United States Department of Labor
Employees' Compensation Appeals Board

H.B., Appellant	)	
and	)	**Docket No. 16-1711**
	)	**Issued: March 15, 2017**
SOCIAL SECURITY ADMINISTRATION, Woodlawn, MD, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 22, 2016 appellant, through counsel, filed a timely appeal from a July 6, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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 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.*

ISSUE

The issue is whether appellant met her burden of proof to establish ongoing total disability commencing November 19, 2013, causally related to the May 20, 2013 employment injury.

FACTUAL HISTORY

On May 22, 2013 appellant, then a 41-year-old program analyst, filed a traumatic injury claim (Form CA-1) alleging that on May 20, 2013 she injured her lower back, shoulder, and head when she "slipped entering the doorway to work, snapping my back, and hitting shoulder and head on metal door." She stopped work that day and has not returned.

In a report dated May 20, 2013, Dr. Delbert U. Morales, a Board-certified family physician, indicated that appellant had slipped at work earlier that day, hitting her head and back, and complained of pain with the slightest movement. He noted lumbosacral spine x-rays showed mild disc space narrowing, mild facet hypertrophy, spina bifida occulta at L5, and no evident fracture. Dr. Morales described findings and diagnosed a lumbar sprain. He advised that appellant could return to light duty the following day with lifting restricted to five pounds, and that she could return to full duty on May 27, 2013.

On May 23, 2013 Dr. Navinder Sethi, a Board-certified orthopedic surgeon, reported that appellant was seen for evaluation of back and head pain following a fall at work. He noted that x-rays that day demonstrated degenerative disc disease at L5-S1 and spina bifida occulta. Following physical examination, Dr. Sethi diagnosed degenerative disc disease with strain, recommended physical therapy, and advised that appellant not work through May 31, 2013. On June 3, 2013 Dr. Ricardo J. Osorno, a Board-certified internist, advised that she not work June 3 through 7, 2013 due to illness.

A June 7, 2013 cervical spine magnetic resonance imaging (MRI) scan showed mild straightening of the cervical lordosis without spondylolisthesis which could be related to muscle spasm, central disc protrusions at C2-3, C6-7, and T4-5, and enlarged lymph nodes.

In a June 7, 2013 report, Dr. Harjit S. Bajaj, a Board-certified neurologist, noted a history that headache, nausea, and vomiting had occurred since appellant slipped and fell at work and she had a new complaint of neck pains, shakes, and tremors, and significant anxiety. He indicated that she reported that a computerized tomography (CT) scan of the head was normal. Dr. Bajaj advised that neurological examination did not show any focal signs. He diagnosed post-traumatic syndrome consisting of headache, neck pains, and anxiety. Dr. Bajaj recommended a CT scan of the cervical spine and an electroencephalogram (EEG).

In a July 8, 2013 report, Dr. Osorno noted that appellant was having head and leg tremors, memory loss, balance problems, was sleeping all the time, and was anxious and fearful. He found no motor or sensory deficits on physical examination. Dr. Osorno diagnosed concussion with no loss of consciousness, postconcussion syndrome, and anxiety state. He recommended management of cognitive issues and follow up by a psychiatrist and neurologist.

An August 1, 2013 CT scan of the neck demonstrated borderline enlarged and possibly reactive lymph nodes and right maxillary sinusitis.[3]

On October 3, 2013 OWCP advised appellant that her claim initially appeared to be an uncontroverted minor injury and that a limited amount of medical expenses was administratively approved but the merits of the claim were not formally adjudicated. It explained that the claim was reopened because the medical bills exceeded $1,500.00. Appellant was asked to provide a physician's opinion addressing how the work incident caused the claimed injury.

