

FACTUAL HISTORY

On June 28, 2010 appellant, then a 36-year-old supervisor of customer service, filed a traumatic injury asserting that she sustained headache, neck pain and stiffness, pain on her scalp and loss of memory on June 26, 2010 in the performance of duty. She stated that she was called to the window to serve a customer. A coworker returned to the window after a brief absence and found appellant on the ground crying.

Appellant sought treatment at the San Francisco General Hospital on June 26, 2010 and was found unable to work for 14 days. In a form report dated June 26, 2010, a physician, whose signature is illegible, stated that she was found unconscious. He reported appellant's subjective complaints of headache and spinal cord pain, loss of memory and pain in the cheeks. The physician stated that her objective findings were normal except for amnesia. He diagnosed traumatic global amnesia.

In a letter dated July 21, 2010, OWCP requested additional factual and medical evidence and allowed 30 days for a response. Appellant submitted her hospital records. On June 26, 2010 she reported that a coworker found her on the ground on her knees, crying and unable to recall the date or events of the day. Appellant denied any trauma or sexual assault. The notes indicate that she repetitively asked "what happened?" There were no obvious signs of trauma and appellant had no complaints or neurological defects except for short-term memory loss. A report from the fire department indicated that there were several different versions of what happened to her, including that she was assaulted and that a customer had a gun. On June 27, 2010 appellant reported scalp tenderness and neck pain on the left. The physician noted that postal inspectors stated that she may have been assaulted. He listed alternative diagnoses of transient global amnesia and postconcussive syndrome.

In a report dated July 1, 2010, Dr. Marina Kasavin, a Board-certified neurologist, noted that appellant had no memory of June 26, 2010 from the time she arrived at work until she found herself in the hospital at 5:00 pm. Appellant and her husband gave the history that she talked with a customer alone for two minutes at 9:50 a.m. and, when her coworker returned, she was sitting on the floor crying. At that time she was unable to answer any questions and was very agitated, asking the same question over and over. Appellant was transported to the hospital where she was extremely agitated and repeatedly asking what the time was. She reported headache and neck pain when she returned to baseline at 5:00 p.m. Appellant reported jaw pain and was unable to open her mouth wide. She had one chipped tooth. Dr. Kasavin diagnosed possible transient global amnesia and noted that it was unusual to have complaints of persistent headaches and jaw pain as well as mild memory impairment associated with this diagnosis.

Appellant submitted additional hospital records including her discharge summary dated June 28, 2010, which reported a history of injury and her complaint of neck pain, but no external signs of head trauma. She was discharged with a diagnosis of acute anterograde and retrograde amnesia, possible likely change in global amnesia. The notes included appellant's report on June 27, 2010 of left scalp tenderness and left neck pain.

Appellant completed a statement on August 12, 2010 that she had no memory of June 26, 2010 other than reporting to work. She became unconscious and lost her memory. Appellant

reported headache, neck pain and a chip on one of her upper left teeth. She stated that postal inspectors were investigating whether a customer hit her and left the scene. Susan Lee, a mail processing clerk, completed a witness statement on July 28, 2010 noting that the incident happened on June 26, 2010 around 9:35 a.m. She explained that a customer reported that he had not received his mail for a month and that she asked appellant to come to the caller window to help the customer. Ms. Lee left the window to dispatch her mail and take it to the truck dock. She returned to the window in two to three minutes and found appellant by herself sitting and crying on the floor. Appellant's hair clip and eyeglasses were also on the floor.

By decision dated September 1, 2010, OWCP found that appellant was a federal employee who filed a timely claim, but denied her claim finding that she did not establish fact of injury. The factual evidence was not sufficient to establish that the incident occurred as she described. OWCP found that it was unclear what event occurred or how a work-related injury occurred. It further found that appellant did not submit medical evidence of a diagnosed condition causally related to her alleged work injury.

Appellant requested an oral hearing on September 20, 2010.

Appellant testified at the oral hearing on February 22, 2011. She had no recollection of the events of June 26, 2010 and that she was unable to state whether she fell or was assaulted. Appellant stated that the customer had a criminal record, that she was very frightened on June 26, 2010 and that she believed that she would not have been so frightened if she had not been assaulted. Her husband testified that at the hospital she had swelling in the back of her head which was painful to touch. Appellant noted that she had a chip in her molar. She did not know if she hit a postal cart or the floor.

