



OWCP accepted the claim for a concussion with brief loss of consciousness, unspecified post-traumatic headache, and postconcussion syndrome.

August 2, 2010 emergency room records diagnosed a fall with concussion and noted a history of a prior subdural hematoma. An August 2, 2010 computerized tomography (CT) scan of the brain revealed no acute intracranial injury. Initial reports beginning August 6, 2010 from appellant's physician, Dr. W. Paul Slomiany, a family practitioner, noted treating appellant for headache after head trauma at work. He also noted conditions of diabetes, a previous subdural hematoma, depression, hypertension, and hyperlipidemia. Appellant returned to modified telework duty, four hours a day on October 18 and on December 20, 2010 he was released to regular, full-time duty.

Appellant filed a claim for recurrence (Form CA-2a) on November 8, 2011 claiming that his headaches had generally subsided because of his pain medication, but that in October 2011 the headaches began to return and the pain medication did not reduce the pain. He claimed that he had been working at his desk doing his work duties when his headaches became unbearable, he became dizzy, and was unable to concentrate.

By decision dated January 11, 2012, OWCP accepted the recurrence claim and advised appellant to submit claims for any periods of disability and for any medical expenses associated with the recurrence. Appellant returned to work only four hours a day and was paid intermittent disability compensation from December 4, 2011 until his physician returned him to work full time on March 12, 2012 without restrictions.

On September 17, 2013 appellant filed another claim for recurrence (Form CA-2a). In a September 17, 2013 statement, he indicated that, although he had been released to full duty on March 14, 2012, he continued to have headaches but they were controlled with pain but they were coming back again. Appellant was also losing concentration and was unable to comprehend what he was reading. He stated that he believed these were due to his continuing postconcussion syndrome. Appellant described the headaches as the same as those he had when he was first injured back on August 2, 2010. He denied any other injuries or illnesses.<sup>2</sup>

In a September 19, 2013 report, Dr. Slomiany recommended that appellant return to working only four hours a day. In a duty status report, also dated September 19, 2013, he described his clinical findings and noted a normal neurological examination. On September 20, 2013 however, in an attending physician's report, Dr. Slomiany diagnosed recurrent headaches, concentration impairment, and depression. He checked a box "yes" to indicate that the condition was employment related. Dr. Slomiany noted that the "headaches began after fall/head trauma at work on August, 21, 2010." He also advised that appellant had trouble concentrating and significant depression.

On September 19, 2013 appellant's supervisor provided a timeline concerning appellant's claim for recurrence. He noted that on September 16, 2013 appellant had submitted a post negotiation memorandum (PNM) for the supervisor's review. The supervisor sent appellant an e-mail noting that the PNM was unsatisfactory and needed to be revised. (He noted that many

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<sup>2</sup> Appellant also submitted CA-7 forms claiming wage-loss compensation.

times leading up to and right after negotiations, which had been held on August 28, 2013, appellant had been reminded to complete the PNM prior to October 3, 2013 or the file would become overage and negatively impact the metrics.) Appellant was advised of the details of the deficiencies and was requested to have the revised PNM returned to the supervisor by close of business September 18, 2013. While he replied to the supervisor on September 17, 2013 that he understood and that he would correct the PNM, appellant filed his claim for recurrence on September 18, 2013 at 8:00 a.m.

On September 24, 2013 Dr. Slomiany explained that, due to continued headaches and depression, appellant required hospitalization. He requested that appellant be excused from work.

By letter dated September 26, 2013, OWCP advised appellant that it had received his claim for recurrence and advised him of the evidence that would be needed to establish his disability claim, including factual and medical evidence to establish that the work stoppage was caused either by: (1) a spontaneous change in the medical condition which resulted from the previous injury without an intervening injury or new exposure to factors causing the original illness, or by (2) a withdrawal of a light-duty assignment. A questionnaire was forwarded to appellant to complete.

Appellant subsequently submitted September 24, 2013 emergency department records which noted his treatment for headaches and suicidal ideation. The records noted that he had suffered a previous head injury at age five.

