

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

K.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bellmawr, NJ, Employer**

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**Docket No. 13-972
Issued: July 25, 2013**

Appearances:

Mike Williams, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge

MICHAEL E. GROOM, Alternate Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 18, 2013 appellant, through her attorney, filed a timely appeal from the September 27 and December 20, 2012 merit decisions 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.

ISSUE

The issue is whether appellant sustained a head injury in the performance of duty on August 13, 2012.

FACTUAL HISTORY

On August 13, 2012 appellant, a 38-year-old postal supervisor, filed a claim for benefits, alleging a head injury when the motor vehicle she was driving was struck from behind by another vehicle. The accident occurred at 12:45 p.m.

¹ 5 U.S.C. § 8101 *et seq.*

By letter to appellant dated August 21, 2012, OWCP advised her that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive medical report from her treating physician describing her symptoms and a medical opinion explaining the cause of any diagnosed condition.

In an August 14, 2012 Underwood Memorial Hospital report, received by OWCP on September 7, 2012, Dr. Thomas P. Love, Board-certified in emergency medicine, noted that appellant had sustained trauma and a closed head injury as a result of her vehicle being struck from behind the day before. He stated that her physical and neurological examination was mostly normal. Appellant underwent a computerized axial tomography (CAT) scan of her head which showed normal results, with no hemorrhage, extra-axial collection, mass-effect and no area of abnormally increased or decreased attenuation in the brain.

By decision dated September 27, 2012, OWCP denied appellant's claim, finding that she failed to submit sufficient medical evidence in support of her claim that she sustained a head injury in the performance of duty.

By letter dated October 5, 2012, appellant requested reconsideration.

Appellant submitted hospital discharge instructions dated August 14, 2012, an August 14, 2012 primary report from the hospital and a police report.

By decision dated December 20, 2012, OWCP denied modification of the September 27, 2012 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing that 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁷ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

OWCP accepted that the August 13, 2012 motor vehicle incident occurred as alleged in the performance of duty. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.⁸ Appellant has not submitted sufficient, probative medical evidence to establish that the August 13, 2012 employment incident caused a personal injury.

Appellant submitted Dr. Love's August 14, 2012 hospital report, which stated findings on examination. Dr. Love noted that she sustained trauma and a closed head injury as a result of the August 13, 2012 vehicular accident. He listed a history that appellant transported herself to the hospital emergency room that day at approximately 2:30 p.m. Appellant had a normal physical and neurological examination and underwent a normal CAT scan of her head. Dr. Love did not provide a probative, medical opinion addressing whether the August 13, 2012 work incident caused a personal injury.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁹ Appellant did not provide a report from a physician which offered a firm medical diagnosis of her condition or addressed how her condition was causally related to the August 13, 2012 work incident. Dr. Love's August 14, 2012 report did not establish a head injury when her car was struck from behind on August 13, 2012. His report is of limited probative value.¹⁰ Dr. Love did not adequately describe appellant's accident other than noting that she advised that there was no vehicle damage and air bags did not deploy. There is, therefore, no rationalized evidence in the record that appellant's head injury was work related. Therefore, appellant failed to provide a medical report from a physician that explains how the work incident of August 13, 2012 caused or contributed to the claimed head injury.

⁶ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(e).

⁷ *Id.*

⁸ *Carlone, supra* note 5.

⁹ See *Anna C. Leanza*, 48 ECAB 115 (1996).

¹⁰ *William C. Thomas*, 45 ECAB 591 (1994).

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the August 13, 2012 work accident would have caused the claimed injury. Accordingly, she did not establish that she sustained a head injury in the performance of duty.

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.

On appeal appellant contends that her medical bills should be reimbursed by OWCP. The Board notes that the record does not establish that a Form CA-16 was issued by the employing establishment, which would have created a contractual agreement for payment of emergency medical care. Given the circumstances of this case, that appellant's vehicle was involved in a collision at 12:45 p.m. on August 13, 2012 and she was treated at Underwood Memorial Hospital on August 14, 2012. Upon return of the case record, OWCP shall determine whether appellant's medical treatment on August 14, 2012 should be authorized pursuant to 20 C.F.R. § 10.304, which states that in cases involving emergencies or unusual circumstances, OWCP may authorize treatment in a manner other than by Form CA-16.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a head injury in the performance of duty on August 13, 2012.

ORDER

IT IS HEREBY ORDERED THAT the December 20 and September 27, 2012 decisions of the Office of Workers' Compensation Programs are affirmed in part and remanded in part.

Issued: July 25, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board