

<sup>3</sup> Appellant requested oral argument before the Board, explaining her disagreement with OWCP's decisions. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board in exercising its discretion, denies appellant's request for oral argument because this matter pertains to an evaluation of the weight of the medical evidence presented. As such, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish disability from work commencing July 24, 2022 causally related to her accepted September 2, 2021 employment injury; and (2) whether OWCP properly determined that appellant abandoned her request for an oral hearing.

## **FACTUAL HISTORY**

On September 3, 2021 appellant, then a 55-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on September 2, 2021 she injured the left side of her head and ear when she was struck by a pallet jack handle while in the performance of duty.<sup>4</sup> She stopped work on September 7, 2021 and returned to work on November 7, 2021. On December 6, 2021 OWCP accepted the claim for contusion of head and laceration of cerebrum.

In emergency room reports dated July 29 through August 18, 2022, appellant was evaluated for severe acute on chronic headaches. She underwent diagnostic testing, including a computerized tomography angiogram of the head and neck and a computerized tomography scan of the brain, which revealed a small middle cerebral artery (MCA) aneurysm. On August 12, 2022 Dr. Kwazi Adzotor, a Board-certified neurosurgeon, diagnosed headaches, occipital neuralgia, and right MCA aneurysm. He indicated that “the patient has chronic migraines, which appear to be postconcussional” and that the “patient has a clinical definition of occipital neuralgia.”

In a medical report dated September 7, 2022, Dr. Aamr A. Herekar, a Board-certified neurologist, noted that appellant related symptoms of chronic headaches, short-term memory loss, migraines, dizziness, double vision, and loss of vision on the left side of her visual field, which she attributed to the September 2, 2021 employment injury. He documented examination findings and diagnosed postconcussive syndrome and chronic migraines secondary to concussion.

In a letter dated September 9, 2022, Dr. Bratislav Velimirovic, a Board-certified neurosurgeon, recommended that appellant remain out of work for three months due to “the forces that hit her head caused damage to her head.”

In a work capacity evaluation (Form OWCP-5c) dated October 18, 2022, Dr. Farooq Ahmed, a Board-certified internist, diagnosed recurrent headaches and opined that appellant was totally disabled.

Under OWCP File No. xxxxxx663, on January 31, 2023, OWCP referred appellant, the case record, and a SOAF to Dr. Olajide Benson, a Board-certified neurologist, for a second opinion evaluation to determine the extent and degree of any employment-related residuals and/or disability.

In a March 30, 2023 report, Dr. Benson noted the history of the January 5 and September 2, 2021 employment injuries and documented his physical examination findings. He noted diagnoses including, postconcussion syndrome, injury of head, loss of consciousness, contusion of head,

---

<sup>4</sup> OWCP assigned the present claim OWCP File No. xxxxxx264. Appellant has a previously-accepted traumatic injury claim for concussion without loss of consciousness and postconcussional syndrome under OWCP File No. xxxxxx663. OWCP administratively combined OWCP File Nos. xxxxxx264 and xxxxxx663, with the latter serving as the master file.

laceration of cerebrum, contusion of nose, right upper lip, lumbar injury bruised knee, chronic migraines, and intracerebral aneurysm. Dr. Benson opined that appellant's history of traumatic brain injury (TBI) with residual symptoms of chronic headaches, tinnitus, and memory loss all contributed to her current symptoms and that the work-related injuries caused and aggravated her hearing loss. He further opined that appellant could return to her preinjury position without restrictions, but that she required ongoing treatment as her condition had progressed to a chronic form of TBI.

On April 7, 2023 OWCP received a claim for compensation (Form CA-7) filed by appellant on October 24, 2022 for disability from work commencing July 24, 2022.

In a Form OWCP-5c dated April 20, 2023, Dr. Ahmed diagnosed recurrent migraines and double vision. He opined that appellant was totally disabled from work due to dizziness and double vision, which limited her ability to perform her job.

By decision dated May 26, 2023, OWCP denied appellant's claim for compensation, finding that she had not submitted sufficient medical evidence to establish disability from work due to the accepted September 2, 2021 employment injury.

On June 12, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated August 31, 2023, OWCP's hearing representative set aside the May 26, 2023 decision and remanded the case for further development as to whether appellant had established disability commencing July 24, 2022 due to her accepted September 2, 2021 employment injury, to be followed by a *de novo* decision.

In a September 7, 2023 letter, Dr. Velimirovic noted that he had been treating appellant since 2022. He diagnosed postconcussion disorder, repeated headaches, and neck trauma with post-traumatic stress migraines, which were the result of a "work concussion injury." Dr. Velimirovic opined that appellant required ongoing treatment for chronic recurring migraines and that her medical issues interfered with her daily life. He opined that "for that reason I do not believe she should be working anymore."

In an October 16, 2023 narrative, Dr. Ahmed opined that appellant was totally and permanently disabled due to multiple medical issues, including Type 2 diabetes, postconcussion disorder, a brain aneurysm, chronic stenosis, repeated head and neck trauma sprains with frequent and painful post-traumatic migraines (18 per month), double vision, and short-term memory loss.

In an undated narrative, received on October 26, 2023, Dr. Rory Allen, an osteopathic family medicine physician, noted the history of appellant's January 5 and September 2, 2021 employment injuries. He indicated that she experienced frequent, prolonged migraines and opined that she was totally and permanently disabled.