In a September 26, 2013 report, Dr. Rami Ausi, a neurologist, noted that appellant was hospitalized for persistent headache, worsening depression, and trouble concentrating. He reported that appellant had suffered a subdural hematoma in 1991 following head trauma. Dr. Ausi noted that appellant had headaches after the hematoma was evacuated, but that they became less frequent over time till they occurred only about once a week. Appellant denied headaches before 1991. Dr. Ausi related that in the last two or three months, appellant's headaches had become constant and regularly occurred around 2:00 p.m. He mentioned that appellant had stress at work. Dr. Ausi noted that the MRI scans taken over the years did not establish a cause for the headaches and that appellant's current CT scan was also unrevealing. He opined that appellant's examination was normal but diagnosed chronic, constant, daily headaches with probable superimposed, analgesic rebound headaches from taking large doses of Tylenol and Aleve.

On October 7, 2013 appellant returned the completed questionnaire. He explained that his headaches never went away, but they were controlled by pain medication. Appellant stated that on September 17, 2013 he was trying to meet deadlines for projects he was assigned but could not comprehend or concentrate on what he was reading. It brought on a severe headache and blurry vision. Appellant stated that it was the same headache he had when he was injured in 2010 and his symptoms had remained since the injury. He described his daily work and stated that his workload had increased because of a personnel shortage and work deadlines. Appellant claimed that Dr. Ausi had told him that the increase in job duties and deadlines triggered his headaches and his postconcussion syndrome because the symptoms were the same as those he had at the time of his 2010 injury. He stated that Dr. Ausi had placed him on limited duty on

September 19, 2013, working four hours a day. Appellant noted that he had been hospitalized on September 24, 2013 and released on September 26, 2013. He stated that he had no other injuries and no activities outside of work that could have affected his condition.

In an October 21, 2013 report, Dr. Slomiany again described appellant's history of injury and treatment. Appellant had sustained a subdural hematoma in 2002 from which he had recovered and that he had recently been hospitalized on September 24, 2013 for severe depression, suicidal thoughts, and headaches. A CT scan of the brain taken at the hospital showed a prior left craniotomy. Dr. Slomiany noted that appellant had improved after his hospitalization. Regarding the relationship between appellant's disability and the original injury, he stated: "his headaches began after the fall and head trauma at work on August 2, 2010 and ... have been recurrent since that time." Dr. Slomiany further believed that appellant's depression developed "because of a concern regarding his recurrent headaches."

On October 23, 2013 appellant requested that his claim be expanded to include depression. He claimed that his ongoing, post-traumatic headaches brought on depression, and suicidal thoughts.

In an October 30, 2013 decision, OWCP denied appellant's claim for a recurrence. It found the medical evidence insufficient to establish that disability or the need for current medical treatment was due to a material change/worsening of his accepted work-related conditions.

Appellant requested a telephonic hearing, which was held on May 13, 2014.<sup>3</sup> OWCP received medical evidence dating from 1993 related to his service-connected injuries. A July 23, 2002 Veterans Affairs (VA) rating decision denied appellant's claim for a service-connected subdural hematoma. OWCP indicated that he had served in the army from 1972 to 1974 and from 1976 to 1994. The decision noted that appellant had been treated by the VA for headaches, muscle weakness, and change in mental status from February 13, 1996 to June 17, 2002 and that he had been hospitalized for an acute subdural hematoma which had been found on an April 11, 2002 CT scan.

