

osteopath, noted a history that, when appellant's vehicle was hit from behind, she hit the left side of her head on a metal post in the motor vehicle. Physical findings included a 2.0 centimeters hematoma of the left posterior scalp with no tenderness. Dr. Brado diagnosed a scalp contusion and mild left cervical and trapezius strain. In reports dating from May 25 to July 20, 2006, Dr. Michael J. Marvin, Board-certified in emergency medicine, noted the history of injury, provided physical findings and diagnosed cervical and thoracic strains. A June 16, 2006 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated no acute abnormality and multilevel disc bulging. Appellant received benefits and returned to restricted duty for four hours a day on June 14, 2006. On August 31, 2006 Dr. Marvin advised that she could return to her regular duties on September 4, 2006.

Appellant filed a Form Ca-7, claim for compensation, for September 12 and 13, 2006. She submitted a disability slip from Dr. Marvin stating that she should be off work on those days. In a treatment note dated September 13, 2006, Dr. Marvin noted that appellant reported that, when she returned to regular duty driving her route, she developed a headache and became nauseous. He diagnosed thoracic and cervical strain. Appellant was paid compensation for four hours for the doctor visit.

Appellant stopped work on September 29, 2006 and filed claims for compensation. In duty status reports dated September 26 to November 9, 2006, Dr. Marvin advised that appellant could perform her regular work duties without restrictions. In an October 18, 2006 treatment note, he reported that appellant would have severe headaches and feel very sick when she got in her postal vehicle to drive. An October 24, 2006 computerized tomography (CT) scan of the brain was negative.

By letter dated November 20, 2006, the Office informed appellant of the medical evidence needed to support her claim for compensation beginning September 29, 2006. In a November 9, 2006 report, Dr. Marvin advised that appellant had tried to go back to her regular duties on three occasions and developed migraines, nausea and vomiting each time. He stated that her psychiatrist had taken her off work and recommended consultation with a neurologist to determine if her headaches were employment related. On December 6, 2006 Thomas Headley, M.S., advised that appellant had been under the care of Dr. K.C. Patel, a psychiatrist, since August 8, 2006. Dr. Patel diagnosed bipolar I disorder and referred her to Mr. Headley for counseling. On January 9, 2007 Dr. Marvin again advised that appellant could perform her regular duties. In a January 9, 2007 report, Dana Domer, a physician's assistant, advised that appellant could return to work with the restriction that she not drive a company vehicle. On January 10, 2007 appellant accepted a modified assignment that did not require driving.

In letters dated December 29, 2006 and January 16, 2007, the Office again informed appellant that the evidence submitted was insufficient to establish that her headaches, nausea and vomiting were caused by the May 23, 2006 employment injury. In a January 16, 2007 report, Dr. Patel noted seeing appellant on August 8, 2006 when he diagnosed bipolar I disorder. He referred her for psychotherapy and took her off work. On January 23, 2007 Ms. Domer advised that appellant was off work on September 12 and 13, 2006 for a migraine related to a cervical strain and had no restrictions other than not driving a company vehicle. In a January 23, 2007 report, Dr. Marvin advised that appellant had been experiencing headaches since the May 23, 2006 employment injury and that she was off work on September 12 and 13, 2006 due to

headache and vomiting. He stated that the headaches were “directly and causally related” to the employment injury. On February 6, 2007 Dr. Marvin advised that she could again begin her regular duties. Appellant resigned on February 6, 2007.

By decision dated March 2, 2007, the Office denied appellant’s claim for compensation for September 12 and 13 and commencing September 29, 2006. It found that the medical evidence was insufficient to establish that she was totally disabled for these periods.

On March 28, 2007 appellant, through her attorney, requested a hearing. In a January 23, 2007 report, Dr. Marvin noted that appellant continued to have headaches and nausea and had a fear of driving postal vehicles. He advised that she should work at modified duty with no driving. On February 6, 2007 Dr. Marvin advised that appellant could work regular duty. In a July 23, 2007 report, Dr. Patel diagnosed PTSD related to the May 23, 2006 employment injury. He advised that driving postal vehicles caused anxiety, irritability, headaches, panic attacks and flashbacks and that these symptoms had not occurred prior to the employment injury.

At the hearing, held on July 25, 2007, appellant testified that she resigned on February 6, 2007 because she was released to regular duty but was fearful that she would become sick. She stated that she was not working and had not looked for work. Appellant had been seen by a neurologist who was not sure what was wrong. She stated that, when she returned to regular duty on September 7, 2006, she experienced a bad headache, nausea and vomiting. However, appellant finished driving her route. This happened again when she returned to work on September 11, 2006. Appellant was off work September 11 and 12, 2006, worked light duty for two weeks, and again attempted to drive her route on September 29, 2006 when she again became sick and stopped work. She still had approximately one migraine per week and had not experienced such headaches prior to her employment injury.

In a July 26, 2007 report, Dr. Kristi Leindecker, Board-certified in family medicine, advised that appellant had not had headaches prior to the May 2006 work injury and that it was “possible that the accident may have caused her headaches.”

By decision dated October 15, 2007, an Office hearing representative affirmed the March 2, 2007 decision, finding that appellant did not establish disability on September 12 and 13, 2006 or beginning September 29, 2006 due to her accepted conditions.

