

ISSUE

The issue is whether appellant has met his burden of proof to establish disability from work for the period October 25 through December 3, 2021 causally related to his accepted August 6, 2021 employment injury.

FACTUAL HISTORY

On August 9, 2021 appellant, then a 40-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 6, 2021 he strained his cervical and thoracic muscle and tendons and his left wrist when the vehicle he was driving was rear-ended in a motor vehicle accident (MVA) while in the performance of duty. He stopped work and returned to full-time, limited-duty work on August 13, 2021. OWCP accepted appellant's claim for cervical strain, left wrist sprain, and thorax strain. By decision dated October 27, 2021, it expanded the acceptance of appellant's claim to include postconcussion syndrome.

In a report dated October 13, 2021, Dr. George Wang, a neurology and psychiatry specialist, described the August 6, 2021 motor vehicle accident and indicated that appellant complained of headache, phonophobia, and dizziness. On physical examination of appellant's neck, he observed no lymphadenopathy. Neurological examination demonstrated fluent speech, orientation to people, and good concentration and attention. Dr. Wang diagnosed concussion without loss of consciousness and unspecified headache.

In a handwritten prescription slip dated November 2, 2021, Dr. Wang noted a diagnosis of postconcussive syndrome. He requested that appellant be excused from work from October 25 through November 1, 2021.

In a letter dated November 4, 2021, Jeremy Valenzuela reported that appellant was under his care. He recommended that appellant be excused from work for three days.

In a work status note dated November 18, 2021, Dr. Wang reported that appellant was seen in his office on November 16, 2021. He requested that appellant be excused from work from November 2 through 21, 2021.

On November 19, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period October 25 through November 19, 2021. On the reverse side of the claim form, an occupational health specialist for the employing establishment indicated that appellant was on leave without pay (LWOP) status from October 25 through November 19, 2021.

In a November 30, 2021 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish disability from work for the period October 25 through November 19, 2021. It advised him of the type of additional evidence needed and afforded him 30 days to provide the necessary evidence.

On December 6, 2021 appellant filed an additional Form CA-7 for disability from work for the period November 20 through December 3, 2021.

Appellant submitted a September 23, 2021 patient visit summary report by a provider with an illegible signature who noted the August 6, 2021 motor vehicle accident and diagnoses of strain of muscle, fascia and tendon of neck, strain of muscle and tendon of the back wall of thorax, unspecified sprain of left wrist, and postconcussional syndrome.

Appellant submitted reports dated November 24, 2021 and January 5 and February 4, 2022 by Samantha J. Reynolds, a certified nurse practitioner, who noted the August 6, 2021 employment injury and recounted appellant's complaints of persistent headaches. Ms. Reynolds conducted a neurological examination and indicated that a November 16, 2021 electroencephalography (EEG) report³ showed abnormal results. She diagnosed concussion without loss of consciousness, unspecified headache, cervicgia, and dorsalgia. Ms. Reynolds also reported that the description of headaches was typical of postconcussive headaches.

In a letter dated December 1, 2021, Ms. Reynolds noted that appellant was seen in the office on November 24, 2021. She requested that appellant be excused from work from November 24 through December 1, 2021.

In letters dated January 10 and February 4, 2022, Ms. Reynolds indicated that appellant was evaluated in their office and requested that appellant be excused from work for the period December 4, 2021 until his next appointment on March 18, 2022.

In a work capacity evaluation (Form OWCP-5c) dated January 29, 22, Dr. Wang indicated that appellant could work part time for four hours per day with restrictions.

By decision dated March 16, 2022, OWCP denied appellant's claim for disability commencing October 25, 2021. It found that the medical evidence of record was insufficient to establish that he was disabled from work during the claimed period due to his accepted August 6, 2021 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.⁵ The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁶ 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

³ A November 16, 2021 EEG report revealed abnormal wake and sleep and mild diffuse encephalopathy.

⁴ *Supra* note 1.

⁵ *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

⁶ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

the accepted employment injury.⁷ 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 the reliable, probative, and substantial medical evidence.⁸

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 specific employment factors identified by the claimant.⁹

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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish disability from work for the period October 25 through December 3, 2021 causally related to his accepted August 6, 2021 employment injury.

In support of his claim for compensation, appellant submitted reports and work status notes dated October 13 and November 18, 2021 by Dr. Wang. Dr. Wang provided examination findings and diagnosed concussion without loss of consciousness and unspecified headache. In notes dated November 2 and 18, 2021, he requested that appellant be excused from work from October 25 through November 21, 2021. Although Dr. Wang opined that appellant was disabled from work during the claimed period, he failed to explain how the period of disability was due to appellant's August 6, 2021 employment injury or why appellant was unable to perform the duties of his position during the period claimed. A mere conclusion without medical rationale supporting a period of disability due to the accepted employment condition is insufficient to meet a claimant's burden of proof.¹¹ Thus, Dr. Wang's reports are insufficient to establish appellant's disability claim.¹²

⁷ *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

⁸ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

⁹ *K.H.*, Docket No. 19-1635 (issued March 5, 2020); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

¹⁰ *K.A.*, Docket No. 19-1564 (issued June 3, 2020); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *William A. Archer*, 55 ECAB 674 (2004).

¹¹ *A.L.*, Docket No. 21-0151 (issued January 21, 2022); *C.B.*, Docket No. 19-0464 (issued May 22, 2020); *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹² *See T.P.*, Docket No. 22-0465 (issued July 29, 2022).

Appellant also submitted reports dated November 24, 2021 through February 4, 2022 by Ms. Reynolds, a nurse practitioner. These reports, however, are of no probative value to establish appellant's wage-loss compensation claim because nurse practitioners are not considered physicians as defined under FECA.¹³ Likewise, the November 4, 2021 letter by Jeremy Valenzuela is of no probative value because there is no indication contained in the letter that Mr. Valenzuela qualifies as a physician as defined in 5 U.S.C. § 8101(2).¹⁴ For this reason, the Board finds that these reports are insufficient to establish appellant's disability claim.

As the medical evidence of record is insufficient to establish disability from work for the period October 25 through December 3, 2021 causally related to the accepted August 6, 2021 employment injury, the Board finds that appellant has not met his burden of proof to establish his claim.

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 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 disability from work for the period October 25 through December 3, 2021 causally related to his accepted August 6, 2021 employment injury.

¹³ 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. § 8102(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); *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.D.*, Docket No. 22-0503 (issued September 27, 2022 (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a nurse practitioner is not considered a physician as defined under FECA).

¹⁴ A medical report may not be considered probative medical evidence if it lacks proper identification and there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2). *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *R.M.*, 59 ECAB 690 (2008); *Thomas L. Agee*, 56 ECAB 465 (2005).

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 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