Dr. Slomiany referred appellant to Dr. Mark Hospodar, a neurologist. In his February 13, 2014 report, Dr. Hospodar noted that appellant had post-traumatic headache. He indicated that appellant had sustained a significant concussion during military service, with memory loss, slowing of speech, and disrupted sleep. Dr. Hospodar advised that appellant's concussion was not recent but was fairly significant. He examined appellant and determined that his condition was likely service connected but that would be difficult to prove. Dr. Hospodar related that appellant did not report his head injury when it occurred because he had been in combat commanding troops. He explained that appellant had a significant brain hemorrhage and a subdural hematoma for which he later had surgery. Dr. Hospodar noted that appellant's February 13, 2014 examination did not reveal focality so he was not going to be referring

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<sup>3</sup> At the hearing, appellant confirmed that he retired on January 31, 2014. He indicated that he did not know the origin of the 2002 subdural hematoma from which he recovered. Appellant attributed his depression to headaches that would not stop. He stated that he was suicidal, and was hospitalized on September 24, 2013 but all tests were negative. Since that time, appellant's symptoms remained the same. He denied having a head injury when he was five years old.

appellant for imaging, but he did recommend an electroencephalogram and cognitive testing and would use that to dictate further care.

Dr. Hospodar, in a follow-up report dated March 21, 2014 found that appellant's cognitive testing was clearly abnormal, with severe difficulty with memory, symbol fluency, and executive function was borderline. Overall, he found the probability of mild cognitive impairment to be 70 to 79 percent which he found quite significant. Dr. Hospodar prescribed medication and sent his report to Dr. Slomiany.

Records from appellant's September 2013 hospitalization for depression included a September 25, 2013 report from Dr. Jeanann McAllister, a Board-certified psychiatrist, who noted that appellant completed many military tours and had some brain damage with short-term memory loss. Dr. McAllister concluded that appellant had a subdural hematoma in 2001 with some short-term memory loss but was able to return to work and have a full career.

Dr. McAllister diagnosed severe recurrent major depressive disorder, secondary to headache. In a September 26, 2013 discharge summary, she noted that appellant had been referred to the hospital by his primary physician because the physician believed appellant was suicidal. Dr. McAllister advised, however, that he denied any suicidal ideation and that he had just made some vague reference to "what's the point of going on." He stated that he would not ever say things so flippantly ever again. Appellant looked forward to going home. Dr. McAllister diagnosed mood dysthymia, and noted a Vietnam era injury with a history of a left craniotomy. She mentioned short-term memory problems, but found nothing acute.

In a September 25, 2013 report, Dr. Slomiany noted that appellant had a history of hypertension, diabetes mellitus. He identified head trauma from the Gulf War, with a subdural hematoma in 1991. Appellant also had a head trauma at work, about three years earlier, when he hit his head on a file cabinet and developed postconcussive syndrome and recurrent headaches. Dr. Slomiany noted that appellant had been improved but recently began having increased headaches, difficulty concentrating. Appellant complained of feeling foggy, some blurry vision, having difficulty completing tasks, and suicidal thoughts. In reports dated October 8 and 31, 2013, Dr. Slomiany diagnosed markedly improved depression and headaches. He stated that appellant could return to full-time work on November 4, 2013.

In a May 15, 2014 attending physician's report, Dr. Hospodar noted a history of injury which included a head injury in 2005 and a fall at work in 2010. He noted findings that included abnormal cognitive testing and poor memory. Dr. Hospodar opined, "clearly he has brain damage for multiple head traumas and is disabled now." He diagnosed postconcussive syndrome and checked a box "yes" to indicate that appellant's condition was employment related.

In a May 16, 2014 mental health assessment, Dr. Howard Friday, a psychologist, diagnosed major depressive disorder, recurrent, unspecified.

In a May 19, 2014 statement, appellant indicated that he was concerned about Dr. McAllister's report, because he had not been serving in Vietnam in 1991. He served in the Gulf War in 1991. Appellant denied any head trauma in the Gulf War and also denied having a subdural hematoma in 1991. He denied Dr. McAllister's statement that he had on-going

headaches after 1991, and stated that his on-going headaches began only after his August 2, 2010 work injury. Appellant explained that he had made an error in saying that he had not filed a VA claim. He looked through his records and remembered that he had filed a VA claim for an April 29, 2002 subdual hematoma but the claim was denied. Appellant noted that he returned to work after a month of recuperation from his subdural hematoma. He asserted that Dr. McAllister's records and report were incorrect.

