

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LINDA L. WHITE and U.S. POSTAL SERVICE,  
POST OFFICE, Spokane, WA

*Docket No. 97-2208; Submitted on the Record;  
Issued January 7, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant sustained a head injury on April 20, 1995, as alleged.

On April 20, 1995 appellant, a letter carrier, sustained an injury while in the performance of her duties when a dog attacked her. The Office of Workers' Compensation Programs accepted her claim for lacerations to both forearms and right second finger, cervical strain and pain disorder.

On September 6, 1995 Dr. Jon M. Tippin, appellant's consulting neurologist, reported that appellant fell backward during the dog attack and struck the occiput and shoulder area. He noted that appellant suffered persistent neck and shoulder pain and headaches ever since. Dr. Tippin diagnosed post-traumatic myofascial cervical and shoulder girdle pain, muscle contraction headaches and post-traumatic migraine.

On March 6, 1996 Dr. D. Todd Wylie, a consulting optometrist, noted that appellant had reported a constant headache and migraines approximately four times a month. Appellant complained that reading was extremely difficult now and that she must stop after a few minutes. She stated that she would frequently lose her place and reread very slowly with poor comprehension. Appellant complained of anxiety and headaches while driving and reported that her contacts did not feel as good as they used to. Dr. Wylie diagnosed well-corrected myopia, headaches, convergence excess, accommodative dysfunction and mild visual field defect. He stated that the performance visual field was a helpful tool in evaluating other patients with head trauma. Dr. Wylie noted that appellant's left eye was normal but that her right eye was somewhat restricted, leading him to believe that the reduction in peripheral sensitivity in the right eye alone was likely due to the trauma and pain appellant experienced to her head and neck.

On March 26, 1996 Dr. Tippin reported that he had been seeing appellant for headaches but that she also had increasing difficulty with her vision. He stated that appellant did not start noticing her visual loss until November or December and that an examination in September was normal. Noting that Dr. Wylie had attributed this to trauma, Dr. Tippin stated that this would be difficult to explain, given the latency of onset. Instead, he reported that appellant's primarily monocular complaints would suggest an optic nerve lesion. Dr. Tippin suggested further studies.

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Scott V. Linder, an orthopedic surgeon, and Dr. Richard E. Marks, a neurologist, for a second opinion. In a report dated April 25, 1996, Drs. Linder and Marks related appellant's complaints, history, symptoms and findings on examination. They diagnosed multiple superficial dog bites of both arms, healed, related to the industrial accident of April 20, 1996; cervical and shoulder straining syndrome, resolved, related to the industrial accident of April 20, 1996; vascular headaches, unrelated, visual disturbances, unrelated; and history of attention, memory and cognitive functioning deficits, unrelated. Drs. Linder and Marks reported that they were unable to draw any relationship between appellant's headaches or stated visual disturbances and the accident of April 20, 1995. The physicians further reported that they were unable to draw any relationship between her stated deficits of attention and the accident. They noted that there was no period of unconsciousness: "While she may have bumped her head in the fall, there was no indication of any significant head injury."

On June 10, 1996 appellant's attending physician, Dr. Paula A. Lantsberger, a specialist in occupational medicine, reported that she did not agree with Drs. Linder and Marks. She explained: "They had denied the relationship of the headaches to the accident of April 20, 1996, however, they indicated cervical and shoulder strain syndrome related to her industrial accident of April 20, 1996. It is not uncommon for persons with cervical and shoulder complaints to have repeated headaches and, particularly, in the frequency with which she is having them."

On February 19, 1997 Dr. Wylie reported that whenever appellant used her eyes for reading or sewing it quickly led to a headache that often turned into a migraine. He reported that she still appeared to have some headaches related to imbalances in her visual systems. In May, Dr. Wylie stated, appellant was having considerable difficulty with eye teaming skills as well as some suppression of right eye vision. "These are visual disorders that are quite consistent with head injuries," he reported.

On April 14, 1997 the Office requested additional information from Drs. Tippin and Wylie. The Office advised Dr. Tippin that medical records contemporaneous to the injury did not mention that appellant hit her shoulder or head; they indicated that appellant was knocked down and landed on her right hip. The Office asked Dr. Tippin whether, given this information, any of his diagnoses was related to the injury of April 20, 1995. The Office asked Dr. Wylie to provide medical reasons for relating appellant's peripheral awareness on the right to the incident of April 20, 1995 and to

include in his discussion the lack of complaints for seven to eight months following the dog attack and Dr. Tippin's normal examination in September 1995.

Dr. Tippin replied on May 19, 1997 that when appellant initially saw him on September 6, 1995 she related that she fell backward, striking the ground with the back of her head and feeling that she had suffered a type of whiplash injury to her neck. He stated the diagnosis of post-traumatic myofascial pain was based on the history as related by appellant and that he could only assume that her statements were accurate and truthful. Also, Dr. Tippin stated, the pattern of headaches fulfilled criteria for chronic tension-type and migraine headaches. He stated that these type of headaches were not uncommon following the type of injury that appellant had. Dr. Tippin further explained that the pathophysiology for muscle contraction, tension-type headaches were probably due to the initial muscle stretching and pulling in the neck, although perpetuation of these headaches probably was related in part to neurophysiologic changes occurring within the central nervous system.

