

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

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**T.W., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
WEST LOS ANGELES MEDICAL CENTER,  
Los Angeles, CA, Employer**

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**Docket No. 15-1347  
Issued: December 7, 2015**

*Appearances:*  
*Appellant, pro se*  
*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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On June 2, 2015 appellant filed a timely appeal from a February 26, 2015 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 the case.<sup>2</sup>

**ISSUE**

The issue is whether appellant sustained an injury in the performance of duty on October 31, 2014, as alleged.

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

<sup>2</sup> Appellant submitted new evidence on appeal. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On December 23, 2014 appellant, then a 51-year-old medical technician, filed a traumatic injury claim (Form CA-1) alleging that on October 31, 2014 she was hit by a patient, resulting in injuries to her face and head.

By letter dated January 6, 2015, OWCP informed appellant that her documentation was insufficient to support her claim, and asked her to submit further information, including medical information, in support of her claim.

In work status and progress reports dated November 4 through 25, 2014, the physicians at Kaiser Permanente placed appellant on leave from November 3 through 29, 2014 and noted onset of condition as October 31, 2014, although there were multiple notations of prior issues with migraine headaches. A computerized tomography scan was performed on November 5, 2014 and interpreted by Dr. Brian J. Shin, a Board-certified radiologist, as showing a 1.2 centimeter extra-axial calcified mass in posterior right temporal lobe consistent with benign meningioma unchanged; moderate posterior left ethmoid sinus disease present unchanged, and resolution of left sphenoid sinus capacity. Dr. Christopher Yongkeun Cha, Board-certified in emergency medicine, treated appellant on November 3, 2014 and indicated that appellant suffered from headaches. In a progress note of that date, he noted gradual onset of headache, nausea and vomiting three days ago after a patient was flailing and hit appellant's right shoulder. Dr. Cha noted no head trauma or loss of consciousness. Dr. Daisylynn Agudo Galario, an internist, treated appellant on November 4, 2014. She diagnosed mixed headache and noted active problems of tension headache, nausea and vomiting, anemia, and leukopenia. Appellant was also seen on November 4, 2014 for nausea and vomiting and received treatment by Dr. Marvin Ersher, a family practitioner, Dr. Que Nguyen, a Board-certified internist, and Dr. Dicky Himansu Shah, a physician Board-certified in emergency medicine. Dr. Qian Zhang, appellant's primary Board-certified neurologist, treated appellant on November 10, 2014 and diagnosed migraine headaches. Dr. Jieli Li, a Board-certified internist, treated appellant on November 13, 2014 and diagnosed post-traumatic stress disorder and mixed headache. In a progress note, he noted that appellant had been admitted for mixed headaches and vomiting triggered by an incident at work when she was hit by a patient. Dr. Li noted that appellant was referred to psychiatry for counseling since she reported anxiety after the incident at work. Appellant was also treated by Amelia Pabelic Getubig, marriage and family therapist, on November 18 and 25, 2014 for adjustment disorder with mixed anxiety and depressed mood.

By decision dated February 26, 2015, OWCP denied appellant's claim for compensation as the medical evidence did not establish that appellant sustained an injury causally related to the accepted employment 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, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are 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>

In order to determine whether an employee actually sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>5</sup> In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.<sup>6</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical opinion evidence.<sup>7</sup> Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.<sup>8</sup>

### ANALYSIS

It is undisputed that an incident occurred as alleged during appellant's employment on October 31, 2014. However, the evidence of record is insufficient to establish that appellant sustained a medical condition causally related to this accepted incident. Therefore, the Board finds that OWCP properly denied appellant's claim.

None of the physicians submitted a well-rationalized medical opinion finding that appellant established a medical diagnosis causally related to the October 31, 2014 incident. Appellant was treated by multiple physicians in November 2014 at Kaiser Permanente. Dr. Shin merely interpreted appellant's computerized tomography scan, but reached no conclusion with regard to causation. Dr. Cha noted that appellant was hit by a patient, but did not link this incident to a diagnosed medical condition. Similarly, Dr. Li briefly noted the employment

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<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

<sup>5</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

<sup>6</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>8</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* n.4.

incident, but did not reach any conclusion on causal relationship. Drs. Galario, Ersher, Nguyen, Shah, and Zhang treated appellant's symptoms of headaches and vomiting but did not address causation. Ms. Getubig, appellant's therapist, did not link any symptoms to appellant's employment incident. Furthermore, as she is not a physician, her report lacks probative value.<sup>9</sup>

A medical diagnosis and an opinion on causal relation must be based on rationalized medical opinion evidence.<sup>10</sup> A physician must accurately describe appellant's work duties and medically explain the process by which these duties would have caused or aggravated her condition.<sup>11</sup> An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish causal relationship.<sup>12</sup>

Because appellant has not provided medical opinion evidence clearly explaining how her accepted employment incident resulted in a specific medical diagnosis, she failed to meet her burden of proof, and OWCP properly denied her claim for compensation.

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 failed to establish an injury in the performance of duty on October 31, 2014, as alleged.

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<sup>9</sup> Medical opinion, in general, can only be given by a qualified physician under FECA. *S.E.*, Docket No. 08-2214 (issued May 6, 2009). *See* 5 U.S.C. § 8101(2) (defines the term physician).

<sup>10</sup> *M.E.*, Docket No. 14-1064 (issued September 29, 2014).

<sup>11</sup> *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to claimant's condition, with stated reasons by a physician). *See also V.S.*, Docket No. 14-2028 (issued June 3, 2015).

<sup>12</sup> *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 26, 2015 is affirmed.

Issued: December 7, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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