



## ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work for the period November 12 through 22, 2019.

## FACTUAL HISTORY

On September 27, 2019 appellant, then a 46-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on September 20, 2019, when loading a postal container onto a trailer, she was struck on the right side of her head by a falling shelf while in the performance of duty. She stopped work on September 24, 2019. OWCP ultimately accepted appellant's claim on March 20, 2020 for traumatic brain injury without loss of consciousness, sprain of the ligaments of the cervical spine, and strain of the muscle, fascia, and tendon at the neck level. Appellant continued to work until September 28, 2019. She received continuation of pay (COP) from September 28 through November 11, 2019.

On October 4 2019 Dr. Ranga Krishna, a Board-certified neurologist, diagnosed concussion and cervical radiculopathy. He noted that appellant was totally disabled until reevaluation on November 15, 2019.

An October 15, 2019 magnetic resonance imaging (MRI) scan of the brain, interpreted by Dr. Karl I. Llussman, a Board-certified neuroradiologist, revealed evidence of traumatic brain injury.

In a November 15, 2019 follow-up visit, Dr. Krishna diagnosed traumatic brain injury and noted that appellant was totally disabled until reevaluation on December 18, 2019.

On November 22, 2019 appellant filed a claim for wage-loss compensation (Form CA-7) for work-related disability for the period November 12 through 22, 2019. On page two of the Form CA-7 the employing establishment indicated that appellant received COP from September 28 through November 11, 2019.

Dr. Krishna treated appellant on October 4 and November 15, 2019 for head and neck pain, which began on September 20, 2019, when she was struck on the head by a piece of equipment while at work. Findings on examination revealed mild-to-moderate tenderness along the cervical and lumbosacral spine and muscle spasm. Dr. Krishna diagnosed headaches, traumatic brain injury, and cervical sprain/strain. He opined to a reasonable degree of medical certainty that appellant's physical injuries were the competent cause of impairment and total disability and causally related to the employment injuries.

Appellant attended hyperbaric oxygen therapy (HBOT) treatments on November 4, 11, and 25, 2019.

On December 20, 2019 Dr. Krishna noted that appellant had persistent head and neck pain with numbness and tingling in the right upper extremity, which began after she was struck in the head by a piece of equipment at work. He diagnosed headaches, traumatic brain injury, and cervical sprain/strain. Dr. Krishna opined that, based on appellant's history and physical examination, to a reasonable degree of medical certainty her physical injuries were the competent

provocative cause of the impairment and total disability and causally related to the accident noted above. Similarly, on January 6, 2020 appellant presented with complaints of severe headaches, difficulty concentrating, blurry vision, and vision loss. Dr. Krishna reviewed the October 15, 2019 MRI scan of the brain, which demonstrated evidence compatible with traumatic brain injury. He diagnosed traumatic brain injury and cervical sprain/strain. In summary, Dr. Krishna opined that appellant's physical injuries were directly caused by the September 20, 2019 employment accident. He advised that appellant had no prior history of the above diagnoses and remained totally disabled from work.

Dr. Krishna continued to treat appellant through January 17, 2020. He indicated that she was still experiencing head and neck pain, numbness and tingling in the right upper extremity, and memory impairment. Dr. Krishna diagnosed headaches, traumatic brain injury, and cervical sprain/strain and opined that appellant was totally disabled. He again opined that her physical injuries were the competent cause of the impairment and disability, and were causally related to the employment accident. In a prescription note of even date, Dr. Krishna diagnosed polyneuropathy.

In a development letter dated March 20, 2020, OWCP requested that appellant submit medical evidence to support disability during the period claimed causally related to the accepted September 20, 2019 employment injuries. It afforded her 30 days to submit the requested evidence. No response was received.

By decision dated April 29, 2020, OWCP denied appellant's claim, finding that she had not established disability from work for the period November 12 through 22, 2019 causally related to the accepted September 20, 2019 employment injuries.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim.<sup>4</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>5</sup> 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.<sup>6</sup>

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

<sup>5</sup> 20 C.F.R. § 10.5(f); *see J.M.*, Docket No. 18-0763 (issued April 29, 2020); *B.K.*, *id.*

<sup>6</sup> *See B.C.*, Docket No. 18-0692 (issued June 5, 2020).

