

her head. By decision dated May 12, 2008, the Board found that she had established an employment incident as alleged, but had not submitted medical evidence to establish an injury causally related to the employment incident.² By order dated January 13, 2010, the Board remanded the case to OWCP for an appropriate decision.³ The Board found that appellant had submitted a timely request for reconsideration and was entitled to a proper decision on the reconsideration request.

With respect to the medical evidence, the record contains an August 8, 2008 report from attending internist, Dr. Lorena Letkomiller, stating that appellant had been seen by a neurologist who confirmed that she continued to have neuropsychiatric complications from the employment injury and was disabled. Dr. Letkomiller also stated that appellant had chronic left knee pain due to falls resulting from imbalance after the accident.

On February 4, 2010 OWCP prepared a statement of accepted facts and referred appellant to Dr. Jonathan Woodcock, Board-certified in psychiatry and neurology, for a second-opinion evaluation. In a report dated March 25, 2010, Dr. Woodcock reviewed medical records and provided results on examination. He noted that appellant reported having seizures, although she did not remember when the first one occurred, her spouse stated that the first one occurred a year and a half prior to the current examination. Dr. Woodcock stated:

“[Appellant’s] presentation is most consistent with psychogenic problems in association with preexisting depression. The mechanism of injury even with a concussion is not consistent with her presentation and degree of disability since this injury. I believe that [appellant’s] problems are related to depression, are principally psychogenic and reflect regressive psychological coping mechanisms. There is no clear association with the injury and the mechanism of injury as reported.”

According to Dr. Woodcock appellant may also be malingering and formal psychological testing could be helpful. He stated that the loss of consciousness with the fall was consistent with a grade 2 concussion, and she appeared to have had bruising of her right shoulder, thigh, arm and back. As to causal relationship between current conditions with employment, Dr. Woodcock stated:

“It is not clear to me how many of [appellant’s] current problems are related to this injury. It appears that her seizures only started about a year-and-a-half ago. It is not clear to me whether those are psychogenic or epileptic. They do not appear to be related to this injury. [Appellant] does appear to have significant ongoing depression with rather regressive withdrawal. She may have agoraphobia. It is not clear to me that these are related to the fall injuries.”

With respect to chronic pain, he stated that the pain in her right thigh could be related to the fall, but most contusional injuries would heal in a brief time without chronic pain. Dr. Woodcock

² Docket No. 08-146 (issued May 12, 2008).

³ Docket No. 09-1423 (issued January 13, 2010).

indicated that he did not find anything wrong with appellant's knee or right arm/shoulder. He noted some subjective right arm pain, but found that this, as with thigh pain, was unlikely to be related to the employment injury. Dr. Woodcock further stated that appellant was impaired by severe chronic depression, probable agoraphobia and "seizures" that he suspected were psychogenic and probably all related to depression. He concluded that he did not see "any association of the depression to the fall."

By letter dated May 11, 2010, OWCP advised appellant that it had accepted concussion with brief loss of consciousness, and contusions of the right shoulder, right hip and back. The letter stated "resolved" after each accepted condition. In a decision dated May 13, 2010, OWCP noted the accepted conditions and found the following were not employment related: depression, seizures, myofascial pain, chronic right arm/shoulder pain and chronic knee pain.

In a letter dated May 18, 2010, appellant's representative requested a hearing on a May 11, 2010 decision. By decision dated June 14, 2010, OWCP determined that the case was not in posture for a hearing as the May 11, 2010 letter was not a final adverse decision. Appellant's representative submitted a letter dated June 28, 2010 stating that the date of the decision for his hearing request should have been May 13, 2010. By decision dated August 9, 2010, OWCP denied the request for a hearing on the grounds that appellant had already requested reconsideration, and therefore was not entitled to a hearing as a matter of right. It further denied the hearing request on the grounds that the issue could equally well be considered by requesting reconsideration.

On April 27, 2011 appellant requested reconsideration of her claim and she submitted additional evidence. In a report dated April 20, 2010, Dr. James Crosby, a neurologist, stated that appellant presented with a history of seizures, noting that her spouse provided most of the history and when she did provide answers the spouse offered contradictory responses. He noted the spouse's statement that the seizures occurred randomly and that appellant felt strongly that the seizures started after her work injury. Dr. Crosby provided results on examination and stated that she may have complex partial seizures with secondary generalization and recommended an electroencephalogram (EEG) to diagnose epilepsy.

