United States Department of Labor
Employees' Compensation Appeals Board

C.D., Appellant	)	
and	)	**Docket No. 13-836**
	)	**Issued: April 3, 2014**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, Baltimore, MD, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 24, 2013 appellant filed a timely appeal from a January 22, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained syncope and headaches causally related to the July 7, 2010 injury at work.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant requested an oral argument. By order dated July 8, 2013, the Board denied appellant's request for an oral argument finding that her arguments on appeal could adequately be addressed in a decision based on a review of the case record.

FACTUAL HISTORY

This case has previously been before the Board. In a September 18, 2012 order,[3] the Board remanded the case for OWCP to obtain a missing medical report and complete the record. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.

On July 7, 2010 appellant, then a 54-year-old diversity and civil rights officer, struck the right side of her forehead at her desk. She passed out after a telephone conversation with Franklin Jones, the Executive Director, at the employing establishment. When appellant gained consciousness she had bruises on her knee caps, a stiff neck and pain in her upper and lower back. She started shaking and passed out again. Appellant stopped work and returned on July 12, 2010. She provided a typed version of her account of the July 7, 2010 telephone conversation with Mr. Jones.

In July 13, 2010 statements, Dr. Michael Lovejoy, the Director of Field Operations at her employing establishment, and Geraldine A. Harle, a secretary, reported that on July 7, 2010 they received a telephone call that appellant had fainted in her office. When they went to her office, they observed that she was visibly upset and that she passed out two more times before she was taken to the hospital by ambulance. In a July 15, 2010 statement, Sean Brady, a financial advisor, stated that he went to appellant's office after he heard that she passed out and saw her lying down on the ground near her chair.

A July 7, 2010 emergency medical services (EMS) report indicated that appellant collapsed twice at the employing establishment and was taken to the hospital due to anxiety. She became dizzy and weak because her supervisor was harassing her. A July 7, 2010 hospital report noted that appellant became dizzy and had a syncope episode at work. Appellant was authorized to return to work on July 8, 2010.

In a July 7, 2010 computerized tomography (CT) report, Dr. Stuart E. Mirvis, a Board-certified diagnostic radiologist, observed no evidence of intracerebral acute pathology and unremarkable paranasal sinuses, orbits and globes. He listed syncope.

In a July 19, 2010 back to work note, Dr. Chetana Shastri, a Board-certified internist, stated that appellant could return to work on August 2, 2010. She noted that appellant was ready to take time off for anxiety and stress and would be seeing mental health on July 30, 2010 to get some help.

On July 28, 2010 Dr. Shastri noted that appellant sustained an injury of mental stress, anxiety and bumps on her left forehead due to a fall. She indicated that appellant did not have a history or evidence of concurrent or preexisting injury. Dr. Shastri reported that appellant was taken to the emergency room where she was examined for dizziness, passing out and had a bump from a fall. She diagnosed stress, anxiety and headaches. Dr. Shastri checked "yes" that she believed appellant's condition was caused or aggravated by an employment activity. Appellant was disabled from July 19 to 30, 2010 and could resume regular work on August 2, 2010.

[3] Docket No. 12-895 (issued September 18, 2012).

In a July 30, 2010 back to work note, Dr. Shastri reported that appellant could return to work on August 5, 2010.

On August 5, 2010 Dr. John McEvoy, a Board-certified internist, stated that appellant had recent issues of reported abuse at work and wanted to transfer because she was not coping well. He related that during an argument at work, she became very upset and had a syncopal episode three times. Appellant fell onto her desk and to the floor and sustained a head injury. Dr. McEvoy noted that she went to the hospital where a CT scan was negative. He opined that the cause of appellant's syncope was felt to be an anxiety attack. Dr. McEvoy reported that she experienced bifrontal headaches with throbbing, pressure-like sensation since the incident. Upon examination, he observed neck stiffness and mild photophobia but no aura or migrainous features. Dr. McEvoy diagnosed anxiety disorder with headaches that seemed to be more tension and stress related. Most of appellant's issues were situational and he opined that the best outcome would be a transfer of work duties to another department. Dr. McEvoy stated that she could return to work with limitations after August 11, 2010.

