

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

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L.H., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
TRANSPORTATION SECURITY )  
ADMINISTRATION, GALATIN FIELD )  
AIRPORT, Billings, MT, Employer )

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**Docket No. 10-29  
Issued: September 17, 2010**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 15, 2009 appellant filed a timely appeal from an August 6, 2009 decision of the Office of Workers' Compensation Programs denying her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant established that she sustained temporomandibular joint (TMJ) syndrome due to her January 22, 2003 injury.

**FACTUAL HISTORY**

The Office accepted that on January 22, 2003 appellant, then a 36-year-old security screener, sustained postconcussion syndrome when she struck her head on a metal beam. On her claim form, she described headaches, neck and back pain. The Office later accepted a neck

sprain/strain. Appellant stopped work on January 23, 2003, returned to light duty on February 11, 2003, then stopped work on February 13, 2003. She resigned from federal employment effective May 12, 2003.

From February through April 2003, appellant was followed by Dr. Joan C. Murray, a Board-certified psychiatrist and neurologist, Dr. J. Michael Wise, a Board-certified emergency physician, and Dr. Peter J. Sikoski, an attending osteopathic physician Board-certified in family practice. The physicians diagnosed postconcussion syndrome with headaches, neck pain and upper back pain attributable to the January 22, 2003 injury. Their reports do not mention any complaints or abnormalities of the jaw or TMJ.

On April 30, 2003 the Office obtained a second opinion from, Dr. Allen M. Weinert, Jr., a Board-certified psychiatrist, who reviewed the medical record and a statement of accepted facts. On examination, Dr. Weinert found marked audible clicking of the TMJ joints with opening and closing, without pain or tenderness on palpation. “[Appellant] relates that this is a long[-]standing finding.” Dr. Weinert diagnosed postconcussive syndrome, mild neck and scapular pain and “TMJ dysfunction as a preexistent condition, unrelated to [appellant’s] injury of January 22, 2003.”

Dr. Lowell R. Quenemoen, an attending Board-certified neurologist, submitted reports dated June 10 to November 5, 2003 noting appellant’s continuing headaches and mood swings. He noted that she had normal facial sensation and strength on neurologic examination.<sup>1</sup>

The Office obtained updated second opinion reports. On February 24, 2004 Dr. Kenneth C. Olson, a Board-certified psychiatrist, diagnosed a mood disorder and post-traumatic headaches causally related to the January 22, 2003 head injury. Dr. Sherry Reid, a Board-certified neurologist, opined on February 26, 2004 that the January 22, 2003 injury caused postconcussive syndrome with behavioral issues. She noted normal strength in the masticatory muscles.

In an April 27, 2004 letter, Dr. Quenemoen concurred the opinions of Dr. Reid and Dr. Olson. He submitted periodic reports through March 1, 2006 noting continuing headaches, neck pain and emotional lability.

Appellant sought additional treatment from April 2006 to August 2007.<sup>2</sup> Dr. Richard Rubinowicz, a Board-certified neurologist, Dr. Robert H. Lee, a Board-certified family practitioner, and Dr. Valerie K. Waters, a Board-certified psychiatrist, each diagnosed postconcussion syndrome. The physicians did not diagnose any complaints or abnormalities of the jaws or TMJ.

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<sup>1</sup> Dr. Quenemoen referred appellant to Dr. Debra Sheppard, Ph.D., a licensed clinical psychologist, who submitted a June 23, 2003 report diagnosing postconcussion syndrome with significant depression due to the January 2003 injury.

<sup>2</sup> In April 2006, appellant moved from Montana to Tennessee. In July 2006, she relocated from Tennessee to Mississippi.

Beginning in September 2007, appellant was followed by Dr. Bryan H. Burdette, an attending dentist. In a September 26, 2007 report, Dr. Burdette noted a history of the January 22, 2003 injury and postconcussion syndrome. Appellant related both that she did not have TMJ clicking before the injury and that the TMJ sounds were present since childhood but that her pediatric dentist was unconcerned. On November 20, 2007 Dr. Burdette diagnosed TMJ arthralgias with an anteriorly displaced disc, capsulitis, repetitive TMJ sounds, tendinitis and myalgias. He requested authorization for a TMJ splint.

In a March 12, 2008 letter, Dr. Burdette opined that appellant's "signs and symptoms, including the left reciprocal TMJ popping [were] a direct result" of the January 22, 2003 injury. He noted that he did not have evidence confirming or refuting appellant's account of events.

In a July 2, 2008 letter, the Office advised appellant that Dr. Burdette's reports were insufficiently rationalized to establish causal relationship.

In a July 14, 2008 letter, Dr. Burdette stated that he could not offer an opinion on causal relationship as he did not examine appellant until four years after the January 2003 injury.

By decision dated August 5, 2008, the Office denied appellant's claim for TMJ syndrome on the grounds that causal relationship was not established.

Appellant requested a telephonic hearing.

