

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

T.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bronx, NY, Employer**

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**Docket No. 12-524
Issued: August 7, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 11, 2012 appellant filed a timely appeal from a September 29, 2011 Office of Workers' Compensation Programs' (OWCP) decision which affirmed the denial of her claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 met her burden of proof to establish that she sustained an injury in the performance of duty on May 12, 2011.

FACTUAL HISTORY

On May 16, 2011 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim alleging that, on May 12, 2011, she fell and hit her head on a door while delivering mail. She stopped work on May 12, 2011. A witness, whose name is illegible, indicated that he saw the mail lady lying on the floor and that he heard a thump on the door.

¹ 5 U.S.C. § 8101 *et seq.*

In a letter dated May 23, 2011, Nicole Richardson, the manager of customer services, controverted the claim on the basis that appellant did not initially inform her that she hit her head. Additionally, the original discharge papers from the emergency room visit were not provided.

On May 26, 2011 OWCP advised appellant that additional factual and medical evidence was needed. She was notified that the employing establishment controverted the claim and requested to describe in detail how the injury occurred. Appellant was asked to provide dates of examination and treatment, a history of injury given by her to a physician, a detailed description of any findings, the results of all x-rays and laboratory tests, a diagnosis and course of treatment followed and a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury. OWCP explained that the physician's opinion was crucial to appellant's claim and allotted her 30 days to submit additional information.

In May 12, 2011 emergency room treatment notes, a nurse indicated that appellant had dizziness and a syncopal episode with weakness at work. She noted that appellant felt dizzy and diagnosed heat exhaustion.

In a May 17, 2011 treatment note, Dr. Charles DeMarco, Board-certified in orthopedic surgery and sports medicine, noted that appellant was involved in a work-related accident on May 12, 2011. He advised that she "passed out, hit her head and sustained injury to her cervical spine and her head." Dr. DeMarco noted that appellant did not remember what happened. He diagnosed cervical derangement with strain/sprain and radiculopathy; and possible mild postconcussive syndrome. In a disability certificate, also dated May 17, 2011, Dr. DeMarco advised that appellant was totally disabled and placed her off work until further notice. He also provided a June 22, 2011 prescription, which was illegible.

By decision dated July 7, 2011, OWCP found that the evidence established that the May 12, 2011 incident occurred as alleged but denied the claim finding that the medical evidence did not establish a medical condition related to the accepted incident.

On August 3, 2011 appellant requested a review of the written record and submitted additional medical evidence. She described the employment injury and noted that, at the time of the incident, it was very hot and she smelled a strong odor. Appellant became light-headed and called Ms. Richardson, to let her know that she was light-headed. She subsequently lost her balance and fell towards a neighbor's door, who helped her and called the paramedics. Appellant noted that Ms. Richardson accompanied them to the hospital and was aware of the incident from the start. A statement was also received from her sister. OWCP also received June 7, 2011 treatment notes from a nurse.

In a June 22, 2011 report, Dr. Vikas Varma, a Board-certified neurologist, noted that on May 12, 2011 appellant was delivering mail and became dizzy, subsequently hitting her head and fainting. Appellant related that she had episodes of blurry vision and dizziness, which could be intense at times. Dr. Varma opined that she appeared to "have suffered postconcussion syndrome, status post trauma at work." He opined that appellant was totally disabled. Dr. Varma provided a disability certificate of the same date placing her off work. In a July 15, 2011 report, he noted that she was on the job on May 12, 2011 when she became dizzy, fell and

hit her head and fainted. In a July 28, 2011 report, Dr. Varma noted that appellant was seen for a follow up. He repeated the history of injury related by her and noted that she was under Dr. DeMarco's care for intermittent headaches with unsteady sensation, dizziness and blurring of vision. Dr. Varma discussed test results with appellant and recommended physical therapy.

In a July 7, 2011 report, Dr. DeMarco noted that he saw appellant for a follow up. He stated that she "passed out, hit her head and sustained injury to her cervical spine and head." Appellant was seen at a local hospital, evaluated, treated and released as no fracture or dislocation was noted. She did not remember what happened and was told to follow up with her doctor. Dr. DeMarco advised that there were no obvious signs of concussion. Appellant was seen by a neurologist and a magnetic resonance imaging (MRI) scan of the brain was reviewed that revealed cervical paraspinal tenderness and cervical paraspinal spasm, which caused pain in the cervical spine that radiated to the bilateral upper extremities. Dr. DeMarco related that she indicated that the pain was persistent and debilitating. He noted that appellant denied any prior history of injuries to the body parts or any intervening history of injuries. Dr. DeMarco examined her and found cervical paraspinal tenderness and paraspinal spasm with 20 to 30 percent restrictions of cervical and lumbar mobility. He diagnosed cervical derangement with strain/sprain and radiculopathy, possible postconcussive syndrome and recommended an MRI scan of the cervical spine and follow up with a neurologist. Dr. DeMarco indicated that appellant was totally disabled. He provided a disability certificate of the same date indicating that she was totally disabled and unable to return to work.

