

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

_____)	
T.G., Appellant)	
)	
and)	Docket No. 14-226
)	Issued: April 28, 2014
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 12, 2013 appellant filed a timely appeal of the October 8, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her traumatic injury claim. 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 the case.

ISSUE

The issues is whether appellant met her burden of proof to establish that she sustained a traumatic injury on July 16, 2013.

FACTUAL HISTORY

On August 22, 2013 appellant, then a 37-year-old letter carrier, filed a traumatic injury claim alleging that on July 16, 2013 she was struck by a taxi cab while driving her motor vehicle and injured her neck. She did not stop work. In the supervisor's report on appellant's traumatic

¹ 5 U.S.C. §§ 8101-8193.

injury claim, Roger Shetty, noted that she was in the performance of duty when injured and that his knowledge of the facts about the injury were consistent with her statement.

Appellant submitted a disability certificate from Dr. Gautum Khakhar, a Board-certified physiatrist, dated July 26, 2013. Dr. Khakhar treated her on July 19, 2013 and noted that she was unable to work pending reevaluation on August 27, 2013. In a CA-17, duty status report, dated August 27, 2013, he noted that appellant was status post motor vehicle accident. Appellant was treated for cervical muscular injuries and bilateral knee sprains. Dr. Khakhar opined that appellant remained temporarily totally disabled pending reevaluation.

By letter dated September 5, 2013, OWCP advised appellant of the factual and medical evidence needed to establish her claim. It requested that she submit such evidence, particularly a physician's reasoned opinion addressing the causal relationship of her claimed condition, the alleged motor vehicle incident. OWCP also asked that appellant identify the location of the accident, the date of the accident, whether the accident occurred during her regularly assigned route, address her delay in filing a claim for compensation and submit a police report or investigation by her agency of the accident.

Appellant submitted a July 17, 2013 report from Dr. Ershad Elahi, Board-certified in emergency medicine, who treated her in an emergency room and diagnosed motor vehicle traffic accident involving a collision and a muscle strain. Dr. Elahi prescribed pain medicine and discharged appellant.

On July 19, 2013 appellant was treated by Dr. Vincent Huang, a Board-certified physiatrist, for neck pain with numbness and tingling in both upper extremities, headache, dizziness and bilateral knee pain. She reported being involved in a motor vehicle accident on July 16, 2013 and struck on the right front passenger's side. Appellant reported head trauma without loss of consciousness and noted seeking hospital treatment the day after the accident. She presented with pain with lifting, reaching, bending. Appellant had difficulty with activities of daily living and work-related activities that require lifting, bending, twisting and pulling. Her history was significant for a prior motor vehicle accident which resulted in a left knee ligament repair in 2008. Appellant advised that she had not returned to work since the July 16, 2013 accident. On examination, Dr. Huang noted tenderness of the cervical spine with a painful range of motion, positive Spurling maneuver, trigger points on the right trapezius and supraspinatus, tenderness and painful range of motion of both knees and a positive McMurray test. Manual motor strength was 4/5 in the right shoulder, reflexes were symmetric and equal bilaterally and intact sensory testing. Dr. Huang diagnosed status post motor vehicle accident on July 16, 2013 with cervical myofascial derangement and bilateral knee sprain and strain. He recommended physical therapy, trigger point injections and pain medications. Dr. Huang opined that appellant remained temporarily, totally disabled. He stated that, "if the above statements are true and accurate, causality is established between the above[-]stated accident and today's pathological findings."

On September 3, 2013 appellant had a cervical spine magnetic resonance imaging (MRI) scan which revealed a disc bulge at C4-5 with anterior thecal sac impingement. A September 3, 2013 cervical spine x-ray showed no evidence of fracture or foraminal impingement. An September 3, 2013 x-ray of the bilateral knees revealed no fracture or dislocation. Appellant submitted a note from Dr. Khakhar dated September 12, 2013 who diagnosed cervical sprain/strain and knee sprain/strain.

In a decision dated October 8, 2013, OWCP denied appellant's claim. It found that the factual evidence did not establish that the July 16, 2013 incident occurred as alleged. OWCP further found that the medical evidence did not establish an injury connected to the claimed 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 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. 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

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. There are two components involved in establishing 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.³

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁴ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁵

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.⁶

² Gary J. Watling, 52 ECAB 357 (2001).