On October 18, 2013 Dr. Osorno explained that appellant had been his patient since March 27, 2012. He advised that since the May 20, 2013 slip and fall at work she had persistent headaches, progressive worsening of fatigue, insomnia, dizziness, speech impairment with expressive challenges, slow speech with intervals of stuttering, short-term memory loss, inability to concentrate, irritability, and inability to drive or go to public places due to hyperventilation. Dr. Osorno indicated that appellant's upper and lower back pains had mildly improved, but that her cognitive problems continued, noting that she was to see a neurologist for repeat head CT scan and EEG. He concluded that her anxiety and mood issues appeared to be related to the work injury and that she had ongoing physical limitations. Dr. Osorno diagnosed postconcussion syndrome and lumbar sprain which, he opined, aggravated her previous underlying depression and precipitated flare-ups of anxiety and panic attacks.

On October 30, 2013 OWCP accepted the conditions of sprain of back, lumbar region, and headache as resulting from the May 20, 2013 employment injury.

Appellant filed a claim for compensation (Form CA-7) on November 20, 2013, for the period October 25 to November 22, 2013. She thereafter filed claims for compensation for continuing periods of wage loss.

On November 1, 2013 appellant indicated that the May 20, 2013 employment injury occurred when she slipped while entering the workplace, hitting her shoulder and head, with a security guard asking if she was okay. She attempted to walk, but felt sharp, throbbing, shoulder, back, and head pain, and became dizzy. The guard then brought her a chair, called the health unit for assistance, and completed an incident report. Appellant noted that after she sat and while awaiting a nurse, she text messaged her supervisor, D.N., who came down, talked with the guard, and returned to his office to file a report. She was then taken to the health unit, and later transported to a medical clinic. Appellant advised that since the injury she was under the care of Dr. Osorno and Dr. Stephanie Durruthy, a Board-certified psychiatrist. She maintained that the May 20, 2013 employment injury caused headaches, nausea, dizziness, short-term memory loss, speech impediment, irritability, and panic/anxiety attacks. Appellant noted that she had not returned to work.

OWCP requested additional information from the employing establishment, including any incident reports or witness statements, and whether appellant received continuation of pay (COP) and took leave prior to claiming compensation beginning October 25, 2013. In a January 6, 2014 report, D.N., appellant's supervisor, advised that he could not obtain the guard's

[3] At this time appellant was represented by *Jason S. Lomax, Esq.*

report without filing a Freedom of Information Act request. He provided a breakdown of appellant's absences from May 20 to December 27, 2013, reporting that she used COP until July 23, 2013 and then took a combination of sick, annual, administrative, and donated leave until October 25, 2013. The employing establishment also forwarded a health unit record completed by a nurse who described events from 9:40 to 10:50 a.m. on May 20, 2013. This indicated that appellant was given pain medication and ice, and that because she continued to have pain in her left hip, back, and right shoulder, she was transported to urgent care for evaluation.

Appellant thereafter submitted a May 23, 2013 emergency room record. Cheryl Boehler, a physician assistant at the facility, reported a history that appellant slipped and fell two days previously and had experienced headache and vomiting since. A head CT scan showed opacification of the right maxillary sinus. No bleed, midline shift, mass effect, hydrocephalus, or fractures were seen. A CT scan of the cervical spine demonstrated no evidence of acute fracture or subluxation. Appellant was discharged home with a diagnosis of concussion/head injury.

In May 28, 2013 to January 2, 2014 treatment notes, Dr. Osorno noted that appellant was diagnosed with lumbar sprain and concussion after a May 20, 2013 work injury and had continued complaints of tremors, and difficulty with speech, memory, and motor skills. Past medical problems included hypothyroidism, major depressive affective disorder, attention deficit disorder (ADD) with hyperactivity, and lumbar disc degeneration, and vertical banding gastroplasty. On June 14, 2013 appellant was anxious and tearful, and on August 5, 2013 her lower lumbar pain was worsening. On November 7, 2013 she was still having headaches. In each report he provided findings. Dr. Osorno also diagnosed chronic sinusitis, concussion with no loss of consciousness, lumbar sprain, postconcussion syndrome, anxiety state, panic disorder, and speech disturbance. In duty status reports (Form CA-17) dated November 7, 2013 and January 2 and February 3, 2014, he advised that appellant was totally disabled due to concussion and postconcussion syndrome.[4]

