

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)		
T.H., Appellant))	
))	
and))	Docket No. 23-0811
))	Issued: February 13, 2024
U.S. POSTAL SERVICE, BALTIMORE POST))	
OFFICE, Baltimore, MD, Employer))	
_____))	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq. for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 18, 2023 appellant, through counsel, filed a timely appeal from a May 1, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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 an 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.*

³ The Board notes that, following May 1, 2023 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work commencing April 10, 2021, causally related to her accepted February 22, 2021 employment injury.

FACTUAL HISTORY

On February 25, 2021 appellant, then a 43-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 22, 2021 she injured her head, right elbow, neck, and back when she slipped and fell on ice while in the performance of duty.⁴ She did not stop work.

Emergency Medical Services (EMS) reports dated February 22, 2021, indicated that appellant was found lying on the ground and complaining of head pain and headaches after slipping on ice while delivering mail. The responding EMS technician noted swelling to the back of her head and that she was transported to the emergency room.

In an emergency room report dated February 22, 2021, Brinton Barnett-Jackson, a physician assistant, noted that appellant related complaints of headache and elbow, neck, and low back pain, which she attributed to slipping and falling on ice that day, striking her posterior head and right elbow. He indicated that she denied loss of consciousness. Mr. Barnett-Jackson performed a physical examination and observed a small area of bruising and contusion to the occipital scalp and tenderness to palpation of the right elbow, neck, and low back. He diagnosed a closed head injury and referred appellant for computerized tomography scans of the head and cervical spine, which were normal.

On February 22, 2021 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing appellant to seek medical care related to her head.

In a medical report dated February 25, 2021, Dr. Michael A. Randolph, a Board-certified internist, noted that appellant related complaints of head, right elbow, and low back pain, which she attributed to a fall on ice on February 22, 2021. He performed a physical examination and diagnosed concussion without loss of consciousness and a right elbow contusion. Dr. Randolph recommended that appellant remain out of work and referred her to neurology for evaluation of a concussion.

In a follow-up report dated March 25, 2021, Dr. Randolph noted appellant's complaints and examination findings and diagnosed right elbow contusion, cervicalgia, and concussion

⁴ OWCP assigned the present claim OWCP File No. xxxxxx157. Appellant previously filed a claim for a June 25, 2015 occupational disease (Form CA-2) for repetitive trauma to her neck and back, which OWCP accepted for a lumbar sprain under OWCP File No. xxxxx895. She thereafter filed a claim for an August 3, 2017 traumatic injury, which OWCP accepted for other muscle spasm and strain of muscle of neck under OWCP File No. xxxxxx703. Appellant also has a prior claim for a December 20, 2019 traumatic injury including migraines and traumatic stress under OWCP File No. xxxxxx839, which OWCP denied.

without loss of consciousness. In a duty status report (Form CA-17) of even date, he continued to find her totally disabled.

On May 4, 2021 appellant began filing claims for compensation (Form CA-7) for disability from work, effective April 10, 2021.

In a medical report dated May 5, 2021, Dr. Sumanjit Kaur, a neurologist, noted that appellant related a history of migraine headaches which began when she was a teenager. She further noted that appellant related severe, pulsating, and throbbing head pain following a fall at work on February 22, 2021. Dr. Kaur performed a neurological examination, which was normal. She diagnosed postconcussion syndrome and migraine.

OWCP also received March 25, May 13, and June 29, 2021 reports by Dr. Randolph, who recommended that appellant remain out of work until August 19, 2021, and follow-up reports dated May 13 and June 10, 2021.

In a June 14, 2021 narrative report, Dr. Randolph diagnosed concussion/traumatic brain injury, elbow contusion, and neck and lumbar strains, which he opined were caused or aggravated by the February 22, 2021 employment injury.

On June 15, 2021 OWCP accepted appellant's claim for a right elbow contusion and strains of the muscles of the neck and lower back.

In a June 28, 2021 follow-up report, Dr. Kaur noted her neurological examination findings and diagnosed migraine, postconcussion syndrome, and numbness of fingers on the right.

On June 29, 2021 OWCP referred appellant, a statement of accepted facts, the medical evidence of record, and a series of questions to Dr. Michael S. Sellman, a Board-certified neurologist, and Dr. John C. Barry, a Board-certified orthopedic surgeon, for second opinion examinations.

In a development letter dated July 6, 2021, OWCP informed appellant that the evidence submitted was insufficient to establish entitlement to compensation commencing April 10, 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. OWCP afforded appellant 30 days to submit the necessary evidence.