In a September 1, 2011 report, Dr. DeMarco noted that appellant was in for a follow up. He examined her and found cervical paraspinal tenderness and paraspinal spasm with 20 to 30 percent restrictions of cervical and lumbar mobility. Dr. DeMarco diagnosed cervical derangement with strain/sprain and radiculopathy, possible postconcussive syndrome and recommended an MRI scan of the cervical spine and follow up with a neurologist. He indicated that appellant was totally disabled from work.

By letter dated September 2, 2011, OWCP advised the employing establishment of the opportunity to provide comments and allotted 20 days for the comments to be received. No additional comments were received.

By decision dated September 29, 2011, OWCP's hearing representative affirmed the July 7, 2011 decision.

LEGAL PRECEDENT

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 of FECA² and that an injury was sustained in the performance of duty.³ These

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

³ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.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

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician’s 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, 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.⁷

ANALYSIS

The evidence supports that appellant was delivering mail on May 12, 2011 when she fainted and struck her head on a door as alleged.⁸ The Board finds that the incident that day is established. The medical evidence, however, is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical reports of record do not establish that fainting while delivering mail caused a personal injury on May 12, 2011. The medical evidence provides insufficient explanation of how the employment incident on May 12, 2011 caused or aggravated an injury.⁹

Appellant submitted reports from Dr. DeMarco beginning May 17, 2011. Although the reports generally support a work injury, the Board finds that Dr. DeMarco did not provide rationalized opinion on causal relationship. Dr. DeMarco noted that appellant “passed out, hit her head and sustained injury to her cervical spine and her head.” While he provided a diagnosis

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.*

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ OWCP made no finding and offered no medical evidence to support that the fall was idiopathic in nature. Thus, the fall must be considered as merely an unexplained fall which is covered under FECA. *See K.C.*, Docket No. 11-2093 (issued May 14, 2012). However, as explained, *infra*, the medical evidence is insufficient to establish that the fall caused an injury.

⁹ *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

and noted her work status, he did not address causal relationship in any detail. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ In a July 7, 2011 report, Dr. DeMarco repeated the history of injury, noted that appellant had no prior history of a similar injury, and stated that she was seen at the hospital, evaluated, treated and released as no fracture or dislocation was found. He explained that she did not remember what happened and that there were no obvious signs of concussion. Dr. DeMarco noted that an MRI scan of the brain revealed cervical paraspinal tenderness and cervical paraspinal spasm, which caused pain to the cervical spine that radiated to both upper extremities. He diagnosed cervical derangement with strain/sprain and radiculopathy and possible postconcussive syndrome. Dr. DeMarco found that appellant was totally disabled from work. The Board notes that he did not address how the diagnosis of sprain or strain related to the accepted incident and was speculative in assessing possible postconcussive syndrome. To the extent that Dr. DeMarco supported causal relationship, the Board notes that a medical opinion relating condition to an employment injury because the employee was asymptomatic before the injury, is insufficient, without supporting rationale, to establish causal relationship.¹¹ The remaining reports from Dr. DeMarco also did not further address causal relationship.

Appellant also provided several reports from Dr. Varma. They included a June 22, 2011 report, in which Dr. Varma opined that appellant appeared to “have suffered postconcussion syndrome, status post trauma at work.” While this report provides some support for causal relationship, this support is couched in speculative terms. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.¹² Dr. Varma's other reports dated July 15 and 28, 2011, do not contain any discussion of causal relationship. For example, these reports do not otherwise provide medical rationale explaining the reasons why the May 12, 2011 incident in which appellant hit her head on a door caused or aggravated a diagnosed condition. Thus, they are of limited probative value.

The nursing reports submitted by appellant did not specifically address causal relationship. Health care providers such as a nurse is not a “physician” as defined under FECA. Thus, a nurse's opinion on causal relationship is not a medical opinion and has no weight or probative value.¹³

OWCP advised appellant in a letter dated May 26, 2011 that it was her responsibility to establish that her condition was due to the employment incident. The Board finds that she did not submit sufficient medical evidence to establish that her claimed medical condition was related to the May 12, 2011 incident.

On appeal, appellant questions if OWCP considered her claim and questions in reference to a Ms. Broadnax in the September 29, 2011 decision. The reference appears to be a

¹⁰ *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹¹ *See id.*

¹² *T.M.*, Docket No. 08-975 (issued February 6, 2009).

¹³ *Jane A. White*, 34 ECAB 515, 518 (1983). *See* 5 U.S.C. § 8101(2).

typographical error and that does not affect appellant's claim. The medical evidence of record is insufficiently rationalized to meet her burden of proof. The physicians did not adequately relate how the May 12, 2011 incident caused or aggravated a particular diagnosed medical condition. Additional evidence was received by OWCP subsequent to the September 29, 2011 decision. However, the Board has no jurisdiction to review this evidence for the first time on appeal.¹⁴

Appellant may submit evidence or argument with a written request for reconsideration within one year of this merit decision pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty on May 12, 2011.

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹⁴ 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).