On June 18, 2013 Dr. Durruthy reported that appellant felt anxious and depressed following the May 20, 2013 work injury. On August 29, 2013 she reported that appellant was seen for drug monitoring for attention deficit hyperactivity disorder (ADHD) and depression. Dr. Durruthy reported that appellant's recent and remote memory, attention, and concentration were grossly intact, and that her language was adequate. On October 3, 2013 she reported treating appellant for ADHD and depression since December 17, 2008. Dr. Durruthy responded well to medication and intervals of brief supportive psychotherapy. When appellant was seen on June 18, 2013, she exhibited a new onset of both a staggered gait and significant language challenges with slow deliberate speech and intervals of stuttering. Appellant associated her new symptoms to a recent work-related closed head injury. Dr. Durruthy advised that appellant had a continued sad mood that seemed related to the recent fall and limitations. In October 25, November 15, and December 30, 2013 treatment notes, she noted appellant's continued complaint of mental fatigue and difficulty processing information, which led to increased anxiety. Dr. Durruthy diagnosed major depressive episode and disability secondary to fall.

[4] Dr. Osorno also submitted treatment notes that predated the May 20, 2013 employment injury and a February 3, 2014 attending physician's report (Form CA-20) that is illegible.

On October 24, 2013 Dr. Sethi noted appellant's report that she felt better with physical therapy. He noted mild tenderness across her lumbosacral spine and diagnosed lumbar strain with degenerative disc disease at L5-S1 and advised that he would see her as needed.

On November 19, 2013 Dr. Melinda-Ann Roth, a Board-certified physiatrist, completed an evaluation for a mild brain injury program. She noted appellant's description of her injury, including that she had a memory gap from when she fell until she was sitting in a chair next to a security guard. Dr. Roth described appellant's care and current complaints of radiating low back pain that caused difficulty with balance and a sense of clumsiness. A neurobehavior symptom inventory endorsed symptoms of intermittent daily throbbing headache associated with nausea, dizziness, and difficulty with balance particularly when walking down steps. Dr. Roth indicated that appellant had light and sound sensitivity, occasional double vision, difficulty hearing, mental difficulties of slowed processing speed, difficulty concentrating, memory loss, cognitive fatigue, depression, irritability, and anxiety. Appellant's patient health questionnaire was consistent with severe depression. Other physical complaints included tinnitus, nasal obstruction, urgency, and incontinence. Appellant's hearing was intact to conversational speech and tuning fork. Lumbar and cervical spine range of motion was within functional limits. Neurologic/psychologic examination showed that appellant was alert, oriented times three, had fluent speech, well-articulated and ordered thoughts, and could easily understand and follow multistep requests. Dr. Roth advised that appellant had a closed-head injury with a brief loss of consciousness. She recommended therapy to evaluate and treat vestibular and ocular motor function, speech language pathology to evaluate and treat her cognitive linguistic skills, and counseling for stress management. On December 17, 2013 Dr. Roth noted that appellant's symptoms had not improved. She reiterated her diagnoses and noted that appellant was to begin vestibular function and speech therapy. Dr. Roth also completed a certification for a Family and Medical Leave Act application that day in which she advised that appellant was unable to perform her job duties because she could not prepare and give training classes. She listed appellant's diagnoses and advised that her return to work would be determined later.[5]

In February 2014, OWCP referred appellant to Dr. Robert Allen Smith, a Board-certified orthopedic surgeon, and Dr. David Katz, a Board-certified neurologist, for second opinion evaluations.

In a February 28, 2014 report, Dr. Smith reviewed the medical record and the statement of accepted facts (SOAF), which described the May 20, 2013 work injury and the accepted conditions. He reported examination findings, noting that the neck and back revealed no spasm, atrophy, trigger points, or deformity by palpation. Active spinal range of motion was satisfactory and functional, with no spasm or rigidity. Neurologic examination was normal. Dr. Smith advised that, given appellant's benign clinical examination, there was no evidence of a residual soft tissue injury of the back, which appeared to have completely resolved, and that there was no evidence of an aggravation, precipitation, or acceleration of her preexisting degenerative disease of her lumbar spine related to the work injury. He indicated that she had reached maximum medical improvement (MMI) with regard to the employment injury and that

[5] The record includes initial evaluations for vestibular therapy and speech language pathology dated December 17, 2013 and January 24, 2014 respectively. Each evaluation recommended continued therapy.

her continued symptoms were symptomatic in nature and could not be confirmed by clinical examination. Dr. Smith concluded that appellant could return to her usual job without restriction and needed no additional care for the lumbar sprain. In a March 16, 2014 supplemental report, he advised that, for the accepted lumbar sprain, a reasonable time of total disability from her usual job would be 7 to 10 days following the May 20, 2013 employment injury, after which she could have returned to full duty.