In a July 20, 2021 report, Dr. Sellman noted appellant's history of an injury on February 22, 2021 and reviewed medical reports and diagnostic testing. He performed an examination, which revealed mild tenderness in the frontal region of her head and cervical and paraspinal musculature and decreased sensation involving the fourth and fifth fingers of the right hand. Dr. Sellman noted that appellant also related headaches, but no difficulty with cognition, memory, or speech and no tenderness to palpation of the occipital nerve. He diagnosed a mild cerebral concussion due to the February 22, 2021 employment injury. Dr. Sellman opined that appellant had not recovered from the injury and should remain under the care of a neurologist until December 31, 2021. He further opined that she had no neurological problems involving her head that would preclude her from returning to full-duty work without restrictions. Dr. Sellman requested additional information from Dr. Randolph regarding whether appellant's preexisting migraine headache condition had resolved prior to February 22, 2021.

In a report dated July 23, 2021, Dr. Barry noted appellant's history of injury on February 22, 2021 and reviewed medical reports and diagnostic testing. He performed a physical examination which he observed reduced range of motion in the cervical spine without muscle spasm, but which was otherwise normal. Dr. Barry diagnosed cervical and lumbar strain syndrome and right elbow contusion as a result of the February 22, 2021 employment injury, which had all resolved. He further opined that appellant had a possible diagnosis of right cubital tunnel syndrome which could be causally related to the February 22, 2021 employment injury and should be further evaluated with electrodiagnostic testing. Dr. Barry opined that she could return to work without restrictions from an orthopedic standpoint.

By decision dated August 18, 2021, OWCP denied appellant's claim for compensation, finding that she had not submitted sufficient medical evidence to establish disability from work during the claimed period due to the accepted conditions.

By letter dated August 18, 2021, OWCP provided Dr. Randolph with a copy of the July 20, 2021 report of Dr. Sellman and requested that he clarify the nature and extent of appellant's migraine headache complaints and treatment immediately prior to the February 22, 2021 employment injury.

OWCP continued to receive evidence, including an August 19, 2021 Form CA-17 by Dr. Randolph, who indicated that appellant was unable to return to work. Dr. Randolph diagnosed head, neck, back, and right elbow contusions.

On September 16, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP thereafter received an August 18, 2021 follow-up report by Dr. Kaur, who noted her neurological examination findings and diagnosed migraine and postconcussion syndrome.

A September 17, 2021 report of electromyography and nerve conduction velocity (EMG/NCV) study of the right upper extremity and cervical musculature was read as normal.

In a narrative report dated December 15, 2021 in response to OWCP's August 18, 2021 correspondence, Dr. Randolph indicated that he reviewed his treatment records and found no mention of a remote history of migraine headaches or treatment for migraine headaches during the several years prior to the February 22, 2021 employment injury. He noted that appellant had been working as a mail carrier without any difficulty or work loss due to migraines. Dr. Randolph diagnosed cervicalgia, concussion without loss of consciousness, contusion of the right elbow, and strains of the neck and lower back. He recommended that appellant follow up with pain management. In a Form CA-17 of even date, Dr. Randolph indicated that she remained totally disabled.

In a December 21, 2021 medical report, Dr. Deidre Ammah, a Board-certified neurologist and clinical neurophysiologist, noted that appellant related complaints of left-sided headache and neck pain, which she attributed to the February 22, 2021 employment injury. She noted that appellant had been under the care of Dr. Kaur from May through November 2021, had undergone EMG/NCV testing, and had received steroid injections to appellant's neck, which did resolve her headaches for a period of time. Dr. Ammah reviewed magnetic resonance imaging scan of the brain and cervical spine dated October 19, 2021, which were unremarkable. She performed a

neurological examination and diagnosed postconcussion syndrome, cervical disc disease, and numbness in the right hand.

In a January 5, 2022 Form CA-17, Dr. Randolph continued to find appellant totally disabled.

A hearing was held on January 7, 2022. Appellant testified during the hearing, providing further details regarding the February 22, 2021 incident and her injuries.

In a January 24 and February 7, 2022 follow-up report, Dr. Randolph noted his examination findings and diagnosed contusion of the right elbow, concussion, and strains of fascia of neck and lower back. In Forms CA-17 of even date, he indicated that appellant was totally disabled.

By decision dated March 24, 2022, OWCP's hearing representative denied modification of the August 18, 2021 decision and instructed OWCP to administratively combine OWCP File Nos. xxxxxx895, xxxxxx703, and xxxxxx839 with the current claim. She further noted that OWCP was developing expansion of appellant's claim to include a head injury, but that, even if the claim was expanded, the record was insufficient to establish disability during the claimed period.

