

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

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**S.R., Appellant**

**and**

**U.S. POSTAL SERVICE, CHICAGO LOOP  
STATION, Chicago, IL, Employer**

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**Docket No. 14-1408  
Issued: December 4, 2015**

*Appearances:*  
*Kevin Card, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 6, 2014 appellant, through her representative, filed a timely appeal of a May 7, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 has established a traumatic injury in the performance of duty on December 7, 2011.

**FACTUAL HISTORY**

On December 29, 2011 appellant, then a 47-year-old letter carrier, filed a (Form CA-1) traumatic injury claim alleging that on December 7, 2011 she sustained head/skull injuries due to passing out while in the performance of duty.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

By correspondence dated January 20, 2012, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence to submit.

In a January 21, 2012 report, Dr. Edwin E. Hollins, a treating Board-certified internist, stated that on December 7, 2011 appellant was hospitalized for a symptomatic cerebral aneurysm. He indicated that she underwent a cooling procedure and was in the critical care unit until December 26, 2011. While she was hospitalized, appellant had markedly high blood pressure. She was discharged on December 29, 2011 but not allowed to return to work.

In a February 20, 2012 note, Dr. Bernard R. Bendok, a treating Board-certified neurologist, diagnosed subarachnoid hemorrhage. He indicated that appellant continued to be totally disabled by this condition and would be unable to work for the next six weeks.

By decision dated February 24, 2012, OWCP accepted that appellant was in the performance of duty at the time of the incident but denied appellant's claim as the medical evidence failed to provide a well-reasoned explanation of whether or how a diagnosed condition was due to the work incident.

On May 11, 2012 appellant requested reconsideration.

In support of her claim, appellant submitted six witness statements describing the December 7, 2011 incident. The witnesses consistently stated that on December 7, 2011 an employing establishment field manager had called a meeting with the union stewards and assistant stewards to discuss how the vacation schedule would be handled for that location. There was some dispute between the employing establishment and the union as to how this should occur. Appellant and the manager who called the meeting got into a heated argument and, while appellant was attempting to sit in a chair to call an officer of the local union on her cell phone, she fell to the floor.

In an undated statement, appellant described the December 7, 2011 incident. On December 7, 2011 she, acting in her capacity as chief steward, attended a meeting with management and other union stewards regarding 2012 vacation picks for the bargaining unit. During this meeting a heated argument developed between appellant and the manager. She claims they were yelling at each other when she felt dizzy, faint, and hot. Appellant reported that she passed out while sitting down and fell, hitting her head and neck on the floor. She noted that the manager accompanied her in the ambulance and she reported that even while riding in the ambulance he continued to yell at her.

In addition to the witness statements, OWCP received a March 15, 2012 medical report from Dr. Alan Shepard, a treating Board-certified neurologist. Dr. Shepard diagnosed ruptured aneurysm and coiling with headache, fatigue, and dizziness and noted that she was in the midst of an argument at work when it happened. He claimed that the argument at work likely caused an elevation in her blood pressure which caused her aneurysm to rupture.

By decision dated July 23, 2012, OWCP denied modification finding the submitted evidence insufficient to establish that appellant's cerebral aneurysm was due to her federal employment. It noted that, while Dr. Shepard suggested an increase in blood pressure caused the

aneurysm to rupture, he provided no history of the claimed condition or an explanation of whether appellant had any preexisting blood pressure condition.

On September 10, 2012 appellant requested reconsideration and submitted an August 27, 2012 report from Dr. Shepard. Dr. Shepard noted that she had engaged in an argument with a coworker in December 2011 and had never exhibited hypertension prior to this incident. He claimed that the hypertension was diagnosed, and a bleeding aneurysm was found, which led to all of her symptoms. Dr. Shepard diagnosed cerebral aneurysm and headaches.

In an undated note, Dr. Hollins stated that appellant was a patient of his and that prior to the December 7, 2011 employment incident she had not exhibited any headaches, hypertension, or seizures.

By decision dated September 28, 2012, OWCP denied modification. It modified the denial of appellant's claim to reflect that the claim was being denied because she was not in the performance of duty and that the aneurysm rupture was her own reaction to an argument and not considered part of her normal work duties and not compensable under FECA.

On September 16, 2013 appellant's representative requested reconsideration. He argued that appellant's injury had been sustained in the performance of duty as the aneurysm occurred while performing her union representation duties.