Dr. Barry S. Tatar, a Board-certified otolaryngologist, submitted November 13, 2013 to March 5, 2014 reports in which he noted a history that appellant hit her head when she slipped and fell at work on May 20, 2013 and had complaints of daily headaches and memory loss. In each report he provided physical examination findings, noting that mood and affect were normal. Dr. Tatar described treatment for allergic rhinitis, deviated nasal septum, headache, hypertrophy of nasal turbinates, and chronic sinusitis.

In a February 27, 2014 treatment note, Dr. Roth indicated that appellant complained of increasing lower back pain and headaches, and that her other complaints of concussion-related symptoms remained the same. She described findings and reiterated her diagnoses. In a March 11, 2014 attending physician's report, Dr. Roth noted the history of injury and that appellant had no preexisting injury, disease, or physical impairment. She diagnosed post-traumatic headache, vestibular dysfunction, convergence disorder, light and sound sensitivity, difficulty with auditory discrimination, cognitive impairment with decreased processing speed, concentration, and recall, cognitive fatigue, mood disruption with worsening depression, anxiety, irritability, and sleep dysfunction. Dr. Roth checked a box on a form report "yes" to indicate that these conditions were caused or aggravated by the employment incident. An attached duty status advised that appellant could not resume work.

In a March 25, 2014 report, Dr. Katz, OWCP's referral neurologist, noted reviewing the SOAF and medical record for a second opinion examination. Appellant reported chronic daily headaches, neck and lumbar pain, and speech and cognitive problems since the fall at work. She had a past history of ADD dating to childhood. Appellant reported that she may have lost consciousness when she fell on May 20, 2013. On neurologic examination, she was awake, alert, and oriented. Appellant had slightly nonsmooth/stuttering speech which was inconsistent, no aphasia, and no left-right confusion or neglect. She recalled one of three objects at five minutes, three of three with hints, and could sequence presidents to the elder President Bush. Confrontational visual fields were inconsistent. Appellant had significant loss of the inferior visual fields in both eyes at two feet, but at six feet, she had more trouble counting fingers. This was nonphysiologic. Fundoscopic examination was normal and appellant had normal limb strength with mild give-away weakness. Gait was antalgic, but she could heel and toe walk. In answer to OWCP questions, Dr. Katz opined that appellant had a minor concussion on May 20, 2013, when she slipped and fell backwards and hit her head and neck on a doorframe. Appellant also had neck and back pain. Dr. Katz advised that her preexisting headache condition dating back many years was likely aggravated by May 20, 2013 fall, as was preexisting lumbar pain and degenerative disc disease. At the time of his examination, he opined that there was no evidence to indicate permanent disability. Dr. Katz explained that an injury such as the May 20, 2013 slip and fall was not known to precipitate chronic headaches, stuttering, and forgetfulness. He noted appellant's history of ADD, and advised that, at a minimum, there appeared to be a nonphysiologic overlay to her speech disturbance and visual fields. Dr. Katz found that she had

reached MMI, noting no evidence of an active radiculopathy or cognitive issue due to the May 20, 2013 work injury. Although appellant complained of speech issues, headaches, and neck and back pain, there was no evidence on examination to correlate with permanent disability. Dr. Katz recommended a lumbar MRI scan since she told him one had not been done after the injury, and that formal neuropsychological testing could help in separating her preexisting ADD, depression, and anxiety from any post-traumatic cognitive issues. He concluded that appellant's objective examination was normal with nonphysiologic aspects of the visual fields and nonphysiologic stuttering speech. Dr. Katz found no evidence of objective neurologic dysfunction related to the May 20, 2013 employment injury. In an attached work capacity evaluation, he advised that appellant was capable of performing her usual job without restriction.

