United States Department of Labor
Employees' Compensation Appeals Board

D.D., Appellant	)	
and	)	**Docket No. 13-1517**
	)	**Issued: April 14, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Belmar, NJ, Employer	)	

Appearances:
Jason S. Lomax, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 12, 2013 appellant, through his attorney, filed a timely appeal from a December 18, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) that denied his 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 sustained an injury in the performance of duty on September 2, 2011.

On appeal, appellant's attorney asserts that the medical evidence establishes a causal relationship between the accepted work incident and appellant's current medical condition.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On September 15, 2011 appellant, then a 57-year-old letter carrier, filed a traumatic injury claim alleging that the he struck his head on his mail truck door on September 2, 2011 when he slipped off a curb. He stopped work on September 8, 2011. The employing establishment challenged the claim, indicating that appellant did not report an injury on Friday, September 2, 2011, and worked on Saturday, September 3, 2011. On Tuesday, September 6, 2011, appellant complained of a headache and September 7, 2011 was a scheduled day off. On September 8, 2011 the employing establishment was informed that appellant had been hospitalized for bleeding of the brain and was claiming that he hit his head on a postal vehicle on September 2, 2011. By letter dated October 7, 2011, OWCP informed appellant of the evidence needed to support his claim.

In an October 17, 2011 report, Dr. Bruce R. Rosenblum, a Board-certified neurosurgeon, stated that appellant was seen that day in follow-up after hospitalization for a intracerebral/subdural hematoma after striking his head on his postal vehicle on September 2, 2011. He advised that appellant had no further headaches and a computerized tomography (CT) scan showed that the intracranial hemorrhage had largely resolved. Dr. Rosenblum advised that appellant had no focal neurologic findings on examination and that, because he complained of memory problems, a neuropsychologic evaluation was recommended.

By decision dated November 9, 2011, OWCP denied the claim. It found that the evidence was not sufficient to establish that the claimed incident occurred as alleged. OWCP noted that appellant had not furnished a narrative statement, as requested.

On December 5, 2011 appellant, through his union representative, requested a hearing. In an undated statement, he noted that at about 10:45 a.m. on September 2, 2011 he was exiting his postal vehicle when he slipped backward and struck his head on the corner of the truck door. Appellant continued his route, and the next day, felt a headache coming on. He told Joe Lasky, a coworker, that it could be because he hit his head the day before. Appellant related that he was off Sunday and Monday, a holiday. When he returned to work on Tuesday, September 6, 2011, he had to stop casing mail because his head hurt and he could not see well. Appellant went to get an aspirin in the break room and told Marilyn Donohue, a supervisor, that he hit his head the previous Friday. He was able to finish work on Tuesday. Appellant was off on Wednesday. On Thursday, September 8, 2011 he became sick and at about 12:15 p.m. a friend took him to the hospital.

In a February 21, 2012 decision, an OWCP hearing representative accepted the September 2, 2011 incident and remanded the case for development of the medical evidence.

In a letter dated February 28, 2012, OWCP asked that Dr. Rosenblum provide records of appellant's hospitalization and a narrative report which fully explained his findings and opinion.

On September 8, 2011 Dr. Rafiya S. Khakoo, a Board-certified neurologist, noted a history that appellant hit his head on the door of his truck. This was followed by headaches of increasing intensity. Appellant came to the emergency room for evaluation. Dr. Khakoo reported a past medical history of migraine headaches and hypertension. She diagnosed a head

contusion, status post head trauma prior to admission; small subarachnoid hemorrhage and mild subdural hematoma on the left. A magnetic resonance imaging (MRI) scan of the brain on September 9, 2011 demonstrated a left subdural hematoma, multiple parenchymal contusions in the frontal temporal and frontoparietal regions and subarachnoid blood in the left frontal and parietal convexity region. There was no significant mass effect with the exception of subtle effacement of the sulci in the left cerebral hemisphere. A magnetic resonance angiogram (MRA) of the Circle of Willis was unremarkable.

A September 28, 2011 CT scan study of the head and brain showed a small residual left temporoparietal subdural hematoma. Previous hemorrhagic contusions were no longer seen. In a September 28, 2011 report, Dr. Rosenblum found that appellant was neurologically normal with no focalities. He reviewed the CT scan study and advised that appellant was to remain off work until evaluation on October 10, 2011. An October 17, 2011 CT scan study of the head/brain showed resolution of the left-sided subdural collections and subarachnoid blood, with no residual abnormalities.

Steven P. Greco, Ph.D., provided a January 20, 2012 neuropsychological examination. He reported a history that appellant struck his head against a door on September 2, 2011. Appellant was hospitalized from September 8 to 11, 2011 and had rehabilitation until October 20, 2011. Dr. Greco advised that, after testing, appellant's pattern of cognitive function was consistent with diffuse, ongoing cognitive dysfunction secondary to traumatic injury with deficits in processing speed, cognitive flexibility of thinking, attention-concentration, complex integrative memory and reasoning, problem solving and abstraction. He diagnosed traumatic brain injury/intracranial hemorrhage, cognitive dysfunction, adjustment disorder with mixed emotions, and post-traumatic headaches. Dr. Greco recommended medical adjustment counseling, biofeedback, cognitive rehabilitation, and medical follow-up and indicated that appellant should not work.

On May 17, 2012 OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish that his condition was causally related to the September 2, 2011 employment incident.

On June 5, 2012 appellant, through his attorney, requested a hearing that was held on October 3, 2012. He described the September 2, 2011 incident and testified that he had headaches on his days off that increased in intensity until he was hospitalized. The hearing representative advised appellant to submit additional medical evidence, including hospital records and an opinion from Dr. Rosenblum with a rationalized explanation of causal relationship.