By decision dated May 7, 2014, OWCP denied modification. It found the evidence of record insufficient to establish that the December 7, 2011 incident was a compensable factor of employment as her reaction to the argument was self-generated.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of establishing that the essential elements of his or her claim including that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> 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.<sup>4</sup>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>5</sup> An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's condition became apparent during a period of employment nor the belief that her

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<sup>2</sup> *Supra* note 1.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>6</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between her claimed bilateral shoulder conditions and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>7</sup>

With regard to union activities in general, the Board has adhered to the principle that union activities are personal in nature and are not considered to be within the course of employment.<sup>8</sup> The Board has recognized an exception to the general rule in that employees performing representational functions, which entitle them to official time, are in the performance of duty and entitled to all benefits of FECA if injured in the performance of those functions. The rationale for this exception is that activity undertaken in the capacity of a union representative may simultaneously serve the interests of the employing establishment.<sup>9</sup>

### ANALYSIS

Appellant has alleged that she was involved in a heated argument with a manager on December 7, 2011, concerning 2012 vacation picks for the bargaining unit. According to appellant, she was on union time and the record indicates that she was a chief steward. There has been no evidence submitted to suggest that appellant was not engaged in the official representational function of her position as chief union steward. In its February 24 and July 23, 2012 decisions, OWCP accepted that she was in the performance of duty at the time of the incident, but denied the claim as she had not provided sufficient medical evidence to establish that the accepted incident on December 7, 2011 caused a medical condition.

The Board finds that OWCP properly denied appellant's traumatic injury claim because the medical evidence of record failed to establish causal connection between the accepted incident and the diagnosed conditions of cerebral aneurysm and headaches.<sup>10</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>8</sup> *Marie Boylan*, 45 ECAB 338 (1994).

<sup>9</sup> *Id.*

<sup>10</sup> In its September 28, 2012 and May 7, 2014 decisions, OWCP modified its reason for the denial of the claim suggesting that appellant was not in the performance of duty and, after analyzing the claim as if it had been filed as an occupational disease claim, considered appellant's reaction (cerebral hemorrhage) to the heated argument to be "self-generated." The Board finds, on the contrary that: (1) this claim was submitted as a traumatic injury claim, (2) appellant clearly was in the performance of duty at the time of the incident (*see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.16(d) as she was engaged in negotiations with management on the how leave would be granted to bargaining unit employees), and (3) the evaluation needed to be based simply on whether the medical evidence of record established causal relationship. Both of these OWCP decisions, despite their incorrect analysis, denied appellant's claim.

The medical evidence was reviewed by OWCP. The reports submitted by Dr. Hollins and Dr. Bendock provided diagnoses and advised that appellant should remain off work until cleared by the neurologists, but they provided no opinion on causal relationship. In addition, the undated statement by Dr. Hollins, received into the record on September 18, 2012, stated that appellant had no history of hypertension, headaches, or seizures prior to December 7, 2011. He also provided no opinion on the cause of the diagnosed conditions. The Board has held that medical opinions are of little probative value when they do not offer any opinion regarding the cause of an employee's condition.<sup>11</sup>

Appellant also submitted reports from Dr. Shepard dated March 19 and August 27, 2012. Dr. Shepard contended that the heated argument at work likely caused the elevation in blood pressure which caused the aneurysm to rupture which caused the headaches. While Dr. Shepard offered some support for the connection between the accepted incident and the diagnosed conditions, his opinion provides little rationale to support his opinion. Dr. Shepard did not express an understanding of the situation at the time of the incident in any detail nor did he explain how it could have been competent to have caused the high blood pressure which caused the cerebral aneurysm which caused the headaches. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains only a conclusion unsupported by medical rationale.<sup>12</sup>

Further, Dr. Shepard used the term "likely" in describing the connection between the work incident and the diagnosed conditions. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.<sup>13</sup> An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.<sup>14</sup>

The Board finds that appellant has failed to establish causal relationship between the heated argument at work and the diagnosed conditions.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish a traumatic injury on December 7, 2011.

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<sup>11</sup> *Linda I. Sprague*, 48 ECAB 386 (1997).

<sup>12</sup> *C.M.*, Docket No. 14-88 (issued April 18, 2014).

<sup>13</sup> *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>14</sup> *Supra* note 6; *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 7, 2014 decision of the Office of Workers' Compensation Programs is affirmed, as modified.<sup>15</sup>

Issued: December 4, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>15</sup> James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.