injury. He indicated that he sought medical treatment on November 3, 2008 and that his neck, head, brain, and left shoulder were injured.

In a July 2, 2018 development letter, OWCP noted that appellant was claiming lost time from work beginning July 25, 2000 due to the December 19, 1999 employment injury. It requested factual and medical evidence to substantiate that his disability occurred or increased to a spontaneous change in his accepted medical condition or a withdrawal of his light-duty assignment. OWCP provided appellant with a questionnaire for completion and afforded him 30 days for a response.

Dr. James M. Falko, a Board-certified internist, completed a note on July 3, 2018 and opined that appellant had reached MMI from his traumatic brain injury and contusion to the face which occurred on December 19, 1999. He reported that appellant was off work because of this injury and medication.

On September 24, 2018 appellant underwent NCV and electromyogram (EMG) studies due to numbness in his hands and feet which demonstrated moderately severe sensorimotor polyneuropathy with features of demyelination and axonal injury and possible left L4-S1 radiculopathies.

On December 2, 2018 Dr. Stacy Dixon, a Board-certified neurologist, examined appellant and diagnosed idiopathic neuropathy, neck pain, and injury of the left foot. She noted that on December 19, 1999 appellant sustained a significant brain injury when a pipe hit him in the head and that on February 15, 2000 appellant sustained a crush injury of his left foot. Dr. Dixon reviewed appellant's September 24, 2018 EMG.

By decision dated January 17, 2019, OWCP denied appellant's claim for recurrence of disability. It noted that his December 19, 1999 claim had been accepted for contusions of the face, scalp, and neck as well as sprain of the neck. OWCP found that appellant was released from medical care on March 16, 2000. Appellant, through counsel, requested an oral hearing.

On January 28, 2018 appellant requested reconsideration of the January 17, 2019 decision and alleged existing problems from the closed head, neck, and upper spine injury based on his EMG findings.

On February 8, 2019 Dr. Dixon performed EMG and NCV testing which demonstrated axonal polyneuropathy with demyelination in the distal nerve conduction consistent with diabetes, moderately severe carpal tunnel syndrome, chronic left C5 and C6 radiculopathies without evidence of denervation, and possible multilevel right lumbosacral radiculopathies.

In a February 12, 2019 note, Dr. Falko reported that appellant's diabetes was well controlled, but that he was experiencing painful polyneuropathy of the upper and lower extremities. He asserted that appellant's neurologist believed that the polyneuropathy was likely related to appellant's December 19, 1999 injury when he hit his head on a pipe. Dr. Falko opined that appellant's injury resulted in a traumatic brain injury and decreased cognitive function.

On March 7, 2019 appellant filed a schedule award claim (Form CA-7).

In a March 14, 2019 development letter, OWCP requested a detailed narrative medical report addressing whether appellant had reached MMI, the diagnosis on which the impairment was based, a detailed description of the any permanent impairment, and a permanent impairment rating with references to the sixth edition of the A.M.A., *Guides*.[5]

On March 12, 2019 appellant filed a schedule award claim (Form CA-7) and a separate claim for compensation (Form CA-7) for the period December 19, 1999 through the present.

In a March 19, 2019 letter, the employing establishment noted that appellant returned to work on December 19, 1999 and continued to work through August 3, 2000 the date of his resignation.

In a March 28, 2019 development letter, OWCP requested additional medical evidence to establish disability for the period claimed. It afforded appellant 30 days for a response.

By decision dated April 30, 2019, OWCP denied appellant's schedule award claim finding that he had not established permanent impairment of a scheduled member based on Dr. Hanson's July 18, 2000 report. It noted that there was no medical evidence based on a proper history of injury attributing appellant's permanent impairment under the sixth edition of the A.M.A., *Guides* to his accepted December 19, 1999 employment injury.

By separate decision dated April 30, 2019, OWCP denied appellant's claim for disability compensation for the period December 19, 1999 through April 30, 2019. It found that he had not provided any evidence in support of his claim for wage-loss compensation for the period December 19, 1999 through the present.

On April 24, 2019 appellant testified before an OWCP hearing representative. He denied resigning from the employing establishment on August 3, 2000. Appellant alleged that the

[5] A.M.A., *Guides*, 6th ed. (2009).

December 19, 1999 employment injury resulted in traumatic brain injury, cervical spine, upper neck, and nerve damage down his spine and upper back for which he received treatment from Dr. Falko. He asserted that he never returned to full-time full-duty work at the employing establishment. Appellant alleged that in 2018 his medical conditions worsened.

On May 7, 2019 appellant, through counsel requested an oral hearing before an OWCP hearing representative of both of the April 30, 2019 decisions.

