United States Department of Labor
Employees' Compensation Appeals Board

W.T., Appellant	)	
and	)	**Docket No. 07-2191**
	)	**Issued: March 5, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 24, 2007 appellant filed a timely appeal from the August 10, 2007 merit decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the denial of his claim for compensation. Pursuant to 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 has established that he sustained an injury in the performance of duty on December 3, 2006.

FACTUAL HISTORY

On December 6, 2006 appellant, then a 56-year-old custodian, filed a Form CA-1, traumatic injury claim, alleging that on December 3, 2006 he was sweeping the parking lot at the employing establishment when a horn blew behind him, causing dizziness. He did not stop work. Appellant first sought medical care for his dizziness on December 5, 2006. No additional evidence was submitted.

In a December 19, 2005 letter, the Office advised appellant that additional information was required, including a diagnosis of his condition and a comprehensive medical report from a physician which described the history of injury, a detailed description of findings, the results of all x-ray and laboratory tests, and a rationalized opinion on the causal relationship between the diagnosed condition and the reported work incident of December 3, 2006. He was accorded 30 days in which to provide the requested information. No additional information was received.

By decision dated January 25, 2007, the Office denied the claim. It found that, while the claimed incident occurred as alleged, no medical evidence was provided which contained a diagnosis that could be connected to the accepted event.

The Office subsequently received medical evidence. In a January 16, 2007 report, Dr. Elena K. Norch, a Board-certified internist, advised that she first saw appellant in December 2006 for complaints of dizziness which she diagnosed as possible benign positional vertigo. She noted that, when appellant got home, he remembered that his dizziness started when a horn was blown right behind him at work. As appellant's symptoms persisted, Dr. Norch sent him for vestibular physical therapy. She listed an impression of disequilibrium and difficulty hearing and opined that his symptoms may be secondary to a horn that was blown from a large truck.

In a January 23, 2007 report, Dr. Kent L. Ramsey, a Board-certified otolaryngologist, noted that appellant first became dizzy on December 6, 2006 after hearing a horn behind him at work. Appellant's glucose level was negative for diabetes. Dr. Ramsey performed various tests, including a tympanogram, positional nystagmus, and comprehensive audiometry and speech recognition evaluation. He opined that appellant had a positive Hallpike test indicative of benign positional vertigo.

On February 1, 2007 appellant requested a telephonic hearing, which was held on May 11, 2007. He testified that he was on top of a large sweeper machine in the parking lot of the main post office when a contract driver came up behind him and blew his air horn as a tease. Appellant stated that the noise scared him, causing him to jump and jerk. He stated that the driver was reprimanded by the supervisor for doing this. Later that night, appellant had a terrible spinning sensation in his head which he thought might be a diabetic reaction. He saw his physician the next day and diabetes was not an issue. Appellant told his physician about the loud noise and was referred to Dr. Ramsey, an ear specialist, who found a little bone chip resting on a nerve tendon to his brain and he underwent a special procedure to flush the bone into the canal. He stated that, although the bone chip was still there, he had no further problems and he did not have any hearing loss. Appellant did not have a significant loss of pay or medical expense in connection with this claim.

Appellant submitted a December 6, 2006 statement describing the events surrounding the alleged injury. In a May 30, 2007 report, Dr. Ramsey advised that appellant was treated for benign positional vertigo, which he acquired immediately after being exposed to a loud noise at his workplace. He stated that benign positional vertigo was an inner ear disorder usually caused by head trauma but could also occur spontaneously. Dr. Ramsey stated that, while it was unusual to see a case like this after being exposed to a loud noise, it was possible that exposure to

a loud noise could have caused the condition. He explained that this fit with appellant's history as his symptoms began immediately after the loud noise exposure.

By decision dated August 10, 2007, the Office hearing representative affirmed the denial of the claim on the basis that the medical evidence did not establish that appellant sustained an injury causally related to the accepted work incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while 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.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[4] In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[7]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[8] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[4] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *Gary J. Watling*, 52 ECAB 278 (2001).

[6] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[7] *Gary J. Watling*, *supra* note 5.

[8] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[9] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10]

ANALYSIS

It is not contested that the December 3, 2006 incident occurred as alleged. There is no evidence to contradict that a horn blew behind appellant while he was on a machine, sweeping the parking lot at work. He, however, failed to meet his burden of proof to establish that he sustained an injury caused by this incident. The Board finds that the medical evidence is insufficient to establish that he sustained a medical condition causally related to the December 3, 2006 employment incident.

The reports provided by Dr. Norch and Dr. Ramsey are of diminished probative value on the issue of causal relationship. On January 16, 2007 Dr. Norch provided an impression of disequilibrium and difficult hearing and opined that appellant's symptoms "may be secondary to the horn that was blown from a large truck." Dr. Norch's opinion on causal relationship is speculative in nature. The Board has long held that medical opinions that are speculative or equivocal in character have little probative value.[11]

In a January 23, 2007 report, Dr. Ramsey diagnosed benign positional vertigo. However, he did not specifically address the cause of the diagnosed condition or relate the condition to the December 3, 2006 work incident. This opinion is of diminished probative value.[12] On May 30, 2007 Dr. Ramsey stated that it was "possible" that appellant's positional vertigo was the result of exposure to a loud noise. This opinion is speculative in nature. While Dr. Ramsey noted that appellant's symptoms began immediately after exposure to a loud noise, the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[13] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[14] Dr. Ramsey's opinion is not supported by adequate medical reasoning regarding causal relationship and is of diminished probative value.

[9] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[10] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[11] *Kathy A. Kelley*, 55 ECAB 206 (2004).

[12] *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[13] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[14] *Id.*

There is insufficient medical evidence explaining how the work incident of December 3, 2006 caused or aggravated appellant's benign positional vertigo. Causal relationships must be established by rationalized medical opinion evidence, which is appellant's responsibility to submit. Thus, appellant did not meet his burden of proof to establish that he sustained an injury on December 3, 2006.[15]

CONCLUSION

The Board finds that, while appellant met his burden of proof to establish that he sustained an employment incident on December 3, 2006, he did not meet his burden of proof to establish that he sustained an injury causally related to this incident.

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

[15] The Board notes that the record contains a partial Form CA-16 from the employing establishment authorizing care for the inner ear. Where an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *Tracey P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by the Office. *See* 20 C.F.R. § 10.300(c). The Office did not address this issue in its August 10, 2007 decision.b