

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

S.M., Appellant)	
)	
and)	Docket No. 24-0164
)	Issued: May 13, 2024
U.S POSTAL SERVICE, WILMINGTON BOX,)	
New Castle, DE, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 12, 2023 appellant filed a timely appeal from a July 10, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work commencing May 25, 2021, causally related to her accepted May 25, 2021 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the July 10, 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. *Id.*

FACTUAL HISTORY

On June 1, 2021 appellant, then a 45-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on May 25, 2021 she sustained a lip contusion when a turnstile popped back and hit her in the face while in the performance of duty. She noted that she was uncertain whether she sustained any other injuries. She stopped work on May 25, 2021 and did not return.

The employing establishment issued appellant an authorization for examination and/or treatment (Form CA-16), which indicated that appellant was authorized to seek medical treatment due to her May 25, 2021 injury.

In an undated attending physician report, Part B of the Form CA-16, Dr. Patrick Waters, an osteopath specializing in family medicine, provided findings for a June 2, 2021 examination, diagnosed concussion, and opined that appellant was totally disabled since May 25, 2021. In a June 9, 2021 Form CA-16, Dr. Joel Wagman, Board-certified in family medicine, discussed his first examination of appellant on June 2, 2021 and diagnosed post-traumatic headache. He opined that appellant could return to work pending neurological evaluation. In a July 28, 2021 Form CA16, Dr. Waters diagnosed concussion, and opined that appellant was totally disabled since May 25, 2021. In an August 25, 2021 Form CA-16, Dr. David Hammer, a Board-certified neurologist, diagnosed concussion and opined that appellant was totally disabled since May 25, 2021.

In a report dated August 11, 2021, Dr. Hammer, reported that appellant presented for evaluation of a headache following a May 25, 2021, work injury when she was leaving work through a turnstile that bounced back and hit her in her face. Appellant complained of headaches and dizziness as a result of the employment incident and had not returned to work since. Dr. Hammer reported that prior to the incident, appellant did not experience headaches other than with allergies. He discussed diagnostic test results and diagnosed concussion and headaches with mixed tension migraines status post-concussion. Dr. Hammer noted that he would complete a form keeping appellant “out for a period if needed while we try to improve her symptoms.”

In a report dated November 11, 2021, Dr. Hammer diagnosed concussion and headaches with mixed tension migraines status post-concussion. He indicated that appellant remained out of work pending improvement in symptoms. In a February 23, 2022 report, Dr. Hammer diagnosed concussion, headaches with mixed tension migraines status post-concussion, and dizziness with positive head thrust. He advised that appellant remained out of work pending improvement in symptoms, but “will likely need to go back soon.”

Appellant also submitted a February 28, 2022 report, which lists Dr. Waters as a provider, but the report is unsigned. In a report dated June 6, 2022, Dr. Waters reported examination findings and diagnosed migraine headaches, vertigo, intracranial hemorrhage, abnormal eye finding, epistaxis, and post-traumatic headache.

By decision dated September 30, 2022, OWCP accepted the claim for concussion without loss of consciousness, initial encounter.

On March 30, 2023 appellant filed claims for compensation (Form CA-7) for disability from work for the periods May 25 through July 30, 2021 and August 14, 2021 through September 23, 2022.³

In a development letter dated April 17, 2023, OWCP informed appellant of the deficiencies of her claim for wage-loss compensation commencing June 5, 2021 when she stopped work. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

In an undated report received by OWCP on May 10, 2023, Dr. Waters noted that appellant had a history of traumatic brain injury and intracranial hemorrhage resulting in chronic migraine headaches. He explained that headache flareups resulted in sensitivity to light and noise, as well as pain in her head. Dr. Waters noted that appellant's most recent flareup was on February 20, 2023, and was still currently affecting her. He noted that due to concerns about a repeat hemorrhage, appellant was sent to the emergency room to have imaging studies completed and was subsequently discharged in his care. Dr. Waters reported that they were working diligently to find a treatment that worked.

In a May 2, 2023 note, Dr. Hammer reported that appellant was evaluated in his office after a concussion and continued to have severe vertiginous symptoms in addition to daily headaches from her accepted May 25, 2021 employment injury that had been refractory to medications. He explained that this began after her concussion with orbital fracture and microhemorrhage noted on her imaging study. Dr. Hammer reported that appellant's symptoms were much more severe when she was working on a daily basis, which impacted her ability to work at the pace expected of her. He asserted that she should qualify for disability during the period she was off work and all possible accommodations should be made for her.

By decision dated July 10, 2023, OWCP denied appellant's claim for disability from work commencing May 25, 2021,⁴ finding that the medical evidence of record was insufficient to establish disability from work during the claimed period due to her accepted May 25, 2021 employment injury.