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>7</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 reliable, probative, and substantial medical opinion evidence.<sup>8</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>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work for the period November 12 through 22, 2019.

In an October 9, 2019 note, Dr. Krishna diagnosed concussion and cervical radiculopathy and opined that appellant was totally disabled until reevaluation on November 15, 2019. Similarly, in a follow-up visit dated November 15, 2019, he diagnosed traumatic brain injury and noted that appellant was totally disabled until reevaluation on December 18, 2019. However, Dr. Krishna offered no opinion as to whether appellant's accepted conditions were the cause of her disability. The Board has held that medical evidence that does not provide an opinion regarding whether a period of disability is due to an accepted employment condition is of no probative value and, thus, is insufficient to establish a claim.<sup>10</sup> Dr. Krishna did not provide rationale explaining how or why appellant was disabled from work. Consequently, his reports are insufficient to meet appellant's burden of proof.<sup>11</sup>

Dr. Krishna treated appellant on October 4 and November 15, 2019, and January 17, 2020, and diagnosed headaches, traumatic brain injury, and cervical sprain/strain. He opined that, based on appellant's history and his physical examination to a reasonable degree of medical certainty, her physical injuries were the competent provocative cause of the impairment and total disability and causally related to the accident noted above. While Dr. Krishna provided affirmative opinions, which supported causal relationship, he did not offer a rationalized medical explanation in any of these reports to support his opinion. Medical evidence that provides a conclusion, but does not

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<sup>7</sup> See *C.E.*, Docket No. 19-1617 (issued June 3, 2020).

<sup>8</sup> 20 C.F.R. § 10.5(f); see *W.C.*, Docket No. 19-1740 (issued June 4, 2020); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>9</sup> *J.K.*, Docket No. 19-0488 (issued June 5, 2020); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>10</sup> See *L.L.*, Docket No. 19-1794 (issued October 2, 2020); *C.R.*, Docket No. 19-1427 (issued January 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>11</sup> *Id.*

offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>12</sup>

Similarly, on January 6, 2020 Dr. Krishna diagnosed traumatic brain injury and cervical sprain/strain. In summary, he opined that, based on the history and physical examination, appellant's physical injuries were directly caused by the September 20, 2019 incident. Dr. Krishna advised that appellant had no prior history of the above diagnoses and remained totally disabled from work. However, the Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.<sup>13</sup> For these reasons, the Board finds that Dr. Krishna's report are insufficient to meet appellant's burden of proof.<sup>14</sup>

The record also contains a September 28, 2019 x-ray of the right hand, CT of the brain, CT of the cervical and thoracic spine, and an October 15, 2019 MRI scan of the brain interpreted by Dr. Llussman. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in appellant's period of disability on specific dates.<sup>15</sup>

Appellant also submitted notes from hyperbaric oxygen therapy treatment on November 4, 11 and 25, 2019 signed by an oxygen therapist. The Board has held that medical reports signed solely by a physical therapist are of no probative value as such healthcare providers are not considered physicians as defined under FECA and are, therefore, not competent to provide medical opinions.<sup>16</sup>

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<sup>12</sup> *C.V.*, Docket No. 18-1106 (issued March 20, 2019); *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *A.D.*, 58 ECAB 149 (2006).

<sup>13</sup> *See F.H.*, Docket No. 18-1238 (issued January 18, 2019); *J.R.*, Docket No. 18-0206 (issued October 15, 2018).

<sup>14</sup> Additionally, Dr. Krishna did not offer medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's traumatic brain injury and cervical sprain/strain and the factors of her federal employment. *See P.L.*, Docket No. 19-1750 (issued March 26, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000) (where the Board has held that a mere conclusion without the necessary rationale as to whether a period of disability is due to an accepted employment condition is insufficient to meet a claimant's burden of proof). *See A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018). As such, this report is of limited probative value.

<sup>15</sup> *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

<sup>16</sup> Section 8101(2) provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* 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); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

Appellant did not provide medical evidence containing a rationalized opinion establishing that she was disabled from work from November 12 through 22, 2019 causally related to the September 20, 2019 employment injury. She, thus, has not met her burden of proof.<sup>17</sup>

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 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 period November 12 through 22, 2019.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 29, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>17</sup> *L.L.*, *supra* note 10; *E.M.*, Docket No. 18-0454 (issued February 20, 2020).