In an April 24, 2014 decision, OWCP denied appellant's claim for compensation beginning October 25, 2013. It found that the accepted conditions would be expanded to reflect that she had a mild concussion and a whiplash-type injury to the cervical spine as a result of the May 20, 2013 work injury. However, the weight of the medical evidence rested with the opinions of Drs. Smith and Katz who opined that all conditions had resolved.

Counsel timely requested a hearing before a representative of OWCP's Branch of Hearings and Review. Appellant submitted March 12, 2014 correspondence in which the employing establishment advised her about her reasonable accommodation request. Attached was a patient self-evaluation appellant completed on April 8, 2014 and a questionnaire completed by Dr. Roth on April 22, 2014. Dr. Roth reiterated appellant's diagnoses and indicated that appellant could independently perform activities of daily living with regard to grooming. Appellant needed additional time and safety measures due to dizziness and loss of balance. Due to headaches, light and sound sensitivity, she was limited in performing job duties. Dr. Roth advised that appellant was not capable of work that required performing duties in a timely and accurate fashion, but that appellant could perform limited work from home at her own pace. Dr. Roth indicated that appellant would have difficulty performing multi-tasking, completing a task in a compressed time frames, frequently using a computer for visual scanning/processing/task completion, working in environment where light and sound could not be well managed, would have difficulty with decision making and processing oral and/or written briefings in a compressed period, and participating in small and large work-group meetings.[6]

A May 17, 2014 Social Security Administration (SSA) disability decision found that appellant was disabled beginning May 20, 2013 due to an intracranial injury and mood disorders. The decision included a functional capacity assessment by Dr. L. Pio Roda, a Board-certified surgeon. He opined that appellant's postconcussive symptoms of headaches with nausea and vomiting, some mild visual field defects, and short term memory impairment, together with degenerative disc disease of the cervical and lumbar spine and associated pain and radiculopathy, plus her mental health issues caused significant restrictions in her activities of daily living and made her unable to work an 8-hour day, 40-hour week work schedule. The decision further found that L. Payne, Ph.D., had opined that she had some attention and concentration difficulty likely related to her poorly controlled anxiety and depression which contributed to problems with remembering detailed instructions. The SSA decision concluded that appellant was disabled.

[6] On May 17, 2014 appellant authorized counsel to represent her. *Supra* note 3.

In a May 24, 2014 letter, SSA informed her that she was found disabled effective May 20, 2013, and that she was entitled to monthly disability benefits effective November 2013.

In March 27 to September 9, 2014 treatment notes, Dr. Roth described appellant's continued symptoms, provided examination findings, and reiterated her diagnoses.

In an April 28, 2014 report, Dr. Daniel Gelb, a Board-certified orthopedic surgeon, noted appellant's complaint of low back pain radiating to the left leg that began on May 20, 2013 when she slipped at work. He described findings and recommended a lumbar spine MRI scan. The requested MRI scan was performed on May 28, 2014 and demonstrated a disc extrusion at L4-5 and a disc protrusion at L2-3. On September 12, 2014 Dr. Gelb noted the MRI scan findings and advised that appellant would be a candidate for surgery at L4-5.

By decision dated October 6, 2014, an OWCP hearing representative set aside the April 24, 2014 decision and remanded the case for OWCP to obtain a supplemental report from Dr. Katz that addressed whether the May 20, 2013 employment injury resulted in any period of disability beginning October 25, 2013.

In a February 12, 2015 supplemental report, Dr. Katz advised that, from his review of the medical records and his history and examination, the period of disability began May 20, 2013 and lasted until Dr. Roth's examination on November 19, 2013. He opined that Dr. Roth's examination revealed no significant residual effects of the May 20, 2013 employment-related fall.

In a decision dated September 29, 2015, OWCP modified its prior decision to reflect that appellant was entitled to wage-loss compensation from October 25 through November 19, 2013, noting that she received COP and took leave prior to October 25, 2013.