In a June 3, 2014 attending physician's report, Dr. Slomiany noted that appellant had a preexisting history of head trauma with craniotomy, head trauma in 2010, recurrent headaches and a history of depression. He stated that appellant's headaches began after his fall at work in 2010. Dr. Slomiany found that appellant had memory loss and trouble completing tasks which caused his job performance to suffer. Appellant decided to retire on January 31, 2014. Dr. Slomiany found that appellant was partially disabled from September 19 to November 3, 2013.

In a June 18, 2014 report, Dr. Hospodar noted that medication did not help appellant very much. He stated that he believed appellant was still waiting for a decision on whether his head trauma was related to his military service. Dr. Hospodar reduced appellant's medication and noted that appellant would continue to see Dr. Friday for psychological treatment of his depressive symptoms.

By decision dated July 16, 2014, OWCP affirmed the October 30, 2013 decision denying the claimed recurrence beginning September 17, 2013. OWCP's hearing representative also found that appellant did not establish that his depression was due to the accepted injury.

### **LEGAL PRECEDENT**

Section 10.5(x) of OWCP's regulations provide that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>4</sup>

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.<sup>5</sup>

Appellant has the burden of establishing that he sustained a recurrence of a medical condition<sup>6</sup> that is causally related to his accepted employment injury. To meet his burden, he must furnish medical evidence from a physician who, on the basis of a complete and accurate

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<sup>4</sup> 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

<sup>5</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

<sup>6</sup> 20 C.F.R. § 10.5(y).

factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>7</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>8</sup>

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural occurrence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct.<sup>9</sup> The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.<sup>10</sup> With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation, to arise out of and in the course of employment and is compensable.<sup>11</sup> A claimant bears the burden of proof to establish the claim for consequential injury.<sup>12</sup>

### ANALYSIS

OWCP accepted appellant's claim for concussion with brief loss of consciousness, post-traumatic headaches, and postconcussion syndrome. Appellant first returned to regular duty on December 20, 2010. OWCP later accepted his claim for an October 17, 2011 recurrence. Appellant was released to full duty on March 12, 2012. He subsequently claimed a recurrence of disability beginning September 17, 2013, noting that he could no longer perform his full-time duties because of his accepted conditions.

The Board finds that appellant has failed to establish a recurrence of disability as of September 17, 2013. No medical opinion has been submitted containing a rationalized explanation as to how appellant's disability on September 17, 2013 was directly related to his August 2, 2010 fall at work. The need for a rationalized opinion on causal connection is crucial in this case because of appellant's serious preexisting head injury.

In support of his claim, appellant submitted reports from Dr. Slomiany. On September 19, 2013 Dr. Slomiany opined that appellant should work only four hours a day due to worsening headaches and a previous head injury. However, he noted a normal neurological examination. This report fails to clearly establish the recurrence due to the 2010 accepted work injury.

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<sup>7</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>8</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>9</sup> *Albert F. Ranieri*, 55 ECAB 598 (2004).

<sup>10</sup> *Id.*; *Carlos A. Marrero*, 50 ECAB 117 (1998); *A. Larson*, the Law of Workers' Compensation § 10.01 (2005).

<sup>11</sup> *Kathy A. Kelley*, 55 ECAB 206 (2004); *see also C.S.*, Docket No. 11-1875 (issued August 27, 2012).

<sup>12</sup> *S.P.*, Docket No. 14-900 (issued August 8, 2014).

In a September 20, 2013 attending physician's report, Dr. Slomiany diagnosed recurrent headaches, concentration impairment, and depression. He checked a box "yes" to show that he believed the condition was employment related noting that the "headaches began after fall/head trauma at work on August 21, 2010." The Board has held, however, that the checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.<sup>13</sup>

Dr. Slomiany did not explain how the diagnosed symptoms were related to the accepted work injury rather than to appellant's preexisting conditions. In his September 24 and 25, 2013 reports, he advised that appellant could not work because of continued headaches and depression. However, Dr. Slomiany did not explain how the August 2, 2010 work injury was the cause of these conditions. The Board has long held that medical opinions not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet appellant's burden of proof.<sup>14</sup>

In his October 21, 2013 report, Dr. Slomiany described appellant's history, which included a subdural hematoma in 2002 from which appellant had recovered. He opined that appellant's deteriorating condition was due to the work incident because his headaches did not begin until after his fall at work, and had continued thereafter. Dr. Slomiany further found that appellant's depression developed as a result of the recurrent headaches. 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>15</sup> Dr. Slomiany provided no medical rationale to explain why appellant had a spontaneous change in his accepted conditions on September 17, 2013 and how that change in his condition resulted from the August 2, 2010 injury.

