

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARILYN K. JAMES and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Jackson, Miss.

*Docket No. 97-1216; Submitted on the Record;
Issued December 21, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an injury on August 7, 1996 in the performance of duty, causally related to factors of her federal employment.

On August 7, 1996 appellant, then a 40-year-old tax examiner, filed a claim alleging that as she was sitting in a chair in a group meeting a cabinet door fell, hitting her on the top of her head. A witness confirmed appellant's allegations, explaining that as appellant was sitting by the cabinet, the door fell on top of her head. The witness stated that thereafter appellant grabbed her head and a minute or so later had double vision. Appellant, however, did not seek medical treatment until August 9, 1996.

By letter dated August 26, 1996, the Office of Workers' Compensation Programs requested further information, including the submission of a medical report from the physician treating appellant for this injury, which contained a diagnosis, clinical findings and a rationalized opinion supporting causal relation.

In response appellant submitted a patient information sheet regarding a computerized tomography (CT) scan with contrast that she was scheduled to undergo on August 12, 1996 for "dizziness," an August 12, 1996 hospital admission agreement, a hospital bill, a radiologist's bill, an otolaryngology group bill, her treating physician's bill, an audiogram and a September 9, 1996 treatment note from Dr. Mickey P. Wallace, a Board-certified otolaryngologist. Dr. Wallace noted that appellant got hit at work on the vertex of her head by a file cabinet door while sitting down on August 7, 1996 and now complained of ringing in her ears. He noted that at that time she experienced no loss of consciousness but had dizziness early on which gradually improved, and that she still had occasional headaches, approximately two per week in the occipital region. Dr. Wallace diagnosed "'? dysequilibrium; ?post-traumatic?'"

By decision dated October 1, 1996, the Office rejected appellant's claim finding that she failed to establish that an injury was sustained as alleged. The Office found that a medical

condition resulting from the accepted trauma was not supported by the medical evidence of record.

By letter dated October 22, 1996, appellant requested a reconsideration and in support she submitted several medical reports. Appellant submitted an August 9, 1996 clinic note from Dr. Granger which noted as history that appellant was seen with a two-day history of headache and dizziness, that two days ago while at work a broken steel cabinet section fell over and hit her on the posterior occipital portion of her head, that one to two hours after the incident she felt slightly dazed and went home, and that after sleeping for four hours she awoke still somewhat dazed. Dr. Granger noted that appellant had a slight headache described as frontal temporal, and complained of a sensation as her ears feeling full with hearing distortion. He noted that appellant reported that over the preceding 48 hours she had a vague dizziness and unsteadiness-like sensation. Dr. Granger diagnosed: "Headache probably post-traumatic in origin but consider other causes; dizziness rule/out changes secondary to head trauma as well as; rule/out other causes; status post head trauma; [and] possible serous otitis media."

In an August 19, 1996 note, Dr. Granger noted that appellant was seen August 9, 1996 for evaluation of "dizziness-headache after being hit on [the] head by a steel cabinet door at work." He indicated that she was felt to have "headache, largely post-traumatic in origin and (she was) placed on nonsteroidals, muscle relaxants, and appropriate analgesics." He noted that a subsequent CT scan of the head was negative.

An August 30, 1996 medical progress note indicated that appellant was seen complaining of a persistent throbbing "big" sensation of the head area which improved 60 percent after she took prescription analgesics. Dr. Granger noted that appellant's cranial nerves were functionally intact, and he diagnosed "[h]eadache probably post-traumatic; ear fullness rule/out other causes."

In an October 2, 1996 medical progress note, Dr. Wallace noted that appellant was still complaining of ringing in her ears, that her hearing fluctuated, and that her dizziness was better, and he diagnosed fluctuating hearing loss and "?cochlear hydrops, post-traumatic."

An October 3, 1996 medical progress note from a physician with an illegible signature stated that appellant reported that she was having less frequent headaches of approximately two episodes per week but stated that they were unchanged in severity. This physician diagnosed "headaches - better - felt post-traumatic in origin, [and] Meniere's disease."

By decision dated December 9, 1996, the Office denied modification of the prior decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that none of the medical evidence submitted established a cause and effect relationship of appellant's condition to the incident, and that the diagnoses were speculative, and it argued the fact that the physicians did further testing to rule/out other things demonstrated that they were not sure of the causal relationship.

The Board finds that this case is not in posture for decision.

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish

entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹ In the instant case, although none of appellant's treating physicians' reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that she sustained a discreet, identifiable injury as a result of being struck in the head by a steel door on August 7, 1996, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of fact of injury as a result of appellant's traumatic incident involving her head, that is sufficient to require further development of the case record by the Office.² Additionally, there is no opposing medical evidence in the record.

Therefore, the case must be remanded for a compilation of a statement of accepted facts and the referral of appellant, together with the complete case record and specific questions to be resolved, to an appropriate neurological specialist, for his opinion on whether appellant sustained an injury as a result of being struck on the head by a steel door on August 7, 1996.

Consequently, the decisions of the Office of Workers' Compensation Programs dated December 9 and October 1, 1996 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.
December 21, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹ *William J. Cantrell*, 34 ECAB 1223 (1983).

² *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978); *see also Cheryl A. Monnell*, 40 ECAB 545 (1989); *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).