OWCP subsequently administratively combined OWCP File Nos. xxxxxx895, xxxxxx703, xxxxxx839, and xxxxxx157, with the latter serving as the master file.

OWCP continued to receive evidence. In a February 23, 2022 follow-up report, Dr. Ammah diagnosed postconcussion syndrome and cervical disc disease and recommended that appellant be evaluated by a speech language pathologist.

An August 1, 2022 initial evaluation report outlined a speech language therapy program for appellant.

In follow-up reports and Forms CA-17 October 5, 2021 through March 13, 2023, Dr. Randolph continued to diagnose postconcussion syndrome, cervical disc disorder with radiculopathy, right elbow contusion, and strains of the neck and lower back. In a September 12, 2022 report, he noted that appellant had sustained a left calcaneal fracture after jumping into a foam pit at an amusement park. On March 13, 2023 Dr. Randolph noted that she was experiencing symptoms of post-traumatic stress disorder, including fear of driving in icy conditions, due to the February 22, 2021 employment injury.

By decision dated May 1, 2023, OWCP denied modification of its March 24, 2023 decision.

LEGAL PRECEDENT

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.⁵ 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.⁶ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁷ 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.⁸ 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.⁹

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.¹⁰

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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing April 10, 2021, causally related to her accepted February 22, 2021 employment injury.

In support of her claim for compensation, appellant submitted reports, and CA-17 forms dated February 25, 2021 through March 13, 2023 by Dr. Randolph, who described the February 22, 2021 employment injury, conducted a series of physical examinations, and indicated that she was totally disabled from all work. Although Dr. Randolph opined that she was unable to work during the claimed period of disability, he did not provide medical reasoning explaining the

⁵ *S.F.*, Docket No. 20-0347 (issued March 31, 2023); *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).

⁶ 20 C.F.R. § 10.5(f).

⁷ *See H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁸ *See H.B., id.*; *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

⁹ *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹⁰ *F.B.*, Docket No. 22-0679 (issued January 23, 2024); *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

¹¹ *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

nature of the relationship between the claimed disability and the accepted employment injuries.¹² Therefore, his reports are insufficient to meet appellant's burden of proof.¹³

Dr. Kaur, in her May 5 and June 28, 2021 reports, described the February 22, 2021 employment injury, performed examinations, and diagnosed postconcussion syndrome and migraine. Dr. Ammah, in her December 21, 2021 and February 23, 2022 medical reports, also noted a history of the injury and examination findings and diagnosed postconcussion syndrome, cervical disc disease, and numbness in the right hand. However, neither physician offered an opinion as to whether appellant was disabled from work due to the accepted conditions during the claimed period. Therefore, these reports are of no probative value and are insufficient to establish her claim for compensation.¹⁴

In his July 20, 2021 report, Dr. Sellman, the second opinion neurologist opined that appellant had no neurological problem involving her head that precluded her from returning to full-duty work without restrictions. Similarly, in his July 23, 2021 report, Dr. Barry, the second opinion orthopedist opined that she could return to full, unrestricted duties from an orthopedic standpoint. As such, these reports do not establish appellant's claim for compensation.¹⁵

Appellant also submitted a note from a Mr. Barnett-Jackson, a physician assistant. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified physicians as defined under FECA.¹⁶ Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹⁷

The remainder of the evidence of record consisted of diagnostic study reports. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injury caused any of the additional diagnosed conditions.¹⁸

¹² *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *R.C.*, Docket No. 17-0748 (issued July 10, 2018); *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹³ *Supra* note 10.

¹⁴ *Id.*; *see also L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *Supra* note 8.

¹⁶ 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) (physician assistants are not considered physicians as defined 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).

¹⁷ *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id.*

¹⁸ *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

As the medical evidence of record lacks rationalized medical evidence establishing that appellant was disabled from work commencing April 10, 2021, due to the accepted February 22, 2021 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 10.607.¹⁹

CONCLUSION

The Board finds that appellant has not met her burden of proof establish disability from work commencing April 10, 2021, causally related to her accepted February 22, 2021 employment injury.²⁰

¹⁹ The Board notes that the evidence of record establishes that appellant also sustained injuries to her head, including visible injuries of swelling and contusion, as noted by an EMS provider and Mr. Barnett-Jackson, a physician assistant.

²⁰ The Board notes that the employing establishment executed a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2024
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