Likewise, Dr. Slomiany's June 3, 2014 attending physician's report stated that appellant's headaches began after the fall at work on August 2, 2010. He did not provide medical reasoning explaining the specific connection between the period of disability beginning September 17, 2013 and the August 2, 2010 injury other than noting that headaches began after that fall. Other reports from Dr. Slomiany are also insufficient to establish the claim because they fail to discuss in detail causal relationship.

In a May 15, 2014 attending physician's report, Dr. Hospodar checked a box "yes" to support causal relationship and opined that: "clearly he has brain damage for multiple head traumas and is disabled now." However, checking the box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.<sup>16</sup> The other reports from Dr. Hospodar do not clearly establish that appellant's disability on and after September 17, 2013 was a spontaneous change in his previously accepted conditions.

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<sup>13</sup> See *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

<sup>14</sup> *Carolyn F. Allen*, 47 ECAB 240 (1995).

<sup>15</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>16</sup> *Supra* note 14.

While Dr. McAllister treated appellant for depression and headaches, she did not offer an opinion on causal relationship between the recurrence of disability and the August 2, 2010 injury. Likewise, Dr. Ausi's September 26, 2013 report noted appellant's history and findings but failed to discuss causal relationship.

Accordingly, the Board finds that appellant has failed to meet his burden of proof to establish a recurrence of disability beginning September 17, 2013.

The Board further finds that appellant has not submitted sufficient medical evidence to establish depression as a consequence of his accepted conditions. Appellant has also failed to submit reasoned medical evidence establishing the connection between the August 2, 2010 employment injury and his depression. His medical record reflects a preexisting history of depression.<sup>17</sup>

In his September 20, 2013 report, Dr. Slomiany diagnosed several conditions, to include depression, and checked a box "yes" to indicate that the condition was employment related. This, without additional explanation or rationale, is not sufficient to establish causal relationship.<sup>18</sup>

In his October 21, 2013 report, Dr. Slomiany concluded that appellant's diagnosed depression developed from his concern over his recurrent headaches. He did not provide medical reasoning to explain how depression was a consequence of the accepted 2010 work injury. Other reports from Dr. Slomiany either did not address the cause of appellant's depression or likewise did not provide medical reasoning to explain its relationship to the 2010 employment injury.

Dr. McAllister in her September 25, 2013 report noted that appellant had a subdural hematoma in 2001 with some short-term memory loss, but she found him able to work and have a full career. She diagnosed depressive disorder secondary to headache. Although she attributed appellant's depression to headaches, Dr. McAllister failed to explain with any specificity how appellant's depression was a consequence of the accepted August 2, 2010 work incident. Her September 26, 2013 discharge summary did not address whether the work injury caused or contributed to his depression.

Other medical evidence of record is also insufficient to establish depression as a consequence of the August 2, 2010 work injury because these reports do not contain a physician's opinion clearly supporting that the work injury contributed to appellant's diagnosed depression.<sup>19</sup>

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<sup>17</sup> Although appellant asserted that he had no prior history of depression, Dr. Slomiany's initial reports, beginning August 6, 2011, indicated that appellant had been treated for depression which he did not find to be work related.

<sup>18</sup> *Supra* note 14.

<sup>19</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

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 established that he sustained a recurrence of disability on September 17, 2008 causally related to his August 2, 2010 injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.<sup>20</sup>

Issued: December 4, 2015  
Washington, DC

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

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

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<sup>20</sup> James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.