In a May 22, 2019 report, Dr. Jack D. Rook, a Board-certified physiatrist, noted appellant's history of injury of December 19, 1999 and asserted that appellant's claim was accepted for cervical strain, contusion to the face, and traumatic brain injury. He alleged that appellant was admitted to the hospital for a few days for observation following the December 19, 1999 injury. Dr. Rook reviewed Dr. Hanson's reports as well as appellant's electrodiagnostic studies. He noted that he was examining appellant to provide an impairment rating related to his December 19, 1999 employment injury and recounted appellant's ongoing symptoms of nocturnal pain and paresthesias in the upper extremities, numbness of the hands and arms, and daily headaches. Dr. Rook found that appellant had ongoing complaints of headaches, neck pain, and bilateral upper extremity pain and paresthesias associated with his December 19, 1999 employment injury. On physical examination he found no chronic pain behaviors, decreased cervical range of motion and grip strength on the right. Dr. Rook noted that appellant had a history of cervical pathology with foraminal narrowing and chronic radiculopathies in both upper extremities. He found diminished sensation in the right C5 distribution and weakness in multiple muscles in the right upper extremity including biceps, triceps, and deltoid muscles. Dr. Rook reported that appellant had a normal left upper extremity neurological examination and no impairment rating on the left. In regard to appellant's right upper extremity, he found a chronic right C8 radiculopathy and weakness of the musculature consistent with the EMG findings of chronic partial denervation changes in appellant's first dorsal interosseous and extensor inducis proprius muscles. Dr. Rook determined that this was consistent with the 4/5 weakness in pinch strength in appellant's right hand. He found no sensory loss in the C8 distribution. Dr. Rook utilized *The Guides Newsletter* from July/ August 2009 and determined that appellant would fall into Class 1, C8 radiculopathy regional grid. He determined that this was a default impairment of six percent of the upper extremity. Dr. Rook found that appellant's right upper extremity *Quick*DASH score was 65 resulting in a functional history grade modifier (GMFH) of 3, that the clinical studies grade modifier (GMCS) was 2 and that application of the net adjustment formula resulted in +3 or grade E with a final impairment rating of nine percent permanent impairment of the right upper extremity. He determined that appellant reached maximum medical improvement on July 3, 2018.

By decision dated May 30, 2019, OWCP's hearing representative affirmed the January 17, 2019 denial of recurrence of disability. She found that there was no medical evidence supporting a change in the nature and extent of appellant's injury-related condition.

On August 8, 2019 counsel appeared before an OWCP hearing representative and requested that Dr. Rook's report be referred to the district medical adviser (DMA) for review. In a separate hearing of even date before an OWCP hearing representative, appellant testified regarding his claim for wage-loss compensation. He testified that his previous claims for compensation beginning on December 19, 1999 had been denied.

By decision dated October 22, 2019, OWCP's hearing representative found that appellant failed to submit medical evidence to support disability for the period claimed. She affirmed OWCP's April 30, 2019 decision denying appellant's claimed period of disability.

By separate decision dated October 22, 2019, OWCP's hearing representative found that Dr. Rook's report was based on an inaccurate history of injury and failed to provide an opinion on the causal relationship between appellant's accepted employment injuries and his current diagnosed conditions resulting in permanent impairment. She also noted that the claim was devoid of bridging medical evidence that would indicate an ongoing cervical strain or other condition due to the accepted employment injury. OWCP's hearing representative determined that as causal relationship was not established, Dr. Rook's report was not sufficient to warrant further review regarding any claimed impairment and affirmed OWCP's April 30, 2019 decision denying appellant's schedule award claim.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of FECA and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of scheduled members or functions of the body.[6] However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[7]

As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[8] The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[9]

Neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.[10] However, a schedule award is permissible where the employment-related spinal condition affects the upper

[6] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

[7] *Id.* at § 10.404; *Ronald R. Kraynak*, 53 ECAB 130 (2001).

[8] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

[9] *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[10] 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *A.G.*, Docket No. 18-0815 (issued January 24, 2019); *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

and/or lower extremities.[11] The sixth edition of the A.M.A., *Guides* (2009) provides a specific methodology for rating spinal nerve extremity impairment in *The Guides Newsletter*. It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine. The FECA-approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities. The appropriate tables for rating spinal nerve extremity impairment are incorporated in the Federal (FECA) Procedure Manual.[12]

In addressing upper or lower extremity impairment due to peripheral or spinal nerve root involvement, the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter* require identifying the impairment CDX, which is then adjusted by the GMFH and the GMCS. The effective net adjustment formula is (GMFH-CDX) + (GMCS-CDX).

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.[13] For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship.[14]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a permanent impairment of a scheduled member entitling him to a schedule award.

Appellant filed a claim for a schedule award and submitted a May 22, 2019 impairment rating from Dr. Rook in support of his claim.

The Board has previously explained that the medical evidence of record must establish that the accepted employment injury contributed to the permanent impairment for which schedule award compensation is alleged. Although Dr. Rook attributed appellant's conditions to the accepted December 19, 1999 injury, his opinion fails to provide a rationalized opinion explaining how the schedule award is related to the employment injury. Therefore, the Board finds that the opinion of Dr. Rook is insufficient for appellant to meet his burden of proof to establish that his upper extremity permanent impairment is causally related to his accepted December 19, 1999 employment injury.