By letter dated August 11, 2010, OWCP requested that she respond to specific questions regarding her medical history and the July 7, 2010 employment incident.

In an August 20, 2010 letter, the employing establishment controverted appellant's claim alleging that her conditions were not work related. In a statement, Mr. Jones related that on July 7, 2010 he called appellant to clarify an e-mail she sent to Alan Bersin, the Customs and Border Patrol Commissioner, regarding the reassignment notice and to identify the individuals she believed were responsible for harassment in her workplace. Mr. Jones noted that appellant requested to put her concerns in writing. He advised her to respond to his questions so that he could quickly address her concerns and allegations. Mr. Jones reported that appellant began to speak in a disrespectful tone and refused to answer his questions. When she stopped answering his questions, he assumed that she had hung up. The employing establishment contended that Mr. Jones followed his managerial obligation to speak with appellant in order to address her concerns about her work environment. It also noted that she had not submitted sufficient medical evidence to establish that she sustained a diagnosed condition as a result of the July 7, 2010 employment incident.

In August 20 and 27, 2010 statements, appellant related that on July 7, 2010 she sustained contusions and bruises on her forehead and knees after she passed out. She alleged being harassed, intimidated, threatened, and coerced during a telephone conversation with Mr. Jones, her third level supervisor. Mr. Jones interrogated her on why she went to the Commissioner regarding the reconstruction of his office and kept interrupting her when she attempted to answer his questions. Appellant informed Mr. Jones that she was not feeling well and requested to get back to him but he denied her request. She stated that she was not disrespectful to him and did not raise her voice. Appellant first passed out during the telephone conversation and again while sending an e-mail to notify Mr. Jones and Mr. Hire that she was going to the hospital. She passed out a third time when she was talking to the paramedics. Appellant contended that she lost consciousness as a result of Mr. Jones badgering her for information, speaking to her in a demanding manner, denying her requests to get back to him when she was not feeling well and interrupting her. Appellant requested to be reassigned outside of her office based on the injuries she sustained on July 7, 2010 but the establishment did not cooperate. She reported that she did

not have any history of fainting or any other preexisting condition which could have caused her to lose consciousness.

In a September 1, 2010 statement, Kristy L. Montes, the Director of Field Operations for the Office of Diversity and Civil Rights, denied appellant's request for reassignment for medical reasons. She found that appellant did not provide adequate documentation addressing the impact of appellant's current supervisory assignment on her alleged medical conditions.

In a November 3, 2010 statement, appellant addressed the medical documentation submitted to OWCP and listed her prescribed medications. She reiterated that she suffered traumatic injuries due to the July 7, 2010 telephone conversation and requested a copy of her case record.

Appellant submitted copies of e-mails commencing June 24, 2010 regarding her initial request for Mr. Jones to reconsider his reassignment notice. In e-mails dated July 12 to August 30, 2010, she addressed the refusal of Mr. Jones to reconsider his realignment notice. Appellant also submitted copies of her complaints of employment discrimination to the Equal Employment Opportunity Commission (EEOC).

In a November 17, 2010 report, Dr. Robert E. Rosenthal, Board-certified in emergency and internal medicine, stated that he was the attending physician at the hospital where appellant was examined on July 7, 2010. According to the history provided, appellant "felt funny" and suffered a syncopal or fainting episode at work after a stressful situation. She suffered two more episodes of fainting when she tried to stand. Appellant hit her head on a desk during one of the episodes. Dr. Rosenthal first met appellant while she was awake and complained of a severe headache. He stated that the physical examination was basically unrevealing and that blood tests, a head CT and an electrocardiogram (EKG) failed to show a cause for her loss of consciousness. Dr. Rosenthal diagnosed "vasovagal syncope" and explained that this was a loss of consciousness caused by acute onset of low blood pressure in response to an extremely stressful or painful incident. He opined that appellant's loss of consciousness and the risk of serious injury was consistent with a stressful encounter in the workplace.