In a February 2, 2012 letter, Robert B. Sica, Ph.D., an associate of Dr. Greco, stated that appellant needed cognitive rehabilitation for his traumatic brain injury that occurred on September 2, 2011. On February 6, 2012 Dr. Sica advised that appellant had a traumatic brain injury on September 8, 2011 and was totally disabled.

In an emergency department report of September 8, 2011, Dr. Frank Migliori, Board-certified in emergency medicine, advised that appellant had complaints of aching, pounding headaches which occurred intermittently over the past three days. He provided examination

findings and noted that Dr. Rosenblum was coming to see appellant. Dr. Rosenblum recommended admission and provided consultation orders. A head and brain CT scan demonstrated multifocal acute intracranial hemorrhages on the left side and multiple contusions of the left frontal, temporal and parietal lobes of varying sizes. Appellant was admitted with preliminary diagnoses of intracerebral hemorrhage and hypertension. A September 12, 2011 head/brain CT scan revealed no interval change.

In an October 15, 2012 report, Dr. Rosenblum noted that appellant passed a driver's evaluation and was back at work five hours a day. Appellant had left shoulder and neck pain since the accident, and that Dr. Khakoo determined that it was from arthritis, as seen on cervical spine x-ray. Dr. Rosenblum recommended a cervical spine MRI scan study. In an October 22, 2012 report, he advised that appellant was initially seen in the emergency room on September 8, 2011 and related a history that on September 2, 2011 he fell at work, striking the left side of his head on a postal truck. On September 4 and September 6, 2011, appellant had severe headaches that lasted several hours; and, on the evening of September 7, 2011, he had a persistent headache with vomiting. Dr. Rosenblum advised that a CT scan revealed evidence of left multifocal cerebral contusions, a left subdural hematoma and a subarachnoid hemorrhage. Based on these facts and the September 8, 2011 evaluation, the September 2, 2011 injury caused the intracranial hemorrhages. Dr. Rosenblum stated that the natural history of such traumatic closed head injuries was often typified by a several day history of progressively worsening headaches.

In an October 25, 2012 letter, Angelique Renna, officer in charge at the employing establishment, controverted the claim. She noted that Dr. Sica reported on February 6, 2012 that the injury occurred on September 8, 2011 and that appellant was not on the clock that day. Appellant continued to work for several days following the claimed injury. Ms. Renna provided an accident report dated September 14, 2011 that includes a history that appellant fell from the curb and struck his head against his postal vehicle on September 2, 2011. In a statement dated October 28, 2012, Ms. Donohue indicated that on September 6, 2011 appellant was in the break room with the light out and told her he had a headache and did not feel well. She related that appellant did not mention that he had hit his head or request medical care or a traumatic injury claim form. Appellant later came out of the break room, cased mail and delivered his route. In an October 25, 2012 statement, Hal Orenbuch, a coworker, indicated that appellant did not tell him he had been in an accident or incident in early September 2011 and only reported it two weeks later by telephone.

In a November 13, 2012 report, Dr. Rosenblum noted that appellant was complaining of neck pain, radiating into the left shoulder and examination findings of pain on extension of the cervical spine. He indicated that a cervical spine MRI scan study showed disc herniations at C3-4 and C4-5.

In a December 18, 2012 decision, an OWCP hearing representative found that appellant did not submit sufficient medical evidence to establish that his intracranial hemorrhages, traumatic closed head injury or cognitive dysfunction were causally related to the accepted September 2, 2011 work incident.

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 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 are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[2]

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury 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.[3] To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[4]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[5] 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 employee.[6] Neither the mere 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.[7]

ANALYSIS

OWCP accepted that the September 2, 2011 incident occurred as alleged. The Board finds, however, that the medical evidence is insufficient to establish that the incident caused his claimed medical conditions.

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[2] *Gary J. Watling*, 52 ECAB 278 (2001).

[3] 20 C.F.R. § 10.5(ee) (2011); *Ellen L. Noble*, 55 ECAB 530 (2004).

[4] *Gary J. Watling, supra* note 2.

[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[6] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[7] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

The medical evidence most contemporaneous with the September 2, 2011 work incident includes an emergency room report from Dr. Migliori and a consultation note from Dr. Khakoo, both of which are dated September 8, 2011. Dr. Khakoo reported a history that appellant hit his head on the door of his truck. Both physicians relied on a September 8, 2011 brain/head CT study and diagnosed an intracranial hemorrhage. Neither physician, however, provided a cause of the diagnosed condition. 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.[8] Likewise, the numerous CT and MRI scan studies dated from September 8 to October 17, 2011 did not address the cause of the diagnosed conditions.

Appellant did not go to the emergency room until September 8, 2012, six days after the claimed injury. Dr. Rosenblum, an attending neurosurgeon, submitted a number of reports, in which he noted that appellant had been hospitalized with an intracranial hemorrhage after striking his head on a postal vehicle on September 2, 2011 and reported the CT scan study findings and reported examination findings. The Board, however, finds that these reports, which are rather brief, lack sufficient detailed medical rationale to discharge appellant's burden of proof that he sustained an injury on September 2, 2011. Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition. Dr. Rosenblum did not do so.[9] Appellant, therefore, did not meet his burden of proof to establish that he sustained a traumatic injury on September 2, 2011.

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 did not establish that he sustained an employment-related injury on September 2, 2011.

[8] *Willie M. Miller*, 53 ECAB 697 (2002).

[9] *Leslie C. Moore, supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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