Appellant, through counsel, timely requested a hearing with a representative of OWCP's Branch of Hearings and Review. At the hearing, held on May 25, 2016, she maintained that she continued to have a brain injury. Counsel and OWCP's hearing representative advised her of the evidence needed to support a claim for disability. The record was held open for 30 days for submission of additional evidence. Nothing further was received.

In a July 6, 2016 decision, OWCP's hearing representative affirmed the September 29, 2015 decision. The hearing representative also found that the medical evidence of record was insufficient to support expanding appellant's case to include additional conditions such as a herniated lumbar disc. He noted that Dr. Roth did not explain the objective basis for her multiple diagnoses and found that the weight of the medical evidence rested with the opinions of Dr. Smith and Dr. Katz.

LEGAL PRECEDENT

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. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. 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.[7] Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.[8]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[9] 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 employee.[10] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she had ongoing employment-related disability commencing November 19, 2013, causally related to her accepted conditions resulting from the May 20, 2013 employment injury. OWCP accepted lumbar sprain and headaches as well as resolved mild concussion and whiplash-type injury. The record indicates that appellant received COP to July 23, 2013 and then took a combination of sick, annual, administrative, and donated leave until October 25, 2013. OWCP determined that she was entitled to wage-loss compensation from October 25 through November 19, 2013.[12]

The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion. The opinion of a physician must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship.[13] Medical evidence submitted by a claimant to support his or her claim for compensation benefits should reflect a correct history, and the physician should offer a medically sound explanation of how the specific duties appellant performed caused or aggravated the claimed condition.[14]

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[7] *See* 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[8] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[9] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[11] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[12] Appellant was awarded SSA disability benefits effective November 2013.

[13] *K.W.*, 59 ECAB 271 (2007).

[14] *See T.G.*, Docket No. 14-0751 (issued October 20, 2014).

The Board finds that the weight of the medical opinion evidence regarding the claimed disability rests with the opinions of Dr. Smith, a Board-certified orthopedic surgeon, and Dr. Katz, a Board-certified neurologist, who performed second opinion evaluations for OWCP.

In a comprehensive February 28, 2014 report, Dr. Smith reviewed the medical record and SOAF. He thoroughly described findings, noting no neck or back spasm, and no atrophy, trigger points, or deformity by palpation. Active spinal range of motion was satisfactory and functional, and the neurologic examination was normal. Dr. Smith advised that, given appellant's benign clinical examination, there was no evidence of a residual soft tissue injury of the back, which appeared to have completely resolved. He opined that there was no evidence of an aggravation, precipitation, or acceleration of the preexisting degenerative disease of the lumbar spine related to the May 20, 2013 work injury. Dr. Smith indicated that appellant had reached MMI and that her continued symptoms and could not be confirmed by clinical examination. He advised that she could return to her usual job without restriction and needed no additional care for the lumbar sprain. In a March 16, 2014 supplemental report, Dr. Smith indicated that, for the accepted lumbar sprain, a reasonable time of total disability from appellant's position would be 7 to 10 days following the May 20, 2013 work injury, after which she could have returned to full duty.

Dr. Katz completed a thorough neurologic evaluation on March 25, 2013. He reviewed the SOAF and the medical record as well as noting appellant's description of the work injury. Dr. Katz described her current complaints and reported her past history of ADD dating to childhood. His neurological examination demonstrated slightly nonsmooth/stuttering speech, which he found to be inconsistent, with no aphasia, left-right confusion, or neglect present. Dr. Katz advised that appellant's confrontational visual field examination was also inconsistent and, although she had an antalgic gait, she could heel and toe walk. He opined that she had a minor concussion due to the May 20, 2013 slip and fall, and that the fall also aggravated her preexisting headache, lumbar pain, and degenerative disc disease conditions. Dr. Katz indicated that, at the time of his examination, there was no evidence of a permanent disability, explaining that an injury such as the May 20, 2013 slip and fall was not known to precipitate chronic headaches, stuttering, and forgetfulness. He opined that, at a minimum, there appeared to be a nonphysiologic overlay to appellant's speech disturbance and visual fields. Dr. Katz advised that she had reached MMI, noting no evidence of an active radiculopathy or cognitive issue as a residual of the May 20, 2013 employment injury. He concluded that appellant's objective examination was normal with nonphysiologic aspects of the visual fields and nonphysiologic stuttering speech, and that she was capable of performing her usual job without restriction. In a February 12, 2015 supplemental report, Dr. Katz advised that the period of disability began May 20, 2013 and lasted until her examination by Dr. Roth on November 19, 2013, noting that Dr. Roth's examination revealed no significant residual effects of the fall of May 20, 2013.

