

ISSUE

The issue is whether appellant met her burden of proof to establish disability from December 1, 2013 to August 9, 2014, and on June 4 and 16, 2015, causally related to an October 25, 2012 employment injury.

FACTUAL HISTORY

On October 29, 2012 appellant, then a 45-year-old loan servicing assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries to multiple parts of her body when she fell at work on October 25, 2012. OWCP accepted that appellant sustained a cervical strain, left hip and thigh sprains, lumbar sprain, disorder of the coccyx, left hip and thigh contusions, unspecific disorder of the cervical discs, and chronic pain syndrome.³

Appellant received medical treatment from several attending physicians, including Dr. John M. Dickason, a Board-certified orthopedic surgeon. The reports of record from October and November 2013 indicate that appellant primarily complained of neck and upper extremity pain.

Beginning on December 17, 2013 appellant filed several claim for compensation forms (Form CA-7) alleging disability from December 1, 2013 to February 8, 2014 due to her accepted work conditions. In support of her disability claim, appellant submitted a December 2, 2013 report in which Dr. Dickason indicated that she could not perform her usual job as she needed to take 10-minute breaks every two hours.

In a January 9, 2014 report, Dr. Mahe T. Nadeem, an attending Board-certified physical medicine and rehabilitation physician, indicated that appellant could perform her regular work “with rest breaks.” In January 17 and February 19, 2014 reports, she diagnosed neck sprain, hip and thigh sprains, and hip and thigh contusions and noted that appellant could return to work “with restrictions.”⁴

By decisions dated February 13 and March 28, 2014, OWCP found that appellant did not meet her burden of proof to establish disability from December 1, 2013 to February 8, 2014 because she did not submit sufficient medical evidence in support of her claim.

Appellant filed several additional claims for compensation alleging disability between February 9 and August 9, 2014 due to her accepted work conditions.

In reports dated March 25 and April 21, 2014, Dr. Nadeem diagnosed neck, hip, and thigh sprains, hip and thigh contusions, and cervical disc disorder. In May 5 and 28, 2014 reports, he added lumbar sprain and disorder of the coccyx to appellant’s diagnoses. In each of these reports, Dr. Nadeem indicated in the “work status” portion that appellant was on “Full duty

³ Appellant stopped work on October 25, 2012 and returned to work on October 29, 2012 in her usual job.

⁴ In January 21 and February 18, 2014 letters, OWCP advised appellant about the factual and medical evidence needed to support her claim.

as of December 13, 2013.” On May 30, 2014 he noted that appellant also had chronic pain syndrome.

In a report dated May 14, 2014, Dr. Nadeem indicated that, upon physical examination on that date, appellant exhibited limitation of cervical and lumbar range of motion. He noted that, based on this physical examination, appellant had restrictions of no lifting, carrying, pushing, and pulling; no sustained grasping/gripping activity; no constant/repetitive wrist and hand activity; no constant bending, squatting, and twisting; and no prolonged sitting/standing posture.

In a form report dated June 19, 2014, Dr. Mike Shah, an attending Board-certified physical medicine and rehabilitation physician, listed the date of injury as October 25, 2012 and indicated that appellant was totally disabled from June 19 to August 19, 2014 and partially disabled thereafter.

Dr. Shah noted, in reports dated August 4, 2014, that appellant reported pain in her neck which radiated into her upper extremities. He listed appellant’s accepted conditions in the present case, indicated that her “injuries are work related,” and noted that she had been totally incapacitated since June 19, 2014. Dr. Shah recommended keeping appellant off work “to allow her to get stronger and complete her therapy program.”⁵

Appellant requested reconsideration of her disability claim and, by decisions dated October 2 and 14, 2014, OWCP found that appellant did not meet her burden of proof to establish disability from December 1, 2013 to August 9, 2014 because she did not submit sufficient medical evidence in support of her claim.⁶

Appellant submitted several reports, dated between August 22 and September 29, 2014, in which Dr. Shah diagnosed herniated nucleus pulposus/bulge, brachial neuritis or radiculitis, thoracic or lumbosacral neuritis or radiculitis, sciatica (neuralgia or neuritis of sciatic nerve), sprain of unspecified site of knee and leg, carpal tunnel syndrome, neck sprain/strain (whiplash injury), and lumbar sprain/strain.

Appellant filed a claim for compensation alleging four hours of disability on June 4, 2015 and two hours of disability on June 16, 2015 due to attending doctor’s appointments on those dates in order to treat her work-related conditions.

In a decision dated December 15, 2015, OWCP found that appellant did not meet her burden of proof to establish disability from December 1, 2013 to August 9, 2014 because she did not submit sufficient medical evidence in support of her claim. It indicated that the medical evidence submitted by appellant did not contain medical rationale.

In another decision of December 15, 2015, OWCP found that appellant did not meet her burden of proof to establish disability on June 4 and 16, 2015 because she did not submit

⁵ In a September 25, 2014 report, Dr. Shah discussed the options for treating appellant’s pain, including physical therapy, medications, and injection therapy.

