

<sup>3</sup> The Board notes that, following the February 28, 2023 decision, appellant submitted additional evidence to OWCP. 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.

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish disability from work for the periods July 16 through 29, 2022 and August 13 through September 23, 2022 causally related to her accepted February 13, 2021 employment injury.

## **FACTUAL HISTORY**

On February 18, 2021 appellant, then a 46-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 2021 she fractured her nose when she tripped and fell as she was walking out of a trailer while in the performance of duty. By decision dated March 10, 2021, OWCP accepted the claim for fracture of nasal bones, contusion of left thigh, contusion of right thigh, and headache. On October 14, 2021 it expanded the acceptance of appellant's claim to include headache with orthostatic component; postconcussion syndrome; concussion without loss of consciousness; migraine without aura, not intractable; visuospatial deficit; and dizziness and giddiness. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective April 6, 2021. Appellant returned to part-time work on November 29, 2021.

Appellant stopped work again on July 16, 2022. On August 15, 2022 she filed a claim for compensation (Form CA-7 ) for disability from work for the period July 16 through 29, 2022.

Appellant submitted medical reports dated July 13 through September 19, 2022 from Amy M. Olinzock, a nurse practitioner, who noted treatment of appellant's injuries and recommended work restrictions.

Appellant also submitted work excuse notes dated July 13 through August 2, 2022 by Dr. Aashish Deshpande, Board-certified in physical medicine and rehabilitation. Dr. Deshpande held her off work intermittently from July 13 through 28, 2022 due to a flareup in symptoms, headaches, and migraines related to a traumatic brain injury. In an August 1, 2022 note, he advised that appellant may not return to work from July 29, 2022 until further notice, due to a flareup in migraines associated to her traumatic brain injury.

In a development letter dated August 22, 2022, OWCP informed appellant of the deficiencies of her disability claim. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

By decision dated September 27, 2022, OWCP denied appellant's claim for disability from work for the period July 16 through 29, 2022. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period due to her accepted February 13, 2021 employment injury.

On September 28, 2022 appellant filed a Form CA-7 claim for disability from work for the period August 13 through September 23, 2022.

By decision dated October 5, 2022, OWCP denied appellant's claim for disability from work for the period August 13 through September 23, 2022. It found that the medical evidence of record was insufficient to establish disability from work during the claimed period due to her accepted February 13, 2021 employment injury.

On December 4, 2022 appellant requested reconsideration.

In a July 11, 2022 medical report Dr. Kelsey Satkowiak, a Board-certified neurologist, provided clinical examination findings and reviewed diagnostic studies as it related to appellant's ongoing headaches.

In an August 26, 2022 report Dr. Christopher Goshgarian, a Board-certified neurologist, reported that appellant presented with a medical history significant for chronic headaches and anxiety. He noted a long-standing history of headaches, which worsened following a February 2021 employment injury when she fell and struck her head from a standing position with no loss of consciousness. Following this injury, appellant reported increasing frequency of migraine headaches, as well as holocephalic headaches and blurred vision lasting between 30 to 60 minutes. Dr. Goshgarian diagnosed tension headache and migraine headache without aura, reporting greater than 15 days of disabling headache per month, which lasts longer than four hours. He recommended that appellant resume Botox for prevention therapy.

In a November 3, 2022 medical report, Dr. Deshpande reported that appellant worked as a mail handler for the postal service and started a gradual return to work following her February 13, 2021 employment injury. However, appellant's migraines and vision problems had increased and therefore, she had been off work since July 8, 2022. Dr. Deshpande diagnosed traumatic brain injury without loss of consciousness, migraine without aura, blurred vision and double vision.

In a January 12, 2023 report, Dr. Deshpande reported that appellant could return to work with accommodations of two-hour shifts on Friday, Sunday, and Tuesday nights. He further stated that, every two weeks, she may increase working one hour per shift if she does not exacerbate a flareup of her symptoms. Dr. Deshpande noted restrictions of eliminating quick head movements, wearing noise canceling earplugs, and taking frequent breaks as needed based on symptom flareup. He explained that appellant must have the option of taking breaks or leaving work if she experiences a flareup of traumatic brain injury symptoms. Dr. Deshpande further advised that, if the employing establishment was unable to meet these accommodations, she must remain off work until her work restrictions could be assessed at her next office visit.

By decision dated February 28, 2023, OWCP denied modification of the September 27, 2022 decision, which denied disability for the period July 16 through 29, 2022. It also denied modification of the October 5, 2022<sup>4</sup> decision, which denied disability for the period August 13 through September 23, 2022<sup>5</sup>

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<sup>4</sup> OWCP indicated that it was denying modification of an October 18, 2022 decision. However, this appears to be a typographical error as there is no such final adverse decision of OWCP found in the case record. There is a letter dated October 18, 2022, however it is informational in nature. OWCP's decision which is the proper subject of modification is the October 5, 2022 decision.