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

³ Appellant also claimed disability for the preinjury dates of May 22 through 24, 2021, but this period of claimed disability is not currently before the Board.

⁴ OWCP inadvertently indicated that appellant claimed wage-loss compensation commencing June 5, 2021 due to the May 25, 2021 employment injury. However, appellant actually claimed wage-loss compensation commencing May 25, 2021 due to the May 25, 2021 employment injury.

⁵ *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).

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

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.¹¹ 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.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work commencing May 25, 2021, causally related to her accepted May 25, 2021 employment injury.

In support of her claim for compensation, appellant submitted an August 11, 2021 report wherein Dr. Hammer explained that appellant sustained an injury on May 25, 2021 when she was leaving work and was hit in the face with a turnstile. Dr. Hammer diagnosed concussion and headaches with mixed tension migraines status post-concussion and noted that he would complete a form keeping appellant “out for a period if needed while we try to improve her symptoms.” In a report dated November 11, 2021, he diagnosed concussion and headaches with mixed tension

⁶ 20 C.F.R. § 10.5(f).

⁷ See *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

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

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

¹⁰ *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹¹ See *B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹² *Id.*

migraines status post-concussion. Dr. Hammer advised that appellant remained out of work pending improvement in symptoms. In a February 23, 2022 report, he diagnosed concussion, headaches with mixed tension migraines status post-concussion, and dizziness with positive head thrust. Dr. Hammer indicated that appellant remained out of work pending improvement in symptoms. In a May 2, 2023 report, he reported that appellant continued to have severe vertiginous symptoms in addition to daily headaches from her accepted May 25, 2021 employment injury that had been refractory to medications. Dr. Hammer explained that this began after her concussion with orbital fracture and microhemorrhage noted on her imaging study. He reported that appellant's symptoms were much more severe when she was working on a daily basis, which impacted her ability to work at the pace expected of her. Dr. Hammer reported that she should qualify for disability during the period she was off work and all possible accommodations should be made for her.

While Dr. Hammer opined that appellant's injuries were caused by the May 25, 2021 employment injury resulting in disability during at least part of the claimed period, his opinion is conclusory in nature and does not provide sufficient rationale explaining why she was disabled due to the accepted May 25, 2021 employment injury.¹³ The Board has held that a mere conclusion without the necessary rationale as to whether a medical condition or disability is due to an accepted employment condition is insufficient to meet a claimant's burden of proof.¹⁴

In an undated Form CA-16, Dr. Waters provided findings for a June 2, 2021 examination, diagnosed concussion, and found total disability since May 25, 2021. In a June 9, 2021 Form CA-16, Dr. Wagman discussed his first examination of appellant on June 2, 2021 and diagnosed post-traumatic headache. He reported that appellant could return to work pending neurological evaluation. In a July 28, 2021 Form CA-16, Dr. Waters diagnosed concussion, and opined that appellant was totally disabled since May 25, 2021. In an August 25, 2021 Form CA-16, Dr. Hammer diagnosed concussion and opined that appellant was totally disabled since May 25, 2021. In a report dated June 6, 2022, Dr. Waters diagnosed migraine headaches, vertigo, intracranial hemorrhage, abnormal eye finding, epistaxis, and post-traumatic headache. In an undated report received by OWCP on May 10, 2023, he reported that appellant had a history of traumatic brain injury and intracranial hemorrhage resulting in chronic migraine headaches. Dr. Waters noted that appellant's most recent flareup was on February 20, 2023 which was still currently affecting her. These reports do not contain an opinion that appellant had disability during the claimed period due to the accepted May 25, 2021 employment injury. The Board has held that 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.¹⁵ Therefore, this evidence is insufficient to establish appellant's disability claim.

Appellant also submitted an unsigned February 28, 2022 report. However, the Board has held that unsigned reports and reports that bear illegible signatures cannot be considered probative

¹³ See *H.K.*, Docket No. 23-0739 (issued September 27, 2023).

¹⁴ *J.M.*, Docket No. 21-1261 (issued September 11, 2023).

¹⁵ 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).

medical evidence because they do not provide an indication that the person completing the report qualifies as a physician under FECA.¹⁶

As the medical evidence of record is insufficient to establish causal relationship between the claimed period of disability and the accepted May 25, 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work commencing May 25, 2021, causally related to her accepted May 25, 2021 employment injury.¹⁷

¹⁶ *B.S.*, Docket No. 22-0918 (issued August 29, 2022); *S.D.*, Docket No. 21-0292 (issued June 29, 2021); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁷ The employing establishment executed a series of authorizations for examinations and/or treatment (Form CA-16) authorizing appellant to seek medical care related to the May 25, 2021 employment incident. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 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. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the July 10, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board