⁶ OWCP denied modification of its decisions dated February 13 and March 28, 2014.

sufficient medical evidence in support of her claim. It indicated that appellant did not show that she was treated for an accepted work injury on these dates.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁷ In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.⁸ This meaning, for brevity, is expressed as disability for work.⁹

The medical evidence required to establish a 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 diagnosed condition and the specific employment factors identified by the claimant.¹⁰

ANALYSIS

OWCP accepted that on October 25, 2012 appellant sustained a cervical strain, left hip and thigh sprains, lumbar sprain, disorder of the coccyx, left hip and thigh contusions, unspecific disorder of the cervical discs, and chronic pain syndrome.¹¹ Appellant claimed disability from December 1, 2013 to August 9, 2014, and on June 4 and 16, 2015 due to the accepted conditions related to her October 25, 2012 employment injury.

The Board finds that appellant did not meet her burden of proof to establish disability from December 1, 2013 to August 9, 2014, and on June 4 and 16, 2015. Appellant did not submit sufficient medical evidence to establish her claim.

In support of her disability claim, appellant submitted a December 2, 2013 report in which Dr. Dickason indicated that she could not perform her usual job as she needed to take 10-minute breaks every two hours. In a January 9, 2014 report, Dr. Nadeem indicated that she could perform her regular work “with rest breaks.” In January 17 and February 19, 2014 reports, he diagnosed neck sprain, hip and thigh sprains, and hip and thigh contusions and noted that

⁷ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁸ *See* 20 C.F.R. § 10.5(f).

⁹ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002); *see also A.M.*, Docket No. 09-1895 (issued April 23, 2010).

¹⁰ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹¹ Appellant stopped work on October 25, 2012 and she returned to work on October 29, 2012 in her usual job.

appellant could return to work “with restriction.” The submission of these reports would not establish appellant’s claim because none of these reports contain an opinion that appellant had disability during the claimed period due to the accepted conditions related to her October 25, 2012 injury. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee’s condition/disability is of limited probative value on the issue of causal relationship.¹²

In reports dated March 25 and April 21, 2014, Dr. Nadeem diagnosed neck sprain, hip and thigh sprains, hip and thigh contusions, and cervical disc disorder. In May 5 and 28, 2014 reports, he added lumbar sprain and disorder of coccyx to appellant’s diagnoses. In each of these reports, Dr. Nadeem indicated in the “work status” portion that appellant was on “Full duty as of December 13, 2013.” The submission of these reports do not establish appellant’s claim because Dr. Nadeem did not indicate any period of disability. In a report dated May 14, 2014, Dr. Nadeem reported that, upon physical examination on that date, appellant exhibited limitation of cervical and lumbar range of motion. He noted that, based on this physical examination, appellant had restrictions of no lifting, carrying, pushing, and pulling; no sustained grasping/gripping activity; no constant/repetitive wrist and hand activity; no constant bending, squatting, and twisting; and no prolonged sitting/standing posture. The Board finds that this report is of limited probative value regarding appellant’s claim for disability because Dr. Nadeem did not provide any indication that appellant’s need for work restrictions was due to the accepted work conditions.

In a form report dated June 19, 2014, Dr. Shah listed the date of injury as October 25, 2012 and indicated that appellant was totally disabled from June 19 to August 19, 2014 and partially disabled thereafter. In a report dated August 4, 2014, he noted that appellant reported pain in her neck which radiated into her upper extremities. Dr. Shah listed appellant’s accepted conditions in the present case, indicated that her “injuries are work related,” and noted that she had been totally incapacitated since June 19, 2014. He recommended keeping appellant off work “to allow her to get stronger and complete her therapy program.” Although Dr. Shah identified periods of disability within a portion of the period claimed by appellant and indicated that the disability was work related, he did not provide a rationalized medical opinion explaining why this disability was related to the accepted work conditions.¹³ He did not discuss appellant’s accepted work conditions in any detail or explain how they could have caused disability for the denoted period.

The Board notes that in addition to her claim of work-related disability from December 1, 2013 to August 9, 2014, appellant has also alleged four hours of disability on June 4, 2015 and two hours of disability on June 16, 2015 due to attending doctor’s appointments on those dates in order to treat her work-related conditions. However, appellant has not established this aspect of her claim because the evidence of record does not show that she actually attended doctor’s appointments on those dates in order to treat her work-related conditions.

¹² See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹³ See *supra* note 9.

On appeal, counsel argues that the medical evidence of record establishes appellant's disability claim, but the Board has explained why the medical evidence submitted by appellant is deficient.¹⁴

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 did not meet her burden of proof to establish disability from December 1, 2013 to August 9, 2014, and on June 4 and 16, 2015, causally related to an October 25, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 26, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

¹⁴ Counsel suggested that OWCP should have accepted additional work-related conditions, including several diagnosed by Dr. Shah, but this matter is not currently before the Board.