



## **FACTUAL HISTORY**

This case was previously before the Board.<sup>3</sup>

On June 12, 2013 appellant, then a 46-year-old city carrier, filed a traumatic injury claim alleging that on June 11, 2013 he experienced throbbing headaches and pain in his neck and eyes when delivering mail in 112 degree weather.<sup>4</sup> He stopped work and returned to full duty with no restrictions on June 18, 2013.

On June 11, 2013 the employing establishment issued appellant a completed Form CA-16, authorization for examination, to receive office and/or hospital treatment as medically necessary for the effects of the June 11, 2013 injury.<sup>5</sup>

In a June 11, 2013 emergency room report, Dr. Robert E. Porter, an osteopath who specializes in emergency medicine, noted appellant's complaints of a headache that began eight hours ago and was exacerbated by light, noise and standing. He related that appellant was a letter carrier who got similar headaches when the summer heat came. Dr. Porter reviewed appellant's history and conducted an examination. Neurological examination and computed tomography (CT) scan of appellant's head were normal. Dr. Porter diagnosed heat-related illness, headache and dehydration. He recommended follow-up treatment in 2 days.

In a June 11, 2013 narrative report, Dr. Vernon J. Williams, Board-certified in occupational medicine, related that appellant was delivering mail at work when he got a headache at approximately 12 p.m. He took some pain medication but continued to experience throbbing on the right side of his head. Dr. Williams reviewed appellant's history and provided findings on examination. Neurological examination demonstrated positive for headache and negative for weakness, seizures, paralysis or numbness. Dr. Williams reported that appellant was alert and oriented but appeared somewhat uncomfortable. He observed that appellant's pupils were reactive to light and accommodation. Romberg's test was negative. Dr. Williams diagnosed headache and possible heat exhaustion. He noted that appellant had heat-related headaches before but not to this degree. Dr. Williams opined that appellant's condition may be heat stress related, but he was unsure of the cause of the headache. He explained that there was not the usual muscle cramps in the larger muscles. In an attached clinic note, Dr. Williams reported that appellant should remain off duty as of June 11, 2013.

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<sup>3</sup> Docket No. 14-391 (issued February 28, 2014). By decision dated February 28, 2014, the Board granted appellant's request that his December 9, 2013 appeal before the Board be dismissed so that he could request reconsideration.

<sup>4</sup> The record reveals that appellant previously submitted two other traumatic injury claims for a June 3, 2002 injury (File No. xxxxxx666) and a December 11, 2009 injury (File No. xxxxxx358). He also previously filed an occupational disease claim (File No. xxxxxx197).

<sup>5</sup> When a CA-16 form is properly executed, it creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See Tracey P. Spillane*, 54 ECAB 608 (2003); 20 C.F.R. § 10.300(c).

In a June 11, 2013 CT scan of appellant's head, Dr. Ron Z. Shinar, a Board-certified diagnostic radiologist, observed minimal white matter hypodensities and several calcifications along falx/tentorium. Ventricles and basilar cisterns appeared normal. Dr. Shinar opined that there was no acute intracranial abnormality.

In a June 12, 2013 clinic note, Dr. Williams described the June 11, 2013 incident at work. He noted that appellant had improved but still complained of a little lightheadedness, slight headache and stiffness of his neck. Dr. Williams recommended appellant return to restricted duty and avoid exposure to temperatures greater than 100 degrees for more than 15 minutes per hour for the next two days.

In a June 13, 2013 statement, the employing establishment controverted appellant's claim alleging that the medical documentation was not definitive regarding the etiology of his headaches.

In a June 17, 2013 report, Dr. Chia-How Liu, a Board-certified family practitioner, examined appellant on June 13, 2013 for heat exhaustion resulting in headaches, dizziness and disturbed sleep. He noted that appellant was unable to return to work until June 22, 2013. Dr. Liu recommended that appellant work with temperature restrictions of no more than four hours outdoors if temperatures are greater than 100 degrees. In a June 17, 2013 prescription note, Dr. Liu noted that appellant was seen in the emergency room of the Veterans Administration Medical Center due to illness.

In a June 18, 2013 report, Dr. K. David Moslenko, Board-certified in occupational medicine, described the June 11, 2013 incident at work and the medical treatment appellant received. He noted that appellant continued to complain of a headache for at least a week, primarily on the right side, with some feeling of neck stiffness. Dr. Moslenko reported negative neurological symptoms, systemic symptoms, dizziness or change in neurological function. He diagnosed headache, etiology undetermined and possible heat exhaustion. Dr. Moslenko reviewed appellant's lab evaluations and diagnostic examinations. He opined that there was no work injury related to appellant's symptoms because there were no symptoms, by record review, of heat exhaustion or heat-related illness. Dr. Moslenko recommended appellant return to regular duty.