In a decision dated February 9, 2011, OWCP accepted appellant's July 7, 2010 claim for a head contusion. It found that the medical evidence was insufficient to accept headache, syncope or anxiety disorder as causally related to the July 7, 2010 employment incident.

In a letter dated February 19, 2011, appellant requested reconsideration of the February 9, 2011 decision to deny her claim for headache and syncope. She noted that she previously requested copies of her file but had not received them. Appellant stated that she was at a disadvantage because management reviewed her case file but she was not given the same opportunity. She contended that she submitted sufficient medical evidence to establish her claim.

In a May 12, 2011 decision, OWCP denied her compensation claim for headaches, syncope and anxiety.

On May 23, 2011 appellant requested an oral hearing. She explained that the reason she did not file her request for a hearing within 30 days of the February 9, 2011 decision was the

failure of the initial decision to inform her of her appeal rights. Appellant contended that OWCP's claims examiner was complicating her claim by making it about harassment and a prolonged condition. She clarified that she was not claiming any anxiety disorder, harassment or a hostile work environment but that she experienced stress and the fear of being harassed, intimidated and threatened due to the July 7, 2010 telephone conversation. The stress caused her to faint from an anxiety attack and hit her head. Appellant contended that OWCP ignored Dr. Rosenthal's November 17, 2010 medical report which provided a medical opinion on causal relationship.

A telephone hearing was held on October 13, 2011. Appellant reiterated that she was not making a claim for an anxiety condition but for an anxiety attack as a result of the July 7, 2010 telephone conversation with Mr. Jones. She contended that OWCP's decision was biased as it included a statement by Mr. Jones regarding the July 7, 2010 incident but did not include her statements about the telephone conversation.

In a letter dated October 23, 2011, appellant provided additional comments to the October 13, 2011 telephone hearing. She clarified that she was requesting that the diagnoses of vasovagal syncope and headaches be accepted.

By decision dated January 22, 2013, an OWCP hearing representative affirmed the May 12, 2011 decision denying her claim for vasovagal syncope and headaches. She determined that appellant's fainting episode did not occur in the performance of duty because the alleged cause of the incident, a telephone call with Mr. Jones, was not considered a compensable factor of employment. The hearing representative found that appellant failed to submit sufficient medical evidence to establish that her headaches resulted from her physically striking her head on July 7, 2010.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence[5] 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.[6]

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.[7] 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

[4] 5 U.S.C. §§ 8101-8193.

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

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

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

incident at the time, place and in the manner alleged.[8] 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.[9] 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.[10]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[11] 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.[12] The weight of the 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.[13]

It is a well-settled principle of workers' compensation law that each and every injury or illness that is somehow related to employment is not covered under workers' compensation law. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of FECA. On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of employment.[14]

ANALYSIS

OWCP accepted that on July 7, 2010 appellant sustained contusions to her head when she fell following a telephone conversation with Mr. Jones. It denied that she sustained a syncopal episode or headaches causally related to the July 7, 2010 employment incident.

The Board finds that appellant did not sustain an anxiety attack or syncopal episode in the performance of duty.

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

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

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

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

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

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

[14] *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

Appellant contends that on July 7, 2010 Mr. Jones called her concerning an e-mail she sent to Commissioner Bersin regarding the denial of her request to change his reassignment notice and other workplace concerns. She alleged that during the telephone conversation she was harassed, intimidated, threatened and coerced. As a result, appellant became fearful, had an anxiety attack and fainted. She stated that she was not claiming an anxiety disorder as a result of the July 7, 2010 employment incident but that her syncopal episode and headaches were causally related to this incident. Appellant attributed her fainting episode to an anxiety attack caused by harassment and intimidation at work. Accordingly, she must establish that the cause of her anxiety attack and fainting arose in and out of the course of her employment.

