United States Department of Labor
Employees' Compensation Appeals Board

T.C., Appellant	)	
and	)	**Docket No. 13-511**
	)	**Issued: August 2, 2013**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, New York, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 2, 2013 appellant filed a timely appeal from an August 21, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1](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 causally related to the October 2, 2011 employment incident.

FACTUAL HISTORY

On October 4, 2011 appellant, then a 35-year-old criminal investigator, filed a traumatic injury claim alleging that on October 2, 2011 she "cracked" her neck, experienced soreness on

[1] 5 U.S.C. § 8101 *et seq.*

her left sideand was hospitalized overnight until her contractions stabilized as a result of a motor vehicle accident.[2] She was seven months pregnant at the time of the accident.

On October 13, 2011 OWCP advised appellant that the evidence submitted was insufficient to establish her claim and requested additional evidence. It requested she provide additional factual evidence to establish that the October 2, 2011 incident occurred as alleged and a medical report which included a history of injury, findings on examination, medical diagnosis and a physician's opinion, supported by medical rationale, explaining how the alleged work incident caused her medical condition.

In an October 2, 2011 accident report, a police officer noted that appellant was driving in the middle lane when a vehicle in the right lane cut her off and struckher vehicle on the front right side.

In a handwritten October 2, 2011 hospital record, an unknown provider stated that appellant was seven months pregnant and involved in a motor vehicle accident. Appellantwas transported *via* an ambulance because she requested an examination for the baby and complained of cramping in the lower abdomen and pain in her upper and lower back.

In a handwritten October 3, 2011 prescription slip, Dr. Marc A. Clachko, a Board-certified gynecologist, stated that appellant was placed on bed rest and could not return to work until October 10, 2011 as a result of a motor vehicle accident on October 2, 2011.

In October 3, 2011 emergency room records, Dr. Paul K. Zelensky, Board-certified in emergency medicine, stated that appellant was approximately 28 weeks' pregnant and was involved in a motor vehicle accident. Appellant had complaints of mild pain in the seatbelt distribution and abdominal pain. Upon examination, Dr. Zelensky observed no bruise, tenderness of her abdomen, but with mild lower back paraspinal tenderness. Appellant had full range of motion of the neck and no bony tenderness. Dr. Zelenskyreported that she was cleared from a trauma standpoint but he senther to labor and delivery for fetal monitoring.

In an October 3, 2011 hospital triage discharge report, Dr. Neal Rosenblum, a Board-certified gynecologist, stated that appellant was discharged with a diagnosis of gestational hypertension.

In an October 21, 2011 statement, appellant explained that on October 2, 2011 she was driving westbound in the middle lane when a vehicle from the right lane cut her off and caused a motor vehicle accident. She was seven months pregnant at the time of the accident and was hospitalized due to contractions. Appellant also experienced soreness and pain in her lower abdomen, chest and breast bone, neck and the left side of her body.

In a handwritten October 31, 2011 prescription slip, Dr. Clachko stated that due to a motor vehicle accident appellant was on bed rest until further notice.

[2] The record reveals that appellant filed two previous traumatic injury claims (File Nos. xxxxxx673 & xxxxxx026).

In a decision dated November 28, 2011, OWCP denied appellant's claim finding insufficient medical evidence to establish that she sustained any diagnosed condition as a result of the employment incident. It accepted that the October 2, 2011 incident occurred as alleged but denied the claim finding that the medical evidence failed to provide any diagnosed condition causally related to the accepted incident.

In a November 17, 2011 report, Dr. Clachko stated that appellant was due on December 24, 2011 and had several medical complications affecting her ability to work. He diagnosed hypertension complicating pregnancy, fetal heart rate abnormality, threatened premature labor and pelvic/groin pain. Dr. Clachko advised appellant not to return to work until after her delivery.

On December 20, 2011 appellant submitted a request for reconsideration.She related that on October 2, 2011 she was involved in a motor vehicle accident while on duty and was transported to the hospital for contractions. Appellant stated that the most significant results of her accident were the drastic changes in her pregnancy, including hypertension and painful pelvic strain.

In a December 6, 2011 report, Dr. Clachko stated that on October 2, 2011 appellant was involved in a motor vehicle accident when she was seven months pregnant and was immediately hospitalized with contractions. He reported that ever since the accident she had several medical complications affecting her ability to work. Dr. Clachko diagnosed hypertension complicating the pregnancy, fetal heart rate abnormality, threatened premature labor and pelvic strain. He advised appellant not to return to work until after her delivery.

By decision dated February 10, 2012, OWCP denied modification of the November 28, 2011 denial decision finding insufficient medical evidence to establish that she sustained any diagnosed condition as a result of the accepted October 2, 2011 employment incident.

On March 31, 2012 appellant submitted a request for reconsideration. No additional evidence was submitted.