In a June 18, 2013 report, Dr. Williams related appellant's complaints of continued head and neck pain. He noted that appellant felt slight improvement when indoors but that as soon as he stepped outside his headache and neck pain worsened again. Dr. Williams conducted an examination and diagnosed headache, etiology undetermined. He stated that he agreed with Dr. Moslenko that appellant's condition was unlikely to be of occupational origin, though it appeared aggravated by outdoor activity. Dr. Williams explained that although appellant's symptoms started at work, he believed that there was an underlying condition that was aggravated by being outside in hot weather. He explained that he would expect any residuals effects of heat exhaustion to be resolved and other than a minimal elevation of creatinine, there were no laboratory abnormalities on the lab work done at the Veterans Administration Hospital. Dr. Williams recommended that appellant continue his care with his primary care physician.

In a June 19, 2013 medical note, Dr. Liu stated that appellant was still under his care and advised that he could return to work on July 1, 2013.

In a letter dated June 26, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional medical evidence to demonstrate that he sustained headaches as a result of the alleged June 11, 2013 employment incident.

In a handwritten statement received on June 26, 2013, appellant described the symptoms he experienced on June 11, 2013 at work and the medical treatment he received. He stated that when he was examined on June 18, 2013 at the emergency room he was examined for less than five minutes and that the physician never asked him about his headaches. Appellant also pointed out that the physician did not have any history with him as a patient as compared to his family treating physician. He stated that he never had heat exhaustion symptoms of continued headaches, lightheadedness or neck pain as long as he had since the June 11, 2013 incident.

In a July 19, 2013 statement, appellant responded to OWCP's development letter. He related that on June 11, 2013 the heat began to take a toll on his head while at work and he began to have a headache. Appellant stated that his headache worsened and he also began to feel neck pain, light headedness and dizziness. He took medication and also drank a gallon of water and Gatorade. Appellant informed his supervisor of his condition and was instructed to return his delivery and go to the emergency room. He reported that his symptoms continued and he was examined by his treating physician on June 13, 2013. Appellant alleged that he was unable to work due to his symptoms of headaches, dizziness and light headedness.

In a July 22, 2013 report, Dr. Liu stated that appellant had been under his care due to heat exhaustion with symptoms of headaches and dizziness. He noted that appellant was unable to work from June 11 to 22, 2013. Dr. Liu opined that the exposure to heat at work appeared to have caused the initial episode of heat exhaustions. He reported that recommendations were made to limit this exposure and prevent recurrence.

In a July 23, 2013 report, Dr. Vijendra Swarup, a Board-certified internist, conducted an examination. He noted normal neurological and musculoskeletal findings. Dr. Swarup reported appellant's symptoms of heat exhaustion, dizziness and giddiness, syncope and collapse and chest pain. He stated that these symptoms were likely due to heat exhaustion and recommended that appellant increase his water intake throughout the day.

In a decision dated August 7, 2013, OWCP denied appellant's claim. It accepted that the June 11, 2013 incident occurred as alleged and that he sustained headaches and other symptoms. OWCP denied appellant's claim finding insufficient medical evidence to establish that his conditions were causally related to the accepted incident.

On January 14, 2014 OWCP received appellant's request for reconsideration. Appellant described the June 11, 2013 incident at work and reviewed the medical treatment he received. He alleged that he was off work until June 20, 2013 due to his heat exhaustion symptoms.

OWCP referred appellant's claim, along with a statement of accepted facts, to a medical adviser to determine whether appellant sustained heat exhaustion as a result of the June 11, 2013 employment incident.

In a February 21, 2014 report, Dr. Ellen Pichey, a Board-certified family practitioner, noted that the outside temperature at the employing agency on June 11, 2013 was 110 degrees and related appellant's symptoms of right sided throbbing headache, lightheadedness and nausea. She explained what heat exhaustion was and how it presented as an illness. Dr. Pichey opined that appellant's medical did not match the classic presentation of heat exhaustion. She explained that although headache was mentioned there were no other symptoms of complications from heat exhaustion in the file. Dr. Pichey pointed out that, Dr. Moslenko, in his June 18, 2013 report, stated that there were no symptoms of heat exhaustion or heat-related illness.

By decision dated April 3, 2014, OWCP denied modification of the August 7, 2013 decision. It found that the medical evidence was insufficient to establish that he sustained heat exhaustion as a result of the June 11, 2013 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> 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<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.<sup>10</sup> 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.<sup>11</sup> An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.<sup>12</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.<sup>13</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable

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<sup>6</sup> See *supra* note 1.