[11] *Supra* note 9 at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5c(3) (March 2017).

[12] *Id*. at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

[13] *L.N.*, Docket No. 18-0156 (issued August 21, 2019); *K.B.*, Docket No. 19-0431 (issued July 1, 2019); *Veronica Williams*, 56 ECAB 367 (2005).

[14] *L.N., id*.; *F.E.*, Docket No. 17-0584 (issued December 18, 2017).

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

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 by the weight of the reliable, probative, and substantial evidence.[15] 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.[16] Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.[17]

The term "disability" under FECA means "incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury."[18] This meaning, for brevity, is expressed as disability from work.[19] For each period of disability claimed, an employee has the burden of proving that he or she was disabled from work as a result of the accepted employment injury.[20] Whether a particular injury caused an employee to be disabled from employment and the duration of that disability are medical issues, which must be proven by the preponderance of the reliable probative and substantial medical evidence.[21]

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless 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 under FECA, and is not entitled to compensation for loss of wage-earning capacity.

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is

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

[16] *J.J., id.*; *Dominic M. Descaled*, 37 ECAB 369, 372 (1986).

[17] *J.C.*, Docket No. 18-0318 (issued December 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Nathaniel A. Milton*, 37 ECAB 712 (1986).

[18] 20 C.F.R. § 10.5(f); *William H. Kong*, 53 ECAB 394 (2002).

[19] *J.J., supra* note 15; *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

[20] *J.J., id.*; *William A. Archer*, 55 ECAB 674 (2004).

[21] *J.J., id.*; *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[22]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met his burden of proof to establish total disability from work for the period December 19, 1999 through April 30, 2019 causally related to his accepted December 19, 1999 employment injury.

Appellant was hired by the employing establishment for a temporary seasonal position on December 6, 1999. He sustained accepted injuries on December 19, 1999 including contusions of the head, face, and neck, as well as neck strain. Appellant returned work on December 19, 1999 and accepted a light-duty work position on February 10, 2000 and continued to work until August 3, 2000 when he resigned from the employing establishment.

There is no medical evidence supporting appellant's disability for work after August 3, 2000 due to his accepted employment injuries of head, face, and neck contusions or neck strain. Appellant's attending physicians, Drs. Sacha and Hanson, indicated that appellant was capable of full-time light-duty work and released him from medical treatment in June and July 2000, respectively. The additional medical evidence appellant submitted after August 2000 in support of his claim for compensation did not address any specific period of disability from August 3, 2000 through April 30, 2019.

The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.[23]

On July 3, 2018 Dr. Falko opined that appellant had reached MMI from his traumatic brain injury and contusion to the face which occurred on December 19, 1999. He reported that appellant was off work because of this injury and medication. On February 12, 2019 Dr. Falko reported that appellant was experiencing painful polyneuropathy of the upper and lower extremities. He asserted that appellant's neurologist believed that the polyneuropathy was likely related to appellant's December 19, 1999 injury when he hit his head on a pipe. Dr. Falko opined that appellant's injury resulted in a traumatic brain injury and decreased cognitive function. He did not provide a specific period of disability and did not explain how appellant's accepted head, face, and neck contusions as well as cervical sprain in 1999 resulted in ongoing disability for work. Furthermore, Dr. Falko did not explain how appellant's accepted contusions resulted in the additional conditions of traumatic brain injury and decreased cognitive function. The Board has held that medical evidence that does not provide an opinion as to whether a period of disability is

[22] *Id*.

[23] *M.C.*, Docket No. 18-1391 (issued February 1, 2019).

due to an accepted employment condition is insufficient to meet a claimant's burden of proof.[24] Therefore these reports are insufficient to establish appellant's claim.

On December 2, 2018 Dr. Dixon, diagnosed idiopathic neuropathy, neck pain, and injury of the left foot and noted that on December 19, 1999 appellant sustained a significant brain injury when a pipe hit him in the head. He also failed to provide a period of disability due to the accepted employment injuries or to explain how the accepted injuries continued to impact appellant's ability to work. Dr. Rook did not address appellant's disability for work, instead providing his permanent impairment rating. As noted above, evidence that does not address appellant's claimed period of disability is insufficient to establish his claim.[25]

Finally, appellant submitted results from diagnostic testing. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused the claimed disability.[26] These reports are therefore insufficient to establish the claim.

As the medical evidence of record does not include a rationalized opinion on causal relationship between appellant's claimed disability and his accepted employment injury, the Board finds that he has not met his burden of proof.[27]

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 his burden of proof to establish permanent impairment of a scheduled member entitling him to a schedule award. The Board further finds that he has not met his burden of proof to establish total disability from work for the period December 19, 1999 through April 30, 2019 causally related to his accepted December 19, 1999 employment injury.

[24] *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019).

[25] *M.J.*, Docket No. 19-1287 (issued January 13, 2020).

[26] *Id.*; *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[27] *J.K.*, Docket No. 19-0488 (issued June 5, 2020); *J.M.*, Docket No. 18-0853 (issued March 9, 2020).

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 3, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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