³ T.H., 59 ECAB 388 (2008).

⁴ R.T., Docket No. 08-408 (issued December 16, 2008); Gregory J. Reser, 57 ECAB 277 (2005).

⁵ Betty J. Smith, 54 ECAB 174 (2002).

⁶ I.J., 59 ECAB 408 (2008); Victor J. Woodhams, 41 ECAB 345 (1989).

ANALYSIS

OWCP denied appellant's claim on the grounds that she failed to establish that the July 16, 2013 motor vehicle incident occurred as alleged. However, the evidence supports that on July 16, 2013 she was in an automobile accident while in the performance of duty. Mr. Sheddy, appellant's supervisor, noted on appellant's claim form that she was in the performance of duty when injured and that his knowledge of the facts were consistent with her statement. The employing establishment did not dispute that the incident occurred on July 16, 2013 or that she was not in the performance of duty. The history of injury noted by healthcare providers is consistent with the history given by appellant. In a July 17, 2013 report, Dr. Elahi noted treating appellant in the emergency room. He obtained a history of a motor vehicle traffic accident. In a July 19, 2013 report, Dr. Huang treated appellant for neck pain which she reported was the result of a July 16, 2013 motor vehicle accident when her car was struck on the right front passenger's side. The Board finds that appellant's statements are consistent with the surrounding facts and circumstances of the claim. She has established that she experienced the incident of July 16, 2013, as alleged.

The Board finds, however, that the medical evidence is insufficient to establish that appellant developed a neck, back or knee condition causally related to the July 16, 2013 incident. On September 5, 2013 OWCP advised appellant of the type of medical evidence needed to establish her claim.

Appellant submitted a July 19, 2013 report from Dr. Huang who treated her for neck and bilateral knee pain. She reported working as a letter carrier and being involved in a motor vehicle accident on July 16, 2013 when her car was struck on the right front passenger's side. Dr. Huang made findings upon examination that included cervical myofascial derangement and bilateral knee sprain and strain. He opined that, "if the above statements are true and accurate" then causality is established between the motor vehicle accident and appellant's findings. Although Dr. Huang provided some support for causal relationship, his opinion is insufficient to establish that the claimed cervical myofascial derangement or bilateral knee sprains were causally related to the work incident. He offered equivocal support for causal relationship. Dr. Huang qualified his opinion by noting that "if the above statements are true and accurate."⁷ He also provided insufficient medical reasoning to explain how the motor vehicle collision caused or contributed to the diagnosed medical conditions. Therefore, Dr. Huang's report is insufficient to meet appellant's burden of proof.

Appellant submitted a July 17, 2013 report from Dr. Elahi who treated her in the emergency room and diagnosed motor vehicle traffic accident involving collision and muscle strain. Dr. Elahi discharged appellant and prescribed oral medications. He noted a diagnoses but he did not specifically indicate whether the July 16, 2013 work incident caused or contributed to appellant's diagnoses. This report is insufficient to establish the claim.⁸ Appellant also provided reports from Dr. Khakhar who noted treating her beginning July 19, 2013. Dr. Khakhar provided an August 27, 2013 duty status which noted appellant was status post motor vehicle accident but

⁷ Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

⁸ *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (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).

did not specifically provide an opinion as to whether appellant's July 16, 2013 motor vehicle accident caused or aggravated a diagnosed medical condition. The other medical evidence provided by appellant, including reports of diagnostic testing, are insufficient to establish her claim as they do not provide an opinion on the causal relationship between appellant's July 16, 2013 motor vehicle accident and her diagnosed conditions. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

Appellant has not submitted reasoned medical evidence explaining how and why her diagnosed medical conditions were caused or aggravated by the July 16, 2013 work incident. She has not met her burden of proof.⁹

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 meet her burden of proof to establish that her claimed conditions were causally related to her employment.

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2013 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: April 28, 2014
Washington, DC

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

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

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

⁹ On appeal, appellant submitted new evidence. The Board may not consider new evidence on appeal as its review is limited to the evidence that was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c).