Dr. Wylie replied on April 29, 1997 that appellant's visual field finding and her medical history after the accident of difficulty reading, processing what she reads, losing her place, rereading, constant headache and dry eyes were all consistent with histories of other closed head injuries. He stated that he was not sure how to comment a great deal on the lack of complaints for seven or eight months other than to note that appellant had related that she was experiencing more migraine headaches approximately four times a month since August. Appellant also advised that she had been aware of changes in her vision since the concussion approximately 10 months before February 29, 1996. Regarding Dr. Tippin's normal examination, Dr. Wylie reported that he was not aware of neurologists doing near point visual field testing or checking for convergence excess or suppression of binocular vision during near point testing.

In a decision dated May 30, 1997, the Office found that evidence of record failed to establish a medical connection between the employment incident of April 20, 1995 and appellant's headaches and unequal peripheral awareness.

The Board finds that the evidence of record fails to establish that appellant sustained a head injury on April 20, 1995, as alleged.

A person who claims benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing by a preponderance of the reliable, probative and substantial evidence the essential elements of her claim, including the fact that she sustained an injury at the time, place and in the manner alleged.<sup>2</sup> To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Henry W.B. Stanford*, 36 ECAB 160 (1984); *Samuel L. Licker*, 4 ECAB 458 (1951).

established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>3</sup>

The evidence contemporaneous to the dog attack of April 20, 1995 makes no mention of appellant striking her head upon the ground. Appellant's narrative statement describing the incident and the history she gave to early medical care providers indicate that the dog knocked her to the ground, that she landed on her right side and that the dog dragged her in a circle. An emergency room record noted an abrasion on appellant's right thigh. An emergency center evaluation dated April 20, 1995 indicated that appellant was dragged down onto the ground sustaining an abrasion to the right upper posterior leg and also the right knee. On May 1, 1995 a physical therapist noted that appellant complained of neck stiffness and right hip pain "from when I fell down when the dog attacked me." On May 11, 1995 appellant's attending physician, Dr. Lantsberger, reported that appellant's neck was particularly stiff and sore, that appellant did land on her right hip and that she had a severe bruise on the right hip. On June 8, 1995 Dr. Lantsberger reported that appellant's discomfort had "settled into being headaches, neck pain as well as the previous right knee discomfort."

Dr. Tippin was the first to report, on September 6, 1995, that appellant fell backward, striking the occiput and shoulder area. Appellant then related on November 2, 1995 that when she fell she forcefully bumped her head on the ground.

Appellant's failure to report to early medical care providers a history of striking her head, the absence of any contemporaneous head complaints, the absence of relevant contemporaneous clinical findings or treatment, appellant's failure to account for such circumstances. All of these apparent inconsistencies cast sufficient doubt on appellant's claim that the Board finds that appellant has not met her burden of proof to establish that she struck her head on April 20, 1995, as alleged. The Board will therefore affirm the Office's May 30, 1997 decision on this issue.

The Board also finds, however, that further development of the medical evidence is warranted on the issue of whether the accepted employment injury caused or contributed to at least some of appellant's headaches. There is a conflict in medical opinion necessitating referral to an impartial medical specialist under 5 U.S.C. § 8123(a).

Drs. Linder and Marks were unable to draw any relationship between appellant's headaches and the employment injury of April 20, 1995. Dr. Lantsberger, expressly disagreed, explaining that it was not uncommon for persons with cervical and shoulder complaints to have repeated headaches, particularly in the frequency with which appellant was having them. Further, Dr. Tippin, reported on May 19, 1997 that the

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<sup>3</sup> *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

pattern of appellant's headaches fulfilled criteria for chronic tension-type and migraine headaches. He stated that these type of headaches were not uncommon following the type of injury that appellant had. Dr. Tippin further explained that the pathophysiology for muscle contraction, tension-type headaches was probably due to the initial muscle stretching and pulling in the neck.

The Board notes that the conflict between Drs. Linder and Marks, on the one side and Drs. Lantsberger and Tippin, on the other, is not premised on a history of appellant's striking her head on the ground on April 20, 1995.<sup>4</sup> The conflict concerns whether the accepted employment injuries, including cervical strain, caused or contributed to muscle contraction, tension-type headaches or to migraines.

Section 8123(a) of the Act provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."<sup>5</sup>

To resolve the conflict in opinion between appellant's attending physician and the Office referral physicians, the Office shall refer appellant, together with the medical record and a statement of accepted facts, to an appropriate impartial specialist for an opinion on whether the accepted employment injuries caused or contributed to appellant's subsequent headaches. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on this aspect of appellant's claim.

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<sup>4</sup> In contrast, Dr. Wylie's opinion supporting a causal relationship between appellant's visual difficulties and the April 20, 1995 employment injury is premised on a history of appellant's striking her head on the ground. As this history is not established by the evidence of record, Dr. Wylie's opinion is of little probative value and is insufficient to create a conflict in medical opinion under 5 U.S.C. § 8123(a); see *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete); see generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

<sup>5</sup> 5 U.S.C. § 8123(a).

The May 30, 1997 decision of the Office of Workers' Compensation Programs is affirmed insofar as it found that the evidence failed to establish that appellant struck her head on April 20, 1995, as alleged and is set aside insofar as it found that appellant has not met her burden of proof to establish a causal relationship between the employment injury of April 20, 1995 and her subsequent headaches. The case is remanded for further action consistent with this opinion.

Dated, Washington, D.C.  
January 7, 2000

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member