Appellant submitted additional medical evidence following the hearing, including a September 28, 2010 report from Dr. Aaron Grossman, a Board-certified neurologist, who noted her episode of transient amnesia on June 26, 2010 related to either a traumatic head injury or an extremely stressful encounter with a customer at the employing establishment. Her current symptoms included difficulty concentrating, anxiety, difficulty multitasking, irritability, loss of patience and impulsivity noting that these were consistent with postconcussive syndrome. Dr. Grossman stated that the symptoms in concert with appellant's initial complaints of neck pain, right posterior headache and chipped tooth were suggestive of some form of head trauma either as the result of an attack or a fall on June 26, 2010.

By decision dated April 28, 2011, an OWCP hearing representative found that the evidence did not establish an injury resulting from the June 26, 2010 incident. The hearing representative stated that there was no specific incident to accept as the evidence did not establish either that appellant was assaulted by a customer or that she fell. He concluded that OWCP could not accept the claim on the basis of an unexplained fall. The hearing representative noted that there was no diagnosis of a physical trauma such as head contusion or a neck condition.

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 filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.”² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.³

Congress, in providing for a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with her employment; liability does not attach merely upon the existence of any employee/employer relation.⁴ FECA provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The term “in the performance of duty” has been interpreted to be the equivalent of the commonly found prerequisite in workers’ compensation law, “arising out of and in the course of employment.”⁵ “In the course of employment” deals with the work setting, the locale and time of injury.⁶ In addressing this issue, the Board has stated:

“In the compensation field, to occur in the course of employment, in general, an injury must occur[:] (1) at a time when the employee may reasonably be said to be engaged in her master’s business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.”⁷

This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury “arising out of the employment” must be shown and this encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury in order for an injury to be considered as arising out of the employment, the facts of the case must show some substantial employer benefit is derived or an employment requirement gave rise to the injury.⁸

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ *Christine Lawrence*, 36 ECAB 422, 423-24 (1985); *Minnie N. Heubner (Robert A. Heubner)*, 2 ECAB 20, 24 (1948).

⁵ *James E. Chadden, Sr.*, 40 ECAB 312, 314 (1988).

⁶ *Denis F. Rafferty*, 16 ECAB 413, 414 (1965).

⁷ *Carmen B. Gutierrez*, 7 ECAB 58, 59 (1954).

⁸ *See Eugene G. Chin*, 39 ECAB 598, 602 (1988).

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁹ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.¹⁰

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹¹

ANALYSIS

Appellant, a federal employee, has alleged that she was injured at her regular work station during her tour of duty or as frequently stated by the Board, during her employment at the time and place her duties required. She must show that her injury arose out of her employment and that her employment caused the injury.

If appellant's injury was due to an idiopathic condition, the injury would not arise out of her employment. OWCP has the burden of proof to submit medical evidence showing the existence of a personal, nonoccupational pathology if it chooses to make a finding that a given fall is idiopathic in nature. The fact that the cause of a particular fall cannot be determined does not establish that it was due to an idiopathic condition and if the record does not establish a particular fall was due to an idiopathic condition, it must be considered as merely an unexplained fall, which is covered under FECA.¹²

Appellant has alleged that she sustained an employment incident on June 26, 2010 and that she has no memory of this event. A coworker stated that she left appellant talking to a

⁹ *Elaine Pendleton, supra note 2.*

¹⁰ *See 20 C.F.R. § 10.110(a); John M. Tornello, 35 ECAB 234 (1983).*

¹¹ *James Mack, 43 ECAB 321 (1991).*

¹² *M.M., Docket No. 08-1510 (issued November 25, 2008); Jennifer Atkerson, 55 ECAB 317 (2004).*

customer and when she returned two or three minutes later, appellant was on the floor crying with her glasses and hairclip also on the floor. The factual evidence establishes that she was found on the floor on June 26, 2010. There is no rationalized medical evidence in the record that her employment incident on June 26, 2010 was due to an idiopathic condition. The medical records do not provide a cause for the incident or the diagnosis of transient amnesia. Based on the medical evidence of record, the Board finds that appellant's fall on June 26, 2010 was an unexplained fall. As an unexplained fall while she was engaged in activities incidental to her employment duties, an injury resulting from this fall is compensable. The Board further finds, however, that appellant did not establish any medical condition for which compensation is claimed as a result of the June 26, 2010 incident.