Additional medical evidence relevant to the period of claimed disability includes evidence from Dr. Osorno, who began treating appellant in March 2012. He advised that, since the May 20, 2013 slip and fall, she had persistent headaches, progressive worsening of fatigue, insomnia, dizziness, speech impairment, short-term memory loss, inability to concentrate, irritability, anxiety, depression, and mood issues, all of which appeared to be related to the work injury and presented ongoing physical limitations. Dr. Osorno diagnosed postconcussion syndrome and lumbar sprain which, he opined, aggravated appellant's previous underlying depression, and precipitated flare-ups of anxiety and panic attacks. In reports until January 2,

2014, he consistently advised that she was totally disabled due to concussion and postconcussion syndrome. Dr. Osorno, however, did not explain with sufficient rationale why appellant's many symptoms and these conditions continued and why she continued to be disabled due to the May 20, 2013 employment-related slip and fall. The Board has long held that to support causal relationship a physician's opinion 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 employee.[15] The Board finds that Dr. Osorno's opinion is insufficient to establish that appellant was disabled due to the May 20, 2013 employment injury.

Dr. Durruthy, a psychiatrist, noted treating appellant for ADHD and depression since December 2008. She submitted treatment notes dated October 25, November 15, and December 30, 2013 in which she described appellant's complaint of mental fatigue and difficulty processing information which led to increased anxiety. Dr. Durruthy diagnosed a major depressive episode and disability secondary to fall. The Board, however, notes that she also provided reports on June 18, August 29, and October 3, 2013, which are inconsistent regarding appellant's speech and cognitive difficulties. Dr. Durruthy did not mention that appellant had difficulties on June 18, 2013, and on August 29, 2013 found recent and remote memory, attention, and concentration were grossly intact, and that appellant's language was adequate. It was not until October 3, 2013 that she reported that appellant had a staggered gait and significant language difficulties. Moreover, Dr. Durruthy merely indicated that appellant associated her symptoms with the employment injury and did not discuss whether appellant's diagnosed ADHD had any impact on her conditions. The Board has long held that medical opinions that are speculative or equivocal in character are of diminished probative value.[16] Thus, the Board finds that Dr. Durruthy's opinion is insufficient to establish that appellant was disabled due to the May 20, 2013 employment injury.

Dr. Roth, a physiatrist, began treating appellant on November 29, 2013. While she reported that appellant had a brief loss of consciousness on May 20, 2013, this history was inconsistent[17] with the contemporaneous reports including appellant's description of the slip and fall at work on her claim form and in a November 1, 2013 statement when she did not indicate that she lost consciousness.[18] Dr. Roth also described appellant's numerous cognitive and physical complaints and noted her examination findings. She diagnosed intermittent post-traumatic headache, vestibular impairment with dizziness and loss of balance, convergence disorder with diplopia, light and sound sensitivity, difficulty with sound discrimination, cognitive impairments with decreased processing speed, poor concentration, impaired memory, and cognitive fatigue, and mood disruption with anxiety, depression, irritability, and frustration.

[15] *Supra* note 10.

[16] *D.D.*, 57 ECAB 734 (2006).

[17] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

[18] Dr. Morales, who saw appellant on the date of injury, merely indicated that she slipped and fell at work, hitting her head. Dr. Osorno indicated that she had no loss of consciousness.