On February 26, 2008 appellant, through her attorney, requested reconsideration. In an October 11, 2007 report, Dr. Patel reiterated his diagnoses. He advised that, as appellant’s treatment progressed, she reported panic attacks, increased anxiety, migraine headaches, nausea and vomiting when trying to drive her postal route. When appellant was given nondriving reduced duties the symptoms decreased in frequency and intensity. Her symptoms increased when she began to think of returning to driving her route. Dr. Patel concluded that appellant’s diagnosis of PTSD was a direct and proximate result of the employment-related motor vehicle accident. In an October 29, 2007 report, Dr. Leindecker advised that, soon after appellant returned to work in September 2006, she began experiencing migraine headaches. He stated, “due to the fact that she had never had migraine headaches prior to this accident, I thought it was reasonable to believe that her migraines were associated with the accident” but could not state so with 100 percent accuracy.

In a November 20, 2007 report, Dr. Marvin advised that he began treating appellant in May 2006, and that she unsuccessfully attempted to return to her regular work. According to the medical literature, headaches occurred in 30 to 90 percent of persons after a mild head injury, could be of lifetime duration, and 85 percent were of the tension type but could also be migraine and that, following a mild head injury, between 50 and 80 percent of patients had post-traumatic psychological problems. Dr. Marvin advised that there was a direct causal relationship between the May 23, 2006 work injury and appellant's headache condition. He requested that PTSD and post-traumatic cephalgia be added to her accepted conditions.

In a December 21, 2007 report, Dr. Patel noted that appellant's PTSD first manifested when appellant attempted to return to driving her postal route, a situation that reminded her of the employment injury, and advised that he concurred with Dr. Marvin's conclusions. In a January 15, 2008 report, Dr. Marvin advised that appellant hit the side of her head at the time of the employment-related motor vehicle accident, and after many months of treatment, developed post-traumatic cephalgia secondary to the closed head injury. He reiterated his recommendation that appellant's accepted conditions should be expanded to include this condition and PTSD. In a February 27, 2008 treatment note, Dr. Marvin advised that appellant had headaches approximately three times monthly and, at times, had difficulty driving.

In a merit decision dated April 11, 2008, the Office found that appellant did not establish that the conditions of post-traumatic migraines or PTSD were caused by the May 23, 2006 employment-related motor vehicle accident and that she failed to establish that she was totally disabled on September 12 and 13 and 29, 2006 and following due to the work injury.

LEGAL PRECEDENT -- ISSUE 1

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct. The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury. With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.¹

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.²

¹ S.S., 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

² Charles W. Downey, 54 ECAB 421 (2003).

ANALYSIS -- ISSUE 1

The Board finds this case is not in posture for decision. The accepted conditions are open wound of the scalp without complications and sprains of the neck and thoracic region. Appellant is claiming that her diagnosed conditions of PTSD and post-traumatic cephalgia are consequential injuries. Any subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.³

The medical evidence relevant to whether appellant sustained consequential injuries includes those of Dr. Marvin who noted that appellant hit her head at the time of the motor vehicle accident. Thereafter, each time she tried to return to driving regular duties, she developed headaches, nausea and vomiting. Dr. Marvin advised that appellant's headaches were directly causally related to the May 23, 2006 employment injury and that her work should be modified to no driving. In a November 20, 2007 report, he noted that statistics in the medical literature showed that many patients had headaches and post-traumatic psychological problems following a mild head injury, and concluded that appellant's headache condition was directly caused by the May 23, 2006 work injury. Dr. Marvin requested that post-traumatic cephalgia and PTSD be added to her accepted conditions.

In reports dated July 23 and October 11, 2007, Dr. Patel diagnosed PTSD related to the May 23, 2006 motor vehicle accident, advising that appellant developed anxiety, irritability, headaches, panic attacks and flashbacks when she drove a postal vehicle. He noted that as her treatment progressed she encountered these symptoms when trying to drive her postal route, and when she was not driving, her symptoms decreased in frequency. Dr. Patel opined that appellant's PTSD was a direct and proximate result of the May 2006 employment-related motor vehicle accident.

The Board finds that, while the reports of Dr. Marvin and Dr. Patel lack detailed medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that her diagnosed conditions of PTSD and post-traumatic cephalgia were consequential injuries of the May 23, 2006 employment injury, this does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished.⁴ Each physician has maintained that the May 23, 2006 motor vehicle accident caused PTSD and post-traumatic headaches, and noted that appellant's symptoms of severe headache, nausea and vomiting developed when she drove a postal vehicle.

It is well established that proceedings under the Federal Employees' Compensation Act⁵ are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶ The case shall therefore be remanded to the Office. On remand, the Office shall refer appellant, a

³ *S.S., supra* note 1.

⁴ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *See Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

statement of accepted facts, and the medical evidence of record to an appropriate Board-certified specialist for an examination, diagnosis and a rationalized opinion as to whether appellant has a consequential condition causally related to the May 23, 2006 employment-related motor vehicle accident, and whether she sustained any periods of total disability due to these conditions or due to her previously accepted conditions. After this and such further development deemed necessary, the Office shall issue an appropriate decision.

Because the Board finds the case not in posture regarding Issue 1, Issue 2 is rendered moot.

CONCLUSION

The Board finds this case is not in posture for decision as to whether appellant established that she sustained consequential injuries as a result of the May 23, 2006 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 11, 2008 and October 15, 2007 be set aside and the case remanded to the Office.

Issued: April 6, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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