

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

C.B., Appellant

and

CENTRAL INTELLIGENCE AGENCY,
Herndon, VA, Employer

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**Docket No. 12-1940
Issued: March 5, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 21, 2012 appellant filed a timely appeal from the July 11, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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. The Board also has jurisdiction to review OWCP's August 13, 2012 nonmerit decision denying her request for reconsideration.

ISSUES

The issues are: (1) whether appellant's hydrocephalus is causally related to her federal employment; and (2) whether OWCP properly denied her July 20, 2012 reconsideration request.

FACTUAL HISTORY

On February 2, 2011 appellant, a 39-year-old project manager, filed an occupational disease claim alleging that her hydrocephalus, together with her gait derangement and urinary

¹ 5 U.S.C. § 8101 *et seq.*

incontinence, was causally related to an incident in 1990 when she took a street survival course and hit the back of her head on a concrete floor during the period January 25 to 26, 1990. She indicated that she first became aware that her condition was employment related on January 11, 2010.

Dr. Michael A. Williams, a Board-certified neurologist, saw appellant on November 1, 2010 for a neurological consultation. He related that her condition first came to her attention about three years earlier, when she had difficulty with her job. Appellant had trouble with her thinking and memory. Eventually, an imaging study revealed hydrocephalus.

Dr. Williams noted the following: “Review of risk factors for adult hydrocephalus shows that, in 1990 or 1991 at a self-defense course, [appellant] fell backwards and rather than landing on the mat, she landed on the concrete floor and hit the back of her head. There was no loss of consciousness or bleeding, but she saw stars.” On May 13, 2012 Dr. Williams noted that appellant endorsed no other risk factor for adult hydrocephalus. Further his examination found a normal head circumference, which suggested that the hydrocephalus was acquired, as opposed to congenital. Dr. Williams explained that traumatic brain injury, including concussion, was a known risk factor for hydrocephalus and the fact that appellant saw stars indicated that the fall had enough force for the occipital lobe of the brain to strike the inside of the skull when her head hit the floor. “To the best of our knowledge, however, she did not have a head CT [computed tomography scan] at the time of her injury in 1990 and thus we cannot know whether the hydrocephalus was a preexisting condition. Further, it is possible [appellant] developed idiopathic hydrocephalus.” Dr. Williams concluded that it was highly plausible that the fall she sustained was related to her hydrocephalus, but it was not possible in retrospect to rule out other causes.

On July 11, 2012 OWCP denied appellant’s injury claim. It accepted that the claim was timely and that the incident in 1990 occurred as alleged. OWCP found, however, that the medical evidence was not sufficient to establish that the incident caused appellant’s current hydrocephalus. Although Dr. Williams diagnosed her with hydrocephalus, OWCP found that he did not unequivocally link that diagnosis to her fall during self-defense training in 1990.

On July 20, 2012 appellant requested reconsideration. She stated that she would send in further evidence from her physicians once she had it.

In an August 13, 2012 decision, OWCP denied appellant’s reconsideration request. It found that her request neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant a reopening of her case.

On appeal, appellant believes and agrees with Dr. Williams’ May 13, 2012 report.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the

manner alleged. He or she must also establish that such event, incident or exposure caused an injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

Causal relationship is a medical issue³ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁴ must be one of reasonable medical certainty⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁶

ANALYSIS -- ISSUE 1

OWCP accepts that appellant hit the back of her head in 1990, as alleged. Appellant has therefore met her burden to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question that remains is whether this incident caused her current hydrocephalus.

In his May 13, 2012 report, Dr. Williams, the consulting neurologist, offered some support for appellant's injury claim. He noted that she had identified a risk factor for the condition of hydrocephalus. Appellant endorsed no other risk factors. Her normal head circumference suggested that the condition was acquired, not congenital. Further, appellant's description of the incident was consistent with a traumatic brain injury, which was a known risk factor for hydrocephalus.

Although Dr. Williams concluded that it was highly plausible that appellant's hydrocephalus was related to her fall in 1990, he qualified that conclusion substantially. He explained that it was impossible to know whether this was a preexisting condition. It was possible appellant developed an idiopathic hydrocephalus. Dr. Williams added that it was not possible, in retrospect, to rule out other causes of the condition.

This raises a question of whether Dr. Williams' opinion was one of reasonable medical certainty or whether, having raised some doubt about the condition's etiology, he simply could not say, in retrospect, whether the incident in 1990 caused appellant's current medical condition.

It is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt. The evidence required is only that necessary to convince the

² See generally *Victor J. Woodhams*, 41 ECAB 345 (1989).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ See *William E. Enright*, 31 ECAB 426, 430 (1980).

adjudicator that the conclusion drawn is rational, sound and logical.⁷ But neither can the evidence be equivocal.⁸

Dr. Williams did not explain why symptoms of hydrocephalus did not manifest for 17 years after appellant struck her head. He did not explain whether this was consistent with the nature of hydrocephalus and the element of causal relationship. Medical conclusions unsupported by rationale are of little probative value.⁹

The Board finds that while some support can be found for appellant's claim in Dr. Williams' May 13, 2012 report, the report raises enough doubt about the cause of her condition and the late development of her symptoms that she has not discharged her burden to establish that her current hydrocephalus was the result of what happened in 1990. Accordingly, the Board will affirm the OWCP's July 11, 2012 decision to deny her injury claim.

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.

LEGAL PRECEDENT -- ISSUE 2

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.¹⁰ An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹¹

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹² A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these

⁷ *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

⁸ *Vaheh Mokhtarians*, 51 ECAB 190 (1999) (medical opinions that are speculative or equivocal in character have little probative value).

⁹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

¹⁰ 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.606.

¹² *Id.* at § 10.607(a).

standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹³

ANALYSIS -- ISSUE 2

Appellant had one calendar year after OWCP's July 11, 2012 decision or until July 11, 2013, to request reconsideration. Her July 20, 2012 request, received by OWCP on July 25, 2012, was therefore timely. The question for determination is whether that request met at least one of the three criteria for obtaining a merit review of her case.

In her reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a relevant legal argument not previously considered by OWCP. Appellant did not submit evidence that constituted relevant and pertinent new evidence not previously considered by OWCP. Indeed, she offered no argument or evidence to support her request. Appellant indicated only that she would send in further evidence from her physicians once she had it. Her request therefore was insufficient on its face to require OWCP to reopen her case for a merit review.

As appellant's reconsideration request did not meet any of the requirements for obtaining a merit review of her case, the Board finds that OWCP properly denied her request. The Board will therefore affirm OWCP's August 13, 2012 decision.

CONCLUSION

The Board finds that appellant has not met her burden to establish hydrocephalus is causally related to her federal employment. The Board also finds that OWCP properly denied her July 20, 2012 reconsideration request.

¹³ *Id.* at § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the August 13 and July 11, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 5, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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