In a report dated September 21, 2010, Dr. Letkomiller stated that appellant had been treated by Dr. Crosby and he agrees that appellant was having seizures, and although epilepsy was not demonstrated by EEG, up to 30 percent of epilepsy patients have normal EEG results. She stated that appellant's condition was permanent, "[s]ince her depression and seizures are felt to be directly related to her traumatic brain injury, and have not improved over the past three and a half years...." Dr. Letkomiller repeated this opinion in a February 8, 2011 report.

In a report dated November 18, 2010, Dr. Crosby stated that appellant was suspected of having nonepileptic seizures and possibly complex partial seizures with or without secondary generalization. He indicated that, although there had been an attempt to set up a 24-hour EEG, for some reason this test was never done.

By decision dated August 2, 2011, OWCP reviewed the case on its merits and denied modification. It found the weight of the evidence was represented by Dr. Woodcock and did not establish any additional employment-related conditions.

LEGAL PRECEDENT -- ISSUE 1

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

ANALYSIS -- ISSUE 1

The accepted conditions in the case are concussion with brief loss of consciousness, and contusions of the right shoulder, right hip and back. The May 13, 2010 decision found that these conditions had resolved. It is OWCP's burden of proof to establish that an accepted condition has resolved.

In this regard the Board notes that appellant's attending physicians did not submit probative evidence of a continuing employment-related concussion, or shoulder, hip or back contusions after May 13, 2010. Dr. Woodcock did not indicate that appellant continued to have a concussion causally related to the December 13, 2006 employment incident. As to contusions, he noted that such injuries generally heal in a relatively short period of time. Dr. Woodcock related appellant's continuing problems to depression, which will be discussed below.

Based on the relevant evidence of record, the Board finds that OWCP met its burden of proof in determining the accepted conditions had resolved. The record does not contain any probative evidence of a continuing employment-related concussion, or shoulder, hip and back contusions after May 13, 2010.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵

ANALYSIS -- ISSUE 2

With respect to additional employment-related conditions, Dr. Letkomiller briefly opined that depression and seizures were the direct result of the December 13, 2006 employment injury. She did not provide any medical rationale to support the opinion. Dr. Letkomiller did not discuss in detail the depression diagnosis or its relationship to employment and with respect to seizures she referred to the treatment by Dr. Crosby. The reports from Dr. Crosby do not provide an opinion as to causal relationship of seizures to the employment injury.

⁴ *Furman G. Peake*, 41 ECAB 361 (1990).

⁵ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

OWCP referred the case for a second-opinion evaluation with Dr. Woodcock, and therefore OWCP does have a responsibility to secure a medical report that properly addresses the issues presented.⁶ In his March 25, 2010 report, Dr. Woodcock states that appellant does have severe ongoing depression, and he appears to relate any seizures to the psychological condition. A critical question therefore is whether there was causal relationship between depression and the employment injury. Dr. Woodcock stated that it was “not clear” to him that ongoing depression was related to the fall at work and then concluded that he did not see any “association” of the depression to the fall at work. But his report does not actually provide medical rationale and explanation for the opinion. Dr. Woodcock refers to the depression as preexisting, without discussing whether the employment injury had resulted in a consequential aggravation of the depression. OWCP asked Dr. Woodcock for an opinion as to any ongoing employment-related conditions. It is not clear from his report whether he was referring only to the underlying condition of depression. If Dr. Woodcock felt there was no aggravation of the preexisting depression as a consequence of the December 13, 2006 incident, then he should provide medical rationale for the opinion.

The case will be remanded to OWCP for additional development and a request for a supplemental report from the second-opinion physician. After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that OWCP met its burden of proof in determining that the accepted conditions had resolved as of May 13, 2010. The case is remanded for further development as to whether appellant has established any additional employment-related conditions.

⁶ See *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 2, 2011 is affirmed with respect to termination of medical benefits, and set aside and remanded for further action consistent with this decision of the Board regarding additional employment-related injuries.

Issued: April 23, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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