<sup>5</sup> The Board notes that appellant had also filed a Form CA-7 for disability from work for the period July 30 through August 12, 2022, which OWCP denied by separate decision dated September 27, 2022. Appellant's December 4, 2022 request for reconsideration specifically indicated that she disagreed with the September 27, 2022 denial of her claim for compensation for the period July 30 through August 12, 2022. However, OWCP has not adjudicated that request for reconsideration. Upon return of the case record, it should adjudicate that request for reconsideration.

### **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.<sup>6</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>7</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>8</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 that he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>9</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>10</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>11</sup>

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.<sup>12</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 their disability and entitlement to compensation.<sup>13</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish disability from work for the periods July 16 through 29, 2022 and August 13 through September 23, 2022 causally related to her accepted February 13, 2021 employment injury.

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<sup>6</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).

<sup>7</sup> 20 C.F.R. § 10.5(f).

<sup>8</sup> *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>9</sup> *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

<sup>10</sup> *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

<sup>11</sup> *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

<sup>12</sup> *See B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>13</sup> *Id.*

In support of her claim for compensation, appellant submitted a series of reports by Dr. Deshpande dated July 13, 2022 through January 12, 2023. Dr. Deshpande explained that she worked as a mail handler for the postal service and started a gradual return to work following her February 13, 2021 employment injury. However, her migraines and vision problems had increased and therefore, appellant had been off work since July 8, 2022. In a January 12, 2023 report, Dr. Deshpande reported that she could return to work with accommodations of two-hour shifts on Friday, Sunday, and Tuesday nights. He further stated that, every two weeks, appellant may increase working one hour per shift if she does not exacerbate a flareup of her symptoms. Dr. Deshpande noted restrictions of eliminating quick head movements, wearing noise canceling earplugs, and taking frequent breaks as needed based on symptom flareup as a result of the traumatic brain injury. While he reported that appellant was unable to work as of July 8, 2022, he failed to provide a rationalized opinion supporting disability as a result of the February 13, 2021 employment injury, only generally noting an increase in migraine and vision problems.<sup>14</sup> The Board has held that an opinion is of limited probative regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/period of disability has an employment-related cause.<sup>15</sup> Consequently, this evidence is insufficient to establish appellant's disability claim.<sup>16</sup>

In work excuse notes dated July 13 through August 2, 2022, Dr. Deshpande held appellant off work beginning July 13, 2022 due to a flareup in symptoms, headaches, and migraines related to a traumatic brain injury. However, he failed to provide a rationalized medical opinion explaining why she was unable to perform the duties of her position during the period claimed. As stated above, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/period of disability has an employment-related cause.<sup>17</sup> This evidence is therefore insufficient to establish appellant's disability claim.

Dr. Satkowiak's July 11, 2022 and Dr. Goshgarian's August 26, 2022 reports failed to provide an opinion regarding disability for the period claimed. As the Board has held, 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> Therefore, this evidence is insufficient to establish appellant's disability claim.

Appellant also submitted medical reports dated July 13, 2022 through January 12, 2023 from Ms. Olinzock, a nurse practitioner. However, certain healthcare providers such as nurse practitioners are not considered qualified "physician[s]" as defined under FECA and thus their findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for

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<sup>14</sup> *R.P.*, Docket No. 22-1349 (issued June 12, 2023).

<sup>15</sup> *A.H.*, Docket No. 22-0001 (issued July 29, 2022); *L.M.*, Docket No. 21-0063 (issued November 8, 2021); *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

<sup>16</sup> *E.F.*, Docket No. 20-1680 (issued November 20, 2021).

<sup>17</sup> See *R.H.*, Docket No. 22-0140 (issued August 12, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *S.K.*, Docket No. 19-0272 (issued July 21, 2020); *T.T.*, *supra* note 15; *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>18</sup> See *F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

purposes of establishing entitlement to FECA benefits.<sup>19</sup> This evidence is therefore insufficient to establish appellant's disability claim.<sup>20</sup>

As the medical evidence of record is insufficient to establish disability from work during the claim periods causally related to the accepted February 13, 2021 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 establish disability from work for the periods July 16 through 29 and August 13 through September 23, 2022 causally related to her accepted February 13, 2021 employment injury.

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<sup>19</sup> 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).

<sup>20</sup> *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 28, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2024  
Washington, DC

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

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

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