By decision dated November 1, 2023, OWCP denied appellant's claim for compensation, finding that she had not submitted sufficient medical evidence to establish disability from work commencing July 24, 2022 causally related to the accepted September 2, 2021 employment injury.

On December 1, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated January 17, 2024, OWCP's hearing representative vacated the November 1, 2023 decision and remanded the case for an impartial medical examination on the issue of whether appellant's migraines were the result of an employment injury and whether she was disabled from work due to her accepted September 2, 2021 employment injury commencing July 24, 2022.

On March 15, 2024 OWCP referred appellant to Dr. Manuel Gurule, a Board-certified neurologist, for an impartial medical examination.

In a report dated April 18, 2024, Dr. Gurule, serving as the impartial medical examiner (IME), reviewed the SOAF and medical record and noted appellant's history of employment injuries on September 12, 2004, and January 5 and September 2, 2021. He performed a neurological examination and documented impaired orientation to date and place and impaired recall, but an overall normal mental status score. Testing of the cranial nerves was normal. Dr. Gurule opined that appellant sustained a concussion and postconcussional syndrome as the result of the January 5 and September 2, 2021 employment injuries but did not have any permanent neurological impairment or neurological disability due to the accepted conditions. He indicated that this type of injury would typically resolve after three months. Dr. Gurule noted that on May 21, 2021, appellant's headaches were 0 out of 10 in intensity and that on November 5, 2021 they were mild.<sup>5</sup> He opined that her ongoing headaches were consistent with migraine headaches and were not related to her accepted January 5 and September 2, 2021 employment injuries. Dr. Gurule also opined that appellant was not disabled from work commencing July 24, 2022, causally related to the accepted employment injuries.

By *de novo* decision dated September 4, 2024, OWCP denied appellant's disability claim, finding that she had not met her burden of proof to establish disability from work commencing July 24, 2022 causally related to her accepted September 2, 2021 employment injury. It found that the opinion of Dr. Gurule, the IME, represented the special weight of the evidence.

On September 30, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a November 27, 2024 notice, OWCP's hearing representative informed appellant that it had scheduled a telephonic hearing for January 7, 2025 at 12:45 p.m. Eastern Standard Time (EST). The notice provided a toll-free number and appropriate passcode for access to the hearing. The hearing representative mailed the notice to her last known address of record.

On December 16, 2024 the November 27, 2024 hearing notice was received by OWCP as "return to sender not deliverable as addressed."

Appellant did not appear for the hearing.

By decision dated January 17, 2025, OWCP's hearing representative found that appellant had abandoned her request for an oral hearing, because she had received written notification of the hearing 30 days in advance but failed to appear. It further found that there was no indication in the case record that she had contacted the Branch of Hearings and Review either prior to or within 10 days after the scheduled hearing to explain her failure to appear.

---

<sup>5</sup> The May 21 and November 5, 2021 reports are signed by Sandy Viscon, a nurse practitioner.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>6</sup> 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>7</sup> Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>8</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>9</sup>

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.<sup>10</sup> The medical evidence required to establish causal relationship between a claimed period of disability and an accepted 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>

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.<sup>12</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that this case is not in posture for decision.

In a report dated April 18, 2024, Dr. Gurule, OWCP's IME, opined that appellant sustained a concussion and postconcussional syndrome as the result of the January 5 and September 2, 2021 employment injuries but did not have any permanent neurological impairment or neurological disability due to the accepted conditions. He indicated that this type of injury would typically resolve after three months. Dr. Gurule noted that on May 21, 2021 appellant's headaches were 0 out of 10 in intensity and that on November 5, 2021 they were mild. He opined that her ongoing

---

<sup>6</sup> *Supra* note 2.

<sup>7</sup> See *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

<sup>9</sup> *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

<sup>10</sup> *A.S.*, Docket No. 20-0406 (issued August 18, 2021); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>11</sup> *T.L.*, Docket No. 20-0978 (issued August 2, 2021); *V.A.*, Docket No. 19-1123 (issued October 29, 2019).

<sup>12</sup> See *C.T.*, Docket No. 20-0786 (issued August 20, 2021); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

headaches were consistent with migraine headaches and were not related to her accepted January 5 and September 2, 2021 employment injuries. Dr. Gurule also opined that appellant was not disabled from work commencing July 24, 2022, causally related to the accepted employment injuries. He, however, did not provide sufficient rationale explaining his conclusory opinion with regard to the specific claimed period of disability. The Board has held that a report is of limited probative value regarding causal relationship if it is conclusory and does not contain medical rationale explaining how a given medical condition/disability was related to the accepted employment injury.<sup>13</sup> As such this report is of diminished probative value and insufficient to carry the special weight of the medical evidence.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.<sup>14</sup> Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>15</sup>

On remand OWCP shall request a supplemental opinion from Dr. Gurule explaining with rationale whether appellant was disabled from work, commencing July 24, 2022, causally related to her accepted September 2, 2021 employment injury.<sup>16</sup> Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.<sup>17</sup>

---

<sup>13</sup> See *S.F.*, Docket No. 24-0304 (issued July 10, 2024); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>14</sup> See *M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

<sup>15</sup> *Id.*; see also *R.M.*, Docket No. 16-0147 (issued June 17, 2016).

<sup>16</sup> See *M.S. and E.B.*, *supra* note 11; *S.G.*, Docket No. 22-0014 (issued November 3, 2022); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *P.S.*, Docket No. 17-0802 (issued August 18, 2017).

<sup>17</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 4, 2024 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board. The January 17, 2025 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: March 24, 2025  
Washington, DC

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