Dr. Roth advised that, due to these cognitive problems, appellant was unable to perform job duties. She, however, did not explain why appellant had these many diagnoses which prevented her from work when, on neurological examination, she had had fluent speech, well-articulated and ordered thoughts, and could easily understand and follow multistep requests. Furthermore, Dr. Roth did not discuss appellant's ADHD diagnosis and while appellant had initial evaluations for vestibular function and ocular motor function and speech language pathology, there is no evidence of record to indicate that she continued her course of therapy or had a formal clinical neuropsychological evaluation. As she based her opinion on an incorrect history of injury and did not provide sufficient medical rationale to support her opinion that appellant was disabled due to the May 20, 2013 employment injury, her opinion is insufficient to meet appellant's burden of proof.[19]

Other medical evidence provided by appellant does not specifically relate her disability beginning November 19, 2013 to her accepted conditions. On October 29, 2013 Dr. Sethi diagnosed degenerative disc disease and advised that he would see her as needed. He did not comment regarding appellant's disability status. Thus, Dr. Sethi's opinion does not support that she had disability due to the May 20, 2013 employment injury after November 19, 2013.[20] In reports dated November 13, 2013 to March 5, 2014, Dr. Tatar noted treating appellant for various conditions. While he described the work injury and her complaint of daily symptoms, he did not comment on whether her diagnoses were employment related or whether she was disabled from work. Likewise, while Dr. Gelb, who began treating appellant in April 28, 2014, also did not comment on whether she was disabled due to the accepted conditions.[21]

The record includes a May 17, 2014 SSA disability determination which found that appellant was disabled beginning May 20, 2013. The Board has long held that determinations of other administrative agencies with respect to whether or not an employee is disabled are not binding on OWCP or the Board with respect to whether the individual is disabled under FECA.[22] Thus, the decision of the SSA finding appellant disabled under that disability system is not binding upon OWCP in the adjudication of her claim under FECA.[23]

The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.[24] The Board

[19] *Supra* note 10.

[20] *Supra* note 8.

[21] The record also contains evidence from a nurse and a physician assistant. The Board notes that registered nurses, licensed practical nurses, and physicians assistants are not "physicians" as defined under FECA. *Roy L. Humphrey*, 57 ECAB 238 (2005); *see* 5 U.S.C. § 8101(2). As such, this evidence does not constitute probative medical evidence.

[22] *James E. Norris*, 52 ECAB 93 (2000).

[23] *Id*.

[24] *Sandra Pruitt*, 57 ECAB 126 (2005).

has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.[25] In the absence of sufficient medical evidence, the Board finds that the medical evidence of record is insufficient to establish that appellant was totally disabled for the claimed period. None of the medical reports explain with sufficient rationale why she could not perform her job duties due to the accepted conditions.[26]

As to appellant's contention that other conditions should be accepted, Dr. Osorno, Dr. Durruthy, Dr. Roth, Dr. Tatar, and Dr. Gelb listed additional diagnoses. Neither Dr. Tatar nor Dr. Gelb commented regarding a cause of their diagnosed conditions, and the Board has long held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[27] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.[28] For the reasons discussed above, the opinions of Drs. Osorno, Durruthy, and Roth regarding additional diagnoses are also of insufficient probative value to meet appellant's burden of proof.[29]

As appellant did not submit sufficient rationalized medical opinion evidence to establish that she was unable to work beginning November 19, 2013 due to accepted conditions, she failed to establish that the claimed disability was employment related.[30] She was thus not entitled to wage-loss compensation for the period thereafter.[31]

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.

[25] *See Albert C. Brown*, 52 ECAB 152 (2000).

[26] *See S.B.*, Docket No. 13-1162 (issued December 12, 2013).

[27] *Willie M. Miller*, 53 ECAB 697 (2002).

[28] *W.W.*, Docket No. 09-1619 (issued June 2, 2010).

[29] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury).

[30] The record is unclear regarding appellant's receipt of wage-loss compensation for the period October 25 to November 19, 2013. However, compensation for this particular period is not presently before the Board.

[31] *N.R.*, Docket No. 14-0114 (issued April 28, 2014).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish ongoing total disability commencing November 19, 2013, causally related to the May 20, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2017
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