United States Department of Labor
Employees' Compensation Appeals Board

E.A., Appellant	)	
and	)	**Docket No. 09-1541**
	)	**Issued: February 5, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Kissimmee, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 29, 2009 appellant filed a timely appeal from the May 6, 2009 merit decision of the Office of Workers' Compensation Programs, which affirmed the denial of his claim for workers' compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on January 31, 2008, as alleged.

FACTUAL HISTORY

On February 19, 2008 appellant, then a 51-year-old lead sales and service associate, filed a claim for compensation benefits alleging that he sustained a traumatic injury in the performance of duty on January 31, 2008. He stated: "I was laying down in a table doing my physical rehabilitation program routine when I suddenly got very dizzy. I advice the therapist Cassandra and she directed me to stop exercising. The next day on February 1, 2008, I went to

the urgent care facility for treatment." Appellant described the nature of his injury as vertigo. He explained that the physical therapy was prescribed for a work-related back injury on April 25, 2007.[1] Appellant stated that he did not have any symptoms or conditions prior to the injury claimed and his treatment began only after he received a diagnosis of vertigo.

The Office received an overview of "Dizziness, Lightheadedness and Vertigo" from a medical website. It also received, among other things, a February 26, 2008 report from Dr. Wade W. Han, an otolaryngologist, who evaluated appellant for vertigo and noted that appellant went to the emergency room on January 6, 2008 and was treated with medication with limited improvement. Dr. Han described his findings on examination and diagnosed vertigo, likely right benign paroxysmal positional vertigo.

In a decision dated April 11, 2008, the Office denied appellant's claim for benefits. It found that the medical evidence did not establish that the claimed medical condition resulted from the accepted incident at work. The Office found that Dr. Han offered no rationalized opinion on whether there was a causal relationship between the diagnosed vertigo and the work incident on January 31, 2008.

Appellant requested an oral hearing before an Office hearing representative. He explained that he performed research on the Internet on the causes of vertigo. After the hearing, which was held on February 26, 2009, appellant resubmitted copies of medical documents relating to a functional capacity evaluation; his September 12, 2008 assessment of likely early disruption of the cervical disc and a May 19, 2008 evaluation for a lump or swelling at the back of the head to the left side.

In a decision dated May 6, 2009, the Office hearing representative affirmed the April 11, 2008 denial of benefits. The hearing representative found that the medical evidence failed to establish that the benign positional vertigo was caused or aggravated by appellant's physical therapy exercises.

On appeal, appellant contends that there is no precedent for vertigo under federal guidelines and that the Office should have combined his claim with two other cases. He adds that it is nearly impossible for a physician to find that the onset of vertigo is causally related to the injury because the medical profession does not know for certain all the possible causes of that condition. Appellant notes that the U.S. Court System has already ruled in some cases in favor of the plaintiffs with complaints of vertigo after accidents involving neck injuries similar to his.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.[2]

[1] OWCP File No. xxxxxx139.

[2] 5 U.S.C. § 8102(a).

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.[3]

Causal relationship is a medical issue,[4] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[5] must be one of reasonable medical certainty,[6] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[7]

The mere fact that a condition manifests itself or worsens during a period of federal employment raises no inference of causal relationship between the two.[8]

Newspaper clippings, medical texts, excerpts from publications and the like are of no evidentiary value in establishing the necessary causal relationship as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment injury involved.[9]

ANALYSIS

The Office does not dispute that on January 31, 2008 appellant was lying on a table doing his physical rehabilitation routine. Appellant has established that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The issue is whether this incident caused an injury to appellant.

Dr. Han, the otolaryngologist, evaluated appellant and diagnosed vertigo, likely right benign paroxysmal positional vertigo. He did not associate this medical condition with the incident on January 31, 2008. Dr. Han offered no opinion on whether the January 31, 2008

[3] *E.g., John J. Carlone*, 41 ECAB 354 (1989).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[8] *Steven R. Piper*, 39 ECAB 312 (1987). Temporal relationships are thus distinguished from relationships of causation.

[9] *Gaetan F. Valenza*, 35 ECAB 763 (1984); *Kenneth S. Vansick*, 31 ECAB 1132 (1980).

incident caused appellant's diagnosed condition. Appellant has submitted no medical opinion causally relating his vertigo to what happened on January 31, 2008. Internet research is, at best, of general application and has no evidentiary value in establishing the causal relationship in appellant's claim to workers' compensation benefits. Appellant must submit a well-reasoned opinion from a physician addressing his particular circumstances. Dr. Han did not fully discuss the nature of appellant's vertigo or provide a full and accurate history of what happened on January 31, 2008 to explain how that incident caused appellant's vertigo to a reasonable medical certainty.

The physician must also determine whether appellant's vertigo preexisted the January 31, 2008 incident. Appellant asserted that he did not have any symptoms or conditions prior to the injury claimed, and that his treatment for vertigo began only later, after he received the diagnosis. Dr. Han suggested otherwise. He noted that appellant went to the emergency room on January 6, 2008 and was treated with an antihistamine classified as effective in the management of nausea, vomiting and dizziness associated with motion sickness, and possibly effective in the management of vertigo associated with diseases affecting the vestibular system. This is relevant to whether the January 31, 2008 incident etiologically precipitated the diagnosed condition, temporarily aggravated a preexisting condition, or was merely coincidental to a manifestation of a preexisting condition.

On appeal, appellant argues that there is no precedent for vertigo under federal guidelines. The Board has issued many decisions in cases involving vertigo. In *Jerry A. Miller*,[10] the claimant, a construction worker, sustained an injury in the performance of duty when he stepped into a four-foot deep hole at work. He claimed that he developed positional vertigo as a result. As part of his burden, the Board explained that the employee had to present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.

As for "doubling" case records, Office procedures do not require doubling unless appellant previously filed a claim for a condition similar to vertigo or for the same part of the body or unless adjudication or other processing would require frequent reference to a case that does not involve a similar condition or the same part of the body.[11] The Board notes, however, that appellant attributes his vertigo to treatment prescribed for an accepted employment injury on April 25, 2007 -- treatment he received at the CORA Rehabilitation Clinic, which is 2.7 miles south-southwest of his duty station -- and not to any work duties he performed as a lead sales and service associate on January 31, 2008. Under those circumstances, the Office may wish to consider doubling this case with OWCP File No. xxxxxx139.[12]

[10] 46 ECAB 243 (1994) (Groom, Michael E., dissenting).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.0400.8.c (February 2000).

[12] Where treatment rendered for a condition causally related to the employment causes disability, such disability may be compensable. *Melvin D. Dombach*, 8 ECAB 389 (1955). The claimant must still establish the element of causal relationship.

Because appellant has failed to submit a well-reasoned medical opinion establishing a causal relationship between what happened on January 31, 2008 and his diagnosed vertigo, the Board finds that he has not met his burden of proof. The Board will therefore affirm the Office hearing representative's May 6, 2009 decision affirming the denial of his claim for compensation.

CONCLUSION

The Board finds that appellant has not met his burden to establish that he sustained a traumatic injury in the performance of duty on January 31, 2008, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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