

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

W.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

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**Docket No. 12-245
Issued: May 25, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 14, 2011 appellant filed a timely appeal from July 27 and November 1, 2011 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 the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on April 5, 2010.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 23, 2010 appellant, then a 48-year-old mail carrier, filed a traumatic injury claim alleging that she sustained headaches after her forehead was hit by the rear hatch door of a postal minivan on April 5, 2010. She retired effective October 1, 2010.²

OWCP informed appellant in a December 7, 2010 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a medical report from a physician explaining how the April 5, 2010 work event caused or contributed to a diagnosed condition.

Appellant submitted a September 20, 2010 report from Dr. David A. Thompson, a Board-certified neurologist, who related that she sustained a head injury on April 5, 2010 when the door of her vehicle struck her forehead. Sometime in August 2010, she developed frontal headaches that she “feels are work related.” Appellant did not have a preexisting condition. On examination, Dr. Thompson observed tenderness of the frontal scalp and face. He diagnosed craniofacial head trauma with benign secondary headaches.

By decision dated February 10, 2011, OWCP denied appellant’s claim, finding the medical evidence insufficient to demonstrate that the accepted April 5, 2010 employment incident was causally related to her headaches.³

Appellant requested a telephonic hearing, which was held on May 31, 2011. She testified that she first experienced severe headaches in August 2010, which became more manageable with pain medication. Between April and August 2010, appellant complained of only forehead “softness.”

On July 27, 2011 OWCP’s hearing representative affirmed the February 10, 2011 decision.

Appellant requested reconsideration on August 4, 2011 and provided new evidence. In a March 23, 2011 report, Dr. Irina Chilian, a Board-certified neurologist, noted that a minivan door struck appellant’s forehead sometime in April 2010. Appellant thereafter experienced excruciating localized headaches in the middle of her forehead that she asserts were “directly related to her trauma.” A physical examination was unremarkable while a review of a September 2010 x-ray did not exhibit any abnormalities. Dr. Chilian diagnosed “[a]lleged excruciating daily headaches,” pointing out the “obvious discrepancy between the intensity of alleged pain ... and [a] normal exam[ination] with no signs of any physical discomfort.” She also questioned the localized distribution of pain. Dr. Chilian concluded that appellant may have “either prominent somatization disorder or [is] in pursuit of secondary gains.”

On November 1, 2011 OWCP denied modification of the July 27, 2011 decision.

² The case record indicates that appellant elected disability retirement.

³ OWCP pointed out that the claim was originally received as a simple, uncontroverted case resulting in minimal or no lost time from work and payment was approved for limited medical expenses without formal adjudication.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,⁴ including that she is an “employee” within the meaning of FECA and that she filed her claim within the applicable time limitation.⁵ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁶

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 she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical 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.⁸

ANALYSIS

While the case record supports that appellant’s forehead was hit by the rear hatch door of a postal minivan on April 5, 2010, the Board finds that she did not establish her traumatic injury claim because the medical evidence did not sufficiently establish that this accepted employment incident caused or contributed to her headaches.

Dr. Thompson’s September 20, 2010 report obtained appellant’s account of the April 5, 2010 employment incident and diagnosed craniofacial head trauma with benign secondary headaches. However, he appears to be merely relating her belief that these frontal headaches resulted from her work.⁹ To the extent that this represents his own opinion on causal

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁵ *R.C.*, 59 ECAB 427 (2008).

⁶ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *T.H.*, 59 ECAB 388 (2008).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *See P.K.*, Docket No. 08-2551 (issued June 2, 2009) (an award of compensation may not be based on a claimant’s belief of causal relationship).

relationship, Dr. Thompson did not explain how the April 5, 2010 employment incident caused or contributed to appellant's headaches.¹⁰ Furthermore, in a March 23, 2011 report, Dr. Chilian noted that appellant felt her headaches were due to the April 2010 work incident but found that the reported condition was inconsistent with normal physical examination and x-ray results. She opined that appellant might have a somatization disorder or is seeking secondary gain. Thus, Dr. Chilian's report is insufficient to establish the claim. In the absence of rationalized medical opinion evidence explaining how the April 5, 2010 incident caused or aggravated a diagnosed medical condition, appellant failed to meet her burden of proof.

Appellant may submit new evidence or argument as part of a formal 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 establish that she sustained a traumatic injury in the performance of duty on April 5, 2010.

ORDER

IT IS HEREBY ORDERED THAT the November 1 and July 27, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 25, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).