Appellant alleged that she hit her head on June 26, 2010. Her husband testified that she had a large lump on the back of her head and she testified that she had a chipped tooth after the June 26, 2010 incident. Both the Board and OWCP's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection. In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.¹³

In a signed but illegible medical report dated June 26, 2010, a physician noted appellant's subjective complaints of headache and spinal cord pain, loss of memory and pain in the cheeks. He listed his diagnosis traumatic global amnesia. While the physician mentioned headache, back pain and cheek pain, the Board has generally held that pain is a symptom, not a firm medical diagnosis.¹⁴

In the hospital records dated June 27, 2010, appellant reported scalp tenderness and neck pain on the left. The reviewing physician noted that postal inspectors stated that she may have been assaulted and gave the alternative diagnoses of transient global amnesia and postconcussive syndrome. While the physician offered a medical diagnosis of postconcussive syndrome, he offered this diagnosis only in the alternative and did not clearly opine that this condition resulted from the June 26, 2010 incident. This report is not sufficient to establish an injury resulting from the June 26, 2010 event.

In the discharge summary dated June 28, 2010, appellant's complaints of neck pain were mentioned, but the physician found no external signs of head trauma. Her diagnosis was acute anterograde and retrograde amnesia, possible likely change in global amnesia. This report does not support appellant's claim of head trauma and did not provide any opinion on the causal relationship of her diagnosis of amnesia and her employment event of June 26, 2010. This report is not, therefore, sufficient to establish a medical condition resulting from the June 26, 2010 event.

¹³ *G.G.*, 58 ECAB 389 (2007).

¹⁴ *G.B.*, Docket No. 10-2155 (issued June 1, 2011).

On July 1, 2010 Dr. Kasavin noted appellant's reports of headache, neck pain, jaw pain, a chipped tooth and the inability to open her mouth wide. She diagnosed possible transient global amnesia, but noted that it was unusual to have complaints of persistent headaches and jaw pain as well as mild memory impairment associated with this diagnosis. This report does not offer a firm diagnosis, stating only possible transient global amnesia noting that appellant had additional complaints not usually associated with this diagnosis. As Dr. Kasavin did not provide a firm diagnosis this report is not sufficient to meet appellant's burden of proof.

Dr. Grossman completed a report on September 28, 2010 opining that appellant's episode of transient amnesia on June 26, 2010 related to either a traumatic head injury or an extremely stressful encounter with a customer at the employing establishment. He described her current symptoms of difficulty concentrating, anxiety, difficulty multitasking, irritability, loss of patience and impulsivity noting that these were consistent with postconcussive syndrome. Dr. Grossman stated that these symptoms in concert with her initial complaints of neck pain, right posterior headache and chipped tooth are suggestive of some form of head trauma either as the result of an attack or a fall on June 26, 2010. This report does not offer a clear opinion regarding the causal relationship between appellant's June 26, 2010 event and her diagnosed condition of transient amnesia. Dr. Grossman indicated that, rather than physical trauma, appellant's condition could be the result of stress. Given the speculative nature of his report, the Board finds that his opinions are not sufficiently clear and based on the factual history available to meet her burden of proof to establish that transient amnesia resulted from the event of June 26, 2010.

The Board has carefully reviewed the factual evidence and accepted that appellant sustained an unexplained fall on June 26, 2010 based on the evidence that she, her glasses and her hair barrette were on the floor when her coworker returned after a brief absence. However, given appellant's amnesia and the lack of witnesses to the event, the Board is unable to accept her hypothesis that she was assaulted in the performance of duty. Furthermore, the medical evidence does not support any diagnosis other than amnesia as occurring on June 26, 2010.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP 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 failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty on June 26, 2010.

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: May 14, 2012
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