In a decision dated April 19, 2012, OWCP denied appellant's request for reconsideration finding that no evidence was submitted sufficient to warrant further merit review under 5 U.S.C. § 8128(a).

On May 25, 2012 appellant submitted a request for reconsideration. She described the October 2, 2011 employment incident and related the pain and pregnancy complications she experienced after the incident. Appellant stated that in early December 2011 she mentioned to her physician that she experienced severe pain in her jaw. Her dentist informed her that she developed temporomandibular joint (TMJ) soreness due to the accident. Appellant noted that both her dentist and hygienist advised her that this painful condition was a result of the car accident and was common among many of their patients that were accident victims.

In an unsigned April 16, 2012 dental report, an unknown provider stated that appellant was examined on March 26, 2012 with complaints of TMJ soreness. TMJ discomfort was observed when palpating the area during jaw movements. The provider also noted that on

October 2, 2011 appellant was involved in an automobile accident and that her entire left side was injured in the crash, which resulted in maxilla-facial, chest and pelvic trauma.

By decision dated August 21, 2012, OWCP found insufficient medical evidence to establish that her diagnosed conditions werecausally related to the October 2, 2011 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or herclaim by the weight of the reliable, probative and substantial evidence[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.[6] There are two components involved in establishing the fact of injury. 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.[7] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[8] An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.[9]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[11] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the

[3] 5 U.S.C. §§ 8101-8193.

[4] *J.P.*, 59 ECAB 178 (2007);*Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006);*Edward C. Lawrence*, 19 ECAB 442 (1968).

[8] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[10] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[12]

ANALYSIS

Appellant alleged that on October 2, 2011 she was involved in a motor vehicle accident and experienced complications to her pregnancy, as well as injuries to her neck, hip, abdomen and jaw. OWCP accepted that the October 2, 2011 incident occurred as alleged.Itdenied her injury claim finding insufficient medical evidence to establish that she sustained an injury causally related to the employment incident.

OWCP denied the claim on the grounds that appellant did not submit evidence containing a rationalized medical opinion on causal relationship. The medical evidence consists primarily of reports from Dr. Clachko. In October 3, 2011 prescription slip, Dr. Clachko placed appellant on bed rest as a result of an October 2, 2011 motor vehicle accident. In November 17 and December 6, 2011 reports, he stated that ever since the October 2, 2011 motor vehicle accident appellant had several medical complications affecting her ability to work. Dr. Clachko diagnosed hypertension complicating pregnancy, fetal heart rate abnormality, threatened premature labor and pelvic/groin pain and advised appellant not to return to work until after her delivery. The Board finds that he provided a firm diagnosis of pregnancy complications, which is a compensable injury under FECA.[13] Dr. Clachkostated that appellant's complications resulted from the October 2, 2011 employment incident. Although his opinion may not be fully rationalized,proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. Appellant has the burden to establish entitlement to compensation; however, OWCP shows responsibilityin the development of the evidence to see that justice is done.[14]

In this case, the medical evidence clearly establishes that appellant was seven months pregnant at the time of the October 2, 2011 accident and was immediately examined at the hospital following the accident. Emergency room records dated October 2 to 3, 2011 indicate that shewas transported to the hospital for an examination of her baby. Appellant was treated by Drs. Zelensky and Rosenblum who noted that she was approximately 28 weeks' pregnant and complained of abdominal pain and contractions following a motor vehicle accident. The record also contains an affirmative statement from Dr. Clachko that appellant suffered pregnancy complications, including contractions, gestational hypertension, fetal heart rate abnormality and threatened premature labor as a result of the October 2, 2011 motor vehicle accident. Thus, while none of the physicians provided a rationalized medical opinion explaining how the

[12] *James Mack*, 43 ECAB 321 (1991).

[13] *See L.M.*, Docket No. 10-2084 (issued May 20, 2011) (the Board remanded the case to determine whether an employee who was 24 weeks pregnant was entitled to reimbursement for medical expenses when she was transported to the hospital for fetal monitoring following an April 9, 2009 motor vehicle accident); *see also Marie R. Robinson-McLaughlin*, Docket No. 02-1561 (issued October 24, 2002) (the Board remanded the case for referral to an obstetrician to determine whether a 6-month pregnancy was a complicating factor to an employee's accepted abdominal strain condition).

[14] *Id.; G.G.*, 58 ECAB 389 (2007).

October 2, 2011 accident caused appellant's pregnancy complications the Board concludes that this evidence is sufficient to require further development of the case record.

On remand, OWCP should refer appellant to an appropriate specialist to determine whether she suffered an injury due to the October 2, 2011 employment incident.

CONCLUSION

The Board finds that this case is not in posturefor decision as to whether appellant's pregnancy complicationswere causally related to the accepted employment incident.

ORDER

IT IS HEREBY ORDERED THATthe August 21, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: August 2, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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