As a general rule, a claimant's reaction to administrative or personnel matters fall outside the scope of FECA coverage.[15] Absent error or abuse on the part of the employing establishment, administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specifically assigned work duties of the employee.[16] An employee's complaint about the manner in which a supervisor performs supervisory duties or the manner in which a supervisor exercises supervisory discretion generally fall outside the scope of coverage provided by FECA. This principle recognizes that a supervisor must be allowed to perform his or her duties and that in performance of these duties, employees will at times dislike actions taken. Mere disagreement or dislike of a supervisory or management action is not compensable, absent evidence of error or abuse. In determining whether the employing establishment erred or acted abusively, the Board has first examined whether the employing establishment acted reasonably.[17] To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.[18]

For harassment to give rise to a compensable factor under FECA, there must be some evidence that acts alleged or implicated by the employee did, in fact, occur. A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient, or embarrassing is self-generated and should not give rise to coverage under FECA absent objective evidence that the interaction with his or her supervisor was, in fact, abusive.[19]

In support of her claim, appellant provided statements from Drs. Lovejoy and Harle, who heard that she had fainted in her office. They observed that she was visibly upset and passed out two more times before she was taken to the hospital. In an August 20, 2010 letter, Mr. Jones, the supervisor, controverted appellant's allegations. He asked her to respond to his questions in order to address her concerns and allegations. Appellant refused to answer his questions and began to speak in a disrespectful tone. The Board finds that appellant has not submitted sufficient evidence to establish that Mr. Jones' telephone conversation constituted harassment or was abusive. While the record establishes that she became upset and fainted after the telephone

[15] *Janet I. Jones*, 47 ECAB 345 (1996).

[16] *Gregory N. Waite*, 46 ECAB 662 (1995).

[17] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[18] *Barbara J. Richardson*, 45 ECAB 843 (1994).

[19] *Daniel B. Arroyo*, 48 ECAB 204 (1996).

conversation, there is no evidence that Mr. Jones acted in an abusive manner toward appellant.[20] Appellant has not established a compensable employment factor with regard to her allegation of harassment or managerial abuse.

On appeal, appellant alleged discrimination, harassment and a hostile work environment. She noted that the employing establishment's standard of conduct prohibited discrimination and harassment in the workplace. Appellant references several cases, including *William W. Knespel*,[21] *Jon Louis Van Alstine*,[22] *Donald R. Ford*,[23] *Yvonne D. McCracy*[24] and *Bradford N. Reed*,[25] in support of her claim. As noted, OWCP accepted a head contusion arising from the July 7, 2010 incident at work. The episode occurred in her office during her tour of duty. As she attributes her syncope and headache also resulted from fear caused by harassment and intimidation by her supervisor, she must prove that such harassment occurred and is not based on her own feelings or perceptions.[26] She has not established that the interaction with her supervisor was, in fact, abusive.

Appellant also cited *Donna M. Schmiedeknecht*[27] to support her claim. In that case, a letter carrier claimed a depressive disorder because management required her to complete an increased workload within the same eight-hour workday. The Board accepted the increased work as a compensable factor of employment under *Cutler*. The Board noted that the claimant was not claiming an emotional condition as a result of an administrative or personnel action but she attributed her condition to her duties as a letter carrier. In this case, appellant here is not alleging that her fainting episode resulted from her specific duties as a diversity and civil rights officer but that she fainted due to harassment by Mr. Jones.

On appeal, appellant also contends that it is difficult to prove a one-on-one conversation but that acts that occurred prior to and her typed version of the conversation should render a decision beyond a reasonable doubt that the incident occurred. She provided other examples of a hostile and intimidating work environment. The Board notes that appellant's version of the telephone call was disputed by the employing establishment. Further, if appellant is claiming

[20] *See Latonya S. Tankard*, Docket No. 98-2420 (issued September 22, 2000) (denying appellant's claim for headaches and back pain after fainting and tumbling down the stairs because although the evidence demonstrated that appellant and her employer had a loud discussion it failed to establish that her employer's actions rose to the level of harassment).