<sup>7</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>8</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>9</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>10</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>11</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>12</sup> *T.H.*, 59 ECAB 388 (2008); see also *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>13</sup> See *J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

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.<sup>14</sup> 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.<sup>15</sup>

### ANALYSIS

Appellant alleges that he developed heat exhaustion at work on June 11, 2013. OWCP accepted that the June 11, 2013 incident occurred but denied his claim finding insufficient medical evidence to establish that he sustained a traumatic injury as a result of the employment incident. The Board finds that appellant did not meet his burden of proof to establish that he sustained a head-related illness causally related to the June 11, 2013 employment incident.

The Board notes that the employing establishment properly executed a Form CA-16 which authorized medical treatment as the result of the employees claim for an alleged employment-related injury. Appellant was initially treated in the emergency room. In a June 11, 2013 hospital record, Dr. Porter related that appellant worked as a letter carrier and got headaches when the summer heat came. Upon examination, he noted that neurological findings and a CT scan of appellant's head were normal. Dr. Porter diagnosed heat-related illness, headache and dehydration. The Board notes that Dr. Porter reported essentially normal findings and did not provide any opinion on the cause of appellant's symptoms. Although Dr. Porter reported that appellant worked as a letter carrier, he did not state whether appellant's duties as a letter carrier on June 11, 2013 were causally related to his conditions. The Board has held that 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.<sup>16</sup> Similarly, Dr. Shinar's June 11, 2013 diagnostic report also found no abnormalities and did not opine on the cause of appellant's symptoms. Accordingly, these reports are insufficient to establish appellant's claim.

Appellant was also treated by Dr. Liu. In June 17 to 22, 2013 reports, Dr. Liu examined appellant for heat exhaustion resulting in headaches, dizziness and disturbed sleep. He opined that exposure to heat at work "appeared" to have caused the initial episode of heat exhaustion. Dr. Liu advised appellant to remain off work and recommended limitations on his exposure to sun and heat in order to prevent a recurrence. The Board notes that, although he related appellant's complaints of heat exhaustion to his work, his opinion that exposure to work "appeared" to have caused his heat exhaustion is speculative in nature and failed to explain the causal relationship between his condition and any work-related exposure.<sup>17</sup> Likewise, Dr. Swarup's July 23, 2013 statement that appellant's symptoms were "likely due" to heat

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<sup>14</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>15</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>16</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>17</sup> *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Michael E. Smith*, 50 ECAB 313 (1999).

exhaustion is also vague and equivocal and fails to concretely demonstrate how his symptoms resulted from the June 11, 2013 employment incident.

OWCP referred appellant's claim to an OWCP medical adviser. In a February 21, 2014 report, Dr. Pichey noted that the outside temperature at the employing establishment on June 11, 2013 was 110 degrees and related appellant's symptoms of right-sided throbbing headache, lightheadedness and nausea. She explained what heat exhaustion was and how it presented as an illness. Dr. Pichey opined that appellant's medical evidence did not match the classic presentation of heat exhaustion. She explained that although headache was mentioned there were no other symptoms of complications from heat exhaustion in the file. The Board notes that Dr. Pichey's opinion does not support a causal relationship between appellant's heat-related symptoms and the June 11, 2013 employment incident.

Dr. Pichey's opinion is also supported by additional medical evidence of record. In a June 18, 2013, Dr. Moslenko described the June 11, 2013 incident at work and the medical treatment appellant received. Upon examination, he reported negative neurological symptoms, systemic symptoms, dizziness or change in neurological function. Dr. Moslenko diagnosed headache, etiology undetermined and possible heat exhaustion. He opined that there was no work injury related to appellant's symptoms because there were no symptoms, by record review, of heat exhaustion or heat-related illness. Additionally, in a June 18, 2013 report, Dr. Williams agreed with Dr. Moslenko that appellant's condition was unlikely to be of occupational origin. He explained that, although appellant's symptoms started at work, he believed that there was an underlying condition that was aggravated by being outside in hot weather. None of these physicians believed that appellant sustained heat exhaustion conditions as a result of his work on June 11, 2013. They explained that his symptoms did not support a finding of heat exhaustion. Thus, the Board finds that the medical evidence fails to support that appellant sustained a heat-related condition as a result of his employment.

On appeal, appellant again described his symptoms on June 11, 2013 and the medical treatment he received in great detail. The Board has found that the issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.<sup>18</sup> Because appellant has not provided such medical evidence in this case, the Board finds that he did not meet his burden of proof to establish his 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.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained a traumatic injury causally related to the June 11, 2013 employment incident.

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<sup>18</sup> W.W., Docket No. 09-1619 (June 2, 2010); *David Apgar*, 57 ECAB 137 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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