By decision dated December 8, 2008, the Office found that the case was not in posture for a hearing as the July 2, 2008 letter did not advise her that failure to submit evidence establishing causal relationship within 30 days would result in the denial of her claim. It remanded the case for issuance of a corrected letter.

On December 12, 2008 the Office advised appellant of the deficiencies in Dr. Burdette's reports and afforded her 30 days to submit additional evidence or argument. It stated that failure to submit the requested evidence within 30 days would result in the denial of her claim.

In a December 30, 2008 letter, appellant stated that her emotional symptoms and migraines occurred after the accepted injury but were unrelated to TMJ syndrome. She submitted a December 9, 2008 letter from Dr. Burdette stating that, based on her account, the "right TMJ popping, headache and neck pain" were attributable to the January 23, 2003 injury.

By decision dated January 12, 2009, the Office denied appellant's claim for TMJ syndrome on the grounds that causal relationship was not established. It found that Dr. Burdette's reports were speculative.

In a January 22, 2009 letter, appellant requested a telephonic hearing, held May 14, 2009. During the hearing, counsel asserted that Dr. Burdette's reports established the objective presence of TMJ. Appellant contended that she did not tell Dr. Weinert that she had TMJ or jaw problems before the January 22, 2003 injury. She noted that she had a longstanding issue with grinding her teeth, causing soreness in her jaw.

By decision dated and finalized August 6, 2009, an Office hearing representative affirmed the January 12, 2009 decision denying TMJ syndrome. He found that Dr. Burdette's opinion was insufficiently rationalized and based on an inaccurate history.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical evidence is 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 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.<sup>6</sup>

### **ANALYSIS**

The Office accepted that, on January 22, 2003, appellant sustained a neck sprain/strain and a head injury causing postconcussion syndrome. Appellant's claim form does not indicate that she struck her jaw or complained of jaw pain or TMJ symptoms. Medical reports from her attending physicians through August 2007 did not record that she complained of TMJ symptoms or had any objective abnormality of the head or jaw.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>6</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

Dr. Weinert, a Board-certified physiatrist and second opinion physician, noted in his April 20, 2003 report that appellant related a long-standing history of clicking and popping of the TMJ joints, predating the January 22, 2003 injury. He opined that there was no causal relationship between her TMJ dysfunction and the accepted injury. Dr. Reid, a Board-certified neurologist, noted in a February 26, 2004 report that appellant had normal strength in the masticatory muscles. She did not report any TMJ symptoms or abnormalities. Dr. Quenemoen, an attending Board-certified neurologist, concurred with Dr. Reid in an April 27, 2004 letter.

The first attending physician to diagnose TMJ dysfunction was Dr. Burdette, a dentist. In a September 26, 2007 report, he noted appellant's divergent accounts of how her TMJ symptoms started, both that her childhood dentist noticed the problem and that the condition did not manifest until after the January 22, 2003 head injury. Despite this discrepancy, Dr. Burdette opined on March 12, 2008 that the TMJ dysfunction was a direct result of the January 22, 2003 injury. However, on July 14, 2008, he stated that he could not offer an opinion on causal relationship as he did not examine appellant until four years after the injury. On December 9, 2008 Dr. Burdette again attributed appellant's TMJ popping to the January 22, 2003 injury. The Board finds that the equivocal nature of Dr. Burdette's opinion greatly reduces its probative value.<sup>7</sup> It is based on an inconsistent factual history, further diminishing its probative quality.<sup>8</sup> Dr. Burdette's opinion is insufficient to create a conflict with Dr. Weinert's opinion, which was based on an accurate history and statement of accepted facts.

At the May 14, 2009 hearing, appellant asserted that she did not tell Dr. Weinert that her TMJ symptoms predated the January 22, 2003 injury. However, she acknowledged telling him about her history of bruxism with jaw pain. Appellant also told Dr. Burdette that she had TMJ clicking and popping since childhood. The Board finds that the record indicates that her TMJ symptoms predated the January 22, 2003 head injury. Appellant did not provide sufficient rationalized evidence from her attending physicians supporting the causal relationship between her TMJ condition and the accepted injury. Therefore, the Office properly found that she did not meet her burden of proof.<sup>9</sup>

On appeal, counsel asserts that the Office's August 6, 2009 decision is contrary to fact and law. As noted, appellant did not submit sufficient medical evidence to establish causal relationship.

### **CONCLUSION**

The Board finds that appellant has not established that she sustained TMJ syndrome due to her accepted injury.

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<sup>7</sup> *T. M.*, 60 ECAB \_\_\_ (Docket No. 08-975, issued February 6, 2009).

<sup>8</sup> *See M.W.*, 57 ECAB 710 (2006); *John W. Montoya*, 54 ECAB 306 (2003) (medical opinions based on an incomplete or inaccurate factual history are of little probative value).

<sup>9</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003) (medical reports not containing rationale on causal relationship are entitled to little probative value).

**ORDER**

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

Issued: September 17, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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