[21] 56 ECAB 639 (2005).

[22] 56 ECAB 136 (2004).

[23] 56 ECAB 577 (2005).

[24] 56 ECAB 646 (2005).

[25] 56 ECAB 428 (2005).

[26] *Supra* note 20.

[27] 56 ECAB 726 (2005).

that she sustained an emotional condition as a result of work-related stress from events at work over a period greater than the July 7, 2010 shift, she may file an occupational disease claim.[28]

The Board also finds that appellant failed to establish that she sustained a headaches causally related to the July 7, 2010 injury.

Appellant contends that Dr. Rosenthal's November 17, 2010 report is sufficient to establish a causal connection with vasovagal syncope and headaches. Dr. Rosenthal examined appellant at the hospital on July 7, 2010. He related that, according to the history provided, appellant "felt funny." Appellant experienced a syncopal or fainting episode at work after a stressful situation and suffered two more episodes after she tried to stand. Dr. Rosenthal noted that the physical examination was basically unrevealing and that diagnostic and lab tests failed to establish a cause for her loss of consciousness. He diagnosed vasovagal syncope and explained that this was a loss of consciousness caused by acute onset of low blood pressure in response to an extremely stressful or painful incident. Dr. Rosenthal opined that appellant's loss of consciousness and the risk of serious injury was consistent with a stressful encounter in the workplace. While Dr. Rosenthal provided a diagnosis of syncope and generally references appellant's work, he failed to adequately explain how her conversation with her supervisor caused her stress and resulted in the syncopal episode. Dr. Rosenthal attributed appellant's condition to a generally stressful situation. The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident caused or contributed to appellant's diagnosed medical condition.[29]

In an August 5, 2010 report, Dr. McEvoy noted that appellant had a syncopal episode at work after becoming upset. He opined that the cause was felt to be an anxiety attack. Dr. McEvoy generally referenced the incident at work but did not sufficiently explain how appellant's conditions resulted from the July 7, 2010 telephone conversation or explain how the conditions resulted from the incident. The reports of Drs. Rosenthal and McEvoy are insufficient to establish causal relationship.[30]

In July 2010 reports, Dr. Shastri noted that appellant was taken to the emergency room where she was examined for dizziness, passing out and a bump from a fall. She diagnosed stress, anxiety and headaches. Dr. Shastri checked "yes" to a form question that she believed appellant's condition was caused or aggravated by an employment activity. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes"

[28] A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[29] *B.T.*, Docket No. 13-138 (issued March 20, 2013); *John W. Montoya*, 54 ECAB 306 (2003).

[30] *See L.G.*, Docket No. 13-927 (issued August 27, 2013) (the Board upheld the denial of appellant's claim finding that the medical evidence failed to establish that her medical conditions resulted from fainting at work due to stress and anxiety); *S.B.*, Docket No. 10-435 (issued January 14, 2011) (the Board denied that appellant sustained injuries to her head, back, hip, shoulder and side when she had a severe anxiety attack and fell from her chair after receiving an upsetting e-mail at work).

to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[31]

Appellant also submitted July 7, 2010 EMS and hospital records which indicated that she lost consciousness and collapsed twice at the employing establishment. The reports, however, were not signed by a physician and lack proper identification. Therefore, they are not considered probative medical evidence under FECA.[32]

Causal relationship is a medical issue that can only be established by reasoned medical opinion evidence that is supported by medical rationale.[33] Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[34] In this case, appellant failed to submit sufficient medical evidence to establish that she sustained a syncopal episode or headaches as a result of the July 7, 2010 employment incident.

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 has not met her burden of proof to establish that she sustained syncopal or stress headaches due to the July 7, 2010 employment injury.

[31] *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[32] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[33] *T.H., supra* note 10; *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[34] *Jennifer Atkerson*, 55 ECAB 317 (2004).

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2014
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