United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant **and** **DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Lexington, KY, Employer**	**Docket No. 15-570** **Issued: June 11, 2015**

Appearances:
Joshua S. Harp, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 13, 2015 appellant, through counsel, filed a timely appeal from an August 8, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish a traumatic brain injury and an aggravation of her preexisting bipolar condition causally related to a September 21, 2009 employment incident, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the August 8, 2014 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal, counsel contends that OWCP failed to recognize that appellant met her burden of proof by submitting probative, well-reasoned and rationalized medical opinion evidence to support her claim for compensation, wrongfully disregarded the medical evidence submitted, and failed to further develop the medical evidence in processing and evaluating appellant's claim.

FACTUAL HISTORY

On September 28, 2009 appellant, then a 59-year-old social worker, filed a claim of traumatic injury (Form CA-1) alleging that she sustained an injury on September 21, 2009 as a result of hitting her head on a steering wheel during a motor vehicle accident in the performance of duty.

In an October 6, 2009 letter, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted reports dated September 21 and 23, 2009 from Heather Pile, a physician's assistant, who diagnosed facial contusion status-post motor vehicle accident. On October 2, 2009 Ms. Pile indicated that appellant had some memory loss and a diagnosed head contusion, ruling out intracranial injury.

By decision dated November 12, 2009, OWCP denied appellant's claim on the basis that she failed to establish an injury in the performance of duty.

On November 5, 2010 appellant, through counsel, requested reconsideration and submitted reports dated February 8 and April 29, 2010 from Linda Granacher, a licensed clinical social worker, who diagnosed traumatic brain injury and indicated that appellant was in an employment-related motor vehicle accident on September 21, 2009. Ms. Granacher also mentioned that appellant fell on ice while visiting her sister's home on February 19, 2010.

By decision dated March 25, 2011, OWCP denied modification of its prior decision.

On February 1, 2012 appellant, through counsel, requested reconsideration and submitted psychological and neurological assessment results dated January 14, March 30, and May 13, 2010.

In reports dated February 8, 2010 through March 20, 2013, Dr. Robert Granacher, a Board-certified forensic and geriatric psychiatrist, diagnosed bipolar disorder, panic disorder, and closed head injury due to a motor vehicle accident on September 21, 2009 with aggravation of cognitive function. Dr. Granacher indicated that appellant had been treated for bipolar disorder since 1996. He stated that she was in a car accident on September 21, 2009 and sustained "a closed head injury producing a mild traumatic brain injury." Dr. Granacher opined that the mild traumatic brain injury aggravated appellant's bipolar condition and on October 9, 2009 she experienced an exacerbation of her bipolar disorder.

On May 3, 2010 Dr. Granacher diagnosed cognitive disorder due to closed head injury on September 21, 2009, with associated mild cerebral atrophy on computerized tomography (CT) scan. He indicated that appellant was experiencing significant thought difficulty, her thought

processes were scattered, her thought and motor speeds were reduced, and she had obvious cognitive inefficiency.

On May 26, 2010 Dr. Granacher found that a neuropsychological battery of tests revealed that appellant was impulsive and demonstrated poor vigilance of attention over time and her visual attention measurements revealed mild to moderate impairment of accuracy on visual scanning. He found that the majority of her cognitive scores varied from "below average to above average range." Dr. Granacher noted that he could "not calculate a completely accurate preinjury cognitive capacity estimation because of the discrepancy between the predicted *Test of Premorbid Function* score and her actual *Test of Premorbid Function* performance score." Dr. Granacher tested appellant using the *Connor's Continuous Performance Test -- II* on January 14, 2010 and found that she showed slight improvement when he tested her again on March 30, 2010.

On November 9, 2010 Dr. Granacher explained that the mechanical forces of appellant's motor vehicle accident on September 21, 2009 probably would not have caused this level of cognitive dysfunction in an ordinary person, however, "persons with bipolar illness are exquisitely sensitive to head trauma." He opined that her head injury "biomechanically destabilized her bipolar illness such that she [was] now not capable of competitive work."

On January 14, 2013 Dr. Granacher stated that, prior to the September 21, 2009 motor vehicle accident, appellant showed no evidence of significant cognitive dysfunction while laboring under the burden of her bipolar condition. He concluded that her condition was causally related to the September 21, 2009 motor vehicle accident which "destabilized her moods and caused a significant impairment of attention."

By decision dated March 30, 2012, OWCP affirmed its prior decision, as modified, finding that the evidence was sufficient to establish an injury in the performance of duty, but failed to establish a causal relationship between appellant's conditions and the September 21, 2009 employment incident.

On March 28, 2013 appellant, through counsel, requested reconsideration.

In a January 6, 2010 report, Dr. Andrew Schneider, a Board-certified neurologist, reviewed appellant's medical history and conducted a physical examination. He indicated that she had "longstanding bipolar disorder" and provided "a slightly scattered history." Dr. Schneider stated that on September 21, 2009 appellant was involved in a car accident where she hit her head on the steering wheel, but did not lose consciousness. The next week, appellant was "backing out her vehicle at work when she backed into another car," but there was no reported injury. She also had a "bad emotional break" due to an issue with a patient and coworkers around that same time. Dr. Schneider found that appellant was neurologically awake, alert, and oriented. Appellant's speech was clear and fluent. She scored 30 on the *Mini Mental State Examination* (MMSE). She could do serial 7s without difficulty. Appellant's cranial nerves were unremarkable and funduscopic examination was benign. Regarding her memory complaints, Dr. Schneider opined that this problem reflected impaired concentration related to significant affective and emotional stress. He noted that it was difficult to exclude a mild postconcussