

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

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**M.F., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Brooklyn, NY, Employer**

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**Docket No. 14-597  
Issued: June 20, 2014**

*Appearances:*

*Paul Kalker, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge

MICHAEL E. GROOM, Alternate Judge

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 16, 2014 appellant, through her attorney, filed a timely appeal from the December 9, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury on March 8, 2012.

**FACTUAL HISTORY**

On April 9, 2012 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim alleging that on March 8, 2012 she sustained a head injury when she bent down to pick up a

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

package from the floor of her truck and bumped her head on a shelf when she stood up. She stopped work on March 13, 2012. In an undated note, appellant advised her supervisor, Acting Manager Carl Davis, that she was unable to come to the station because of medical reasons.

The employing establishment controverted the claim. In the supervisor's report on appellant's claim form, Mr. Davis noted that it was unknown if appellant was in the performance of duty at the time of the injury as she did not report the accident until April 13, 2012 and no investigation was done. In an April 13, 2012 statement, Mr. Davis stated that on April 13, 2012 appellant had filed a claim for a March 8, 2012 injury but had never reported the accident to management. He noted that she had called in sick on March 13, 2012 and then had surgery on her head. When appellant was discharged from the hospital she submitted documentation that stated only that she was under medical care. It was only after she went back into the hospital on March 27, 2012 that she wanted to file a Form CA-1. On March 30, 2012 the union had submitted a grievance investigation requesting various forms and that this was the first time that management was aware that appellant was claiming an on-the-job injury.

Appellant submitted an undated statement reiterating the history of injury as occurring "approximately on March 8, 2012." In a March 22, 2012 note from the Department of Neurosurgery of Kings County Hospital Center, a Dr. Tsai stated that appellant could not return to work for at least one month. In an April 5, 2012 note, a physician with an illegible signature stated that a few weeks prior to surgery appellant was at work handling send boxes and bent down to pick up a package and on her way up she hit her head on a metal shelf. The physician opined that her subdural hematoma could have been as a result of trauma to the head.

On June 25, 2012 appellant filed a claim for wage loss from May 5, 2012 and continuing.

By letter dated July 2, 2012, OWCP advised appellant that when her claim was initially received a payment of a limited amount of medical expenses was administratively approved as the injury appeared to be minor and resulted in minimal or no lost time from work. Further, the employing establishment did not challenge the merits of the case or controvert continuation of pay. It advised appellant that her claim had been reopened as she filed a wage-loss claim and the employing establishment controverted the claim. OWCP advised her that the documentation received was insufficient to support her claim and to submit additional factual and medical evidence. It requested that appellant respond to the questions regarding the alleged incident and to provide witness statements or any other documentation to support her claim as well as an explanation as to why she delayed reporting the claimed employment incident and whether she had any similar disability or symptoms prior to March 8, 2012. OWCP also requested that she submit a physician's reasoned opinion addressing the causal relationship of her subdural hematoma. Appellant was provided 30 days to submit the requested information. No additional evidence was received.

By decision dated August 10, 2012, OWCP denied appellant's claim. It found that the alleged incident of March 8, 2012 occurred as alleged but the medical evidence did not establish that her subdural hematoma was caused by the accepted work incident.

On October 1, 2012 OWCP received an undated request for reconsideration. In a September 18, 2012 report, Dr. Renan Macias, a Board-certified anesthesiologist, stated that he

performed a comprehensive neurologic examination of appellant on July 26, 2012 for persistent frontal-occipital headaches, greater on the right side; dizziness; nausea; swelling; and tenderness of the right frontal area. Appellant was asymptomatic for the aforementioned symptoms until March 8, 2012 when she was injured at work about 12:30 p.m. at a specific address in Brooklyn, NY. Dr. Macias stated that appellant was working inside a postal truck, bent down to pick up a package from the floor of the truck and bumped her head against a metal shelf when she stood up. Appellant became dazed, developed severe pounding headaches, dizziness and nausea. Because of persistent headaches, she went to Kings County Hospital Center in Brooklyn two days later, where she was diagnosed with a right side subdural hematoma and admitted for surgical treatment. Dr. Macias stated that days later, while in the hospital, appellant developed another subdural hematoma on the left side of the brain, which required surgery to remove the blood collection. He diagnosed post-traumatic headaches (cephalgia), dizziness, nausea, late effect of injury of the head and abnormal electroencephalogram (EEG). Dr. Macias opined that the subjective and objective findings described resulted in serious limitations to appellant's intellectual, effectual and general physical functioning and that the stated diagnoses were causally related to the March 8, 2012 accident.

By decision dated December 14, 2012, OWCP modified the August 10, 2012 decision to find that the March 8, 2012 incident was not established. It found that the evidence of record cast doubt upon appellant's claim due to a lack of notification of her injury. OWCP noted that appellant was provided the opportunity to clarify the factual deficiencies in her claim, but did not respond.

On September 11, 2013 OWCP received a September 5, 2013 request for reconsideration from appellant's attorney. Counsel contended that appellant's narrative statement of the claimed incident clearly identified the employment factor that caused the claimed injury and that her explanation of the relationship between her injury and the claimed incident was reasonable and credible.

In a June 17, 2013 report, Dr. Macias listed the history of an accident at work on March 8, 2012 when appellant bent down to pick up a parcel from the floor of the truck and bumped her head against a metal shelf. Appellant became dazed, felt dizzy but continued working. She subsequently developed severe, throbbing headaches with dizziness, blurred vision, nausea and insomnia. Because of persistent headaches, appellant went to the emergency room where it was determined that she had a subdural hematoma on the right side and she had surgery. While in the hospital, she developed severe headaches again and had surgery to remove a left side subdural hematoma. Dr. Macias indicated that appellant was employed but unable to work since the accident due to severe, frequent headaches, insomnia and forgetfulness. He noted examination findings and diagnosed right subdural hematoma removal; left subdural hematoma removal; contusion of the face and right eye orbit; late effect of injury of the head; post-traumatic headaches, dizziness, forgetfulness; post-traumatic memory impairment; post-traumatic sleep disorder; partial epilepsy with memory and ideational disturbances; abnormal EEG. Dr. Macias noted that severe closed-head injuries can cause subdural hematoma-type that appellant developed three to four days after she bumped her head. He provided a definition of subdural hematoma and explained that, with lateral forces, contusion may occur at the site of the blow to the head or at the opposite side as the brain impacts on the inner table of the skull and explains why she developed another subdural hematoma on the opposite side. Dr. Macias opined that the

subjective and objective findings resulted in serious limitations of appellant's intellectual, effectual and general physical functioning and are causally related to the March 8, 2012 accident. He further opined that she was totally disabled and has severe pounding headaches, sleep disorder, poor mental concentration, fainting like episodes, abnormal EEG compatible with seizure activity that requires medical treatment. A copy of the July 31, 2012 EEG was provided.

By decision dated December 9, 2013, OWCP denied modification of its prior decision finding inconsistencies in the factual and medical evidence which cast doubt upon the validity of her claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing 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 filed within the applicable time limitation 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 is causally related to the employment injury. 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.<sup>2</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>3</sup>

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>4</sup> Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>5</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical

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<sup>2</sup> Gary J. Watling, 52 ECAB 357 (2001).

<sup>3</sup> T.H., 59 ECAB 388 (2008).

<sup>4</sup> R.T., Docket No. 08-408 (issued December 16, 2008); Gregory J. Reser, 57 ECAB 277 (2005).

<sup>5</sup> Betty J. Smith, 54 ECAB 174 (2002).

background, 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.<sup>6</sup>

### ANALYSIS

OWCP denied appellant's claim on the grounds that she failed to establish that the March 8, 2012 incident occurred as alleged. Appellant alleged that on March 8, 2012 she bumped her head against the metal shelf when she stood up after bending down to pick up a package from the floor of the delivery truck. The record indicates, without verification as to the dates or hospital records, that appellant was admitted to a hospital two days later for a right-sided subdural hematoma. She underwent surgery for a left-sided subdural hematoma. The Board finds that the evidence of record contains numerous inconsistencies that cast serious doubt upon the validity of the claim.

On April 9, 2012 appellant filed a claim for an employment incident which occurred on March 8, 2012. However, the employing establishment was not made aware of such incident until March 30, 2012. On April 13, 2012 Mr. Davis noted that appellant did not report the March 8, 2012 incident to management until March 30, 2012. He noted that appellant had called in sick on March 13, 2012 and then had surgery on her head. Mr. Davis stated that appellant went back to the hospital on March 27, 2012 and filed a Form CA-1. Due to her delay in reporting the incident and the employing establishment's controversion of the claim OWCP requested that appellant provide additional factual information. However, she did not respond. Because of the nature of the injury in this case, subdural hematoma, it is necessary for her to provide an explanation as to why she delayed reporting the claimed employment incident of March 8, 2012 to the employing establishment, whether she sustained any other injuries between the date of the claimed injury and the date it was first reported to your supervisor and to a physician, and whether she had any similar disability or symptoms prior to March 8, 2012. These factual deficiencies must be clarified before it can be accepted that the claimed employment incident of March 8, 2012 occurred and caused or contributed to appellant's subdural hematomas.

Furthermore, the medical evidence contains several inconsistencies that require clarification by appellant and her physician. As noted, the hospital records have not been provided in this case to ascertain when appellant underwent subdural hematoma surgery and the history of injury related in the emergency room. The March 22, 2012 medical report failed to diagnose any medical condition or refer to the claimed employment incident of March 8, 2012. In the April 5, 2012 report, the physician listed a history of injury as a few weeks prior to surgery, appellant had bent down to pick up a package and on her way up had hit her head on a metal shelf. However, the physician did not provide the date of the claimed employment incident. Further, he gave an equivocal opinion that subdural hematoma "could have been due"

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<sup>6</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

to the trauma to the head without providing sufficient medical rationale.<sup>7</sup> These reports are insufficient to establish appellant's claim.

The medical evidence from Dr. Macias dated September 18, 2012 and June 17, 2013 contains several discrepancies that cast serious doubt on the validity of the claim. Dr. Macias first started treating appellant on July 26, 2012, more than four months after the alleged employment incident of March 8, 2012. In his September 18, 2012 report, he indicated that appellant was injured at work on March 8, 2012 about 12:30 p.m. at a specific address in Brooklyn, NY. Dr. Macias noted the history of injury as appellant bent down to pick up a package from the floor of the postal truck and bumped her head against the metal shelf when she stood up. He indicated that she became dazed, developed severe pounding headaches, dizziness, nausea feelings and, because of persistent headaches she went to Kings County Hospital Center in Brooklyn two days later, where she was diagnosed with a right side subdural hematoma and immediately admitted for surgical removal of the subdural hematoma. Dr. Macias stated that days later, while in the hospital, appellant developed another subdural hematoma on the left side of the brain, which required another surgery to remove the blood collection.

While Dr. Macias indicated that appellant was admitted to the hospital two days after the injury for a right side subdural hematoma, Mr. Davis, appellant's supervisor, had noted that appellant had called in sick on March 13, 2012 and then had surgery on her head. This is longer than two days. While Dr. Macias diagnosed several conditions which he opined were causally related to the March 8, 2012 accident, he provided no medical rationale. In his June 17, 2013 report, he again reported the history of injury as being at work on March 8, 2012 when appellant bent down to pick up a parcel from the floor of the truck and bumped her head against a metal shelf and became dazed, felt dizzy, but continued working. Dr. Macias indicated that later on appellant developed severe, throbbing headaches with dizziness, blurred vision, nausea, insomnia and, because of persistent headaches, she went to the emergency room where it was determined she had a subdural hematoma on the right side and she had surgery to evacuate a right subdural hematoma. While in the hospital, appellant developed severe headaches again and had surgery to remove a left side subdural hematoma. Dr. Macias indicated that severe closed-head injuries can cause subdural hematoma-type that appellant developed three to four days after she bumped her head. This contradicts his earlier report in which he indicated that appellant was hospitalized two days after the alleged employment incident. Additionally, Dr. Macias indicated that appellant developed the left-sided subdural hematoma due to lateral forces. However, appellant indicated that she bumped her head against a metal shelf as she was standing up. Therefore, it is unclear how her head was struck with "lateral forces." Furthermore, according to Dr. Macias, appellant developed severe symptoms immediately after the claimed injury and went to the hospital two days later. It is unclear why she delayed reporting the claimed injury to the employing establishment when she developed severe symptoms after the claimed injury. Furthermore, although Dr. Macias opined that serious limitations of appellant's intellectual, effectual and general physical functioning are causally related to the March 8, 2012 accident and she was totally disabled, he did not provide a well-reasoned medical explanation as to how bumping her head against the metal shelf when standing up caused the right-sided subdural

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<sup>7</sup> Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

hematoma. He offered an explanation that the left side subdural hematoma occurred due to lateral forces. However, there is no indication that lateral forces were involved. The July 31, 2012 EEG has no relevance to establishing the factual portion of appellant's claim.

Counsel argues that the evidence established fact of injury and causal relationship. As noted, the inconsistencies and late notification of injury in this case cast serious doubt upon the validity of the claim.

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 that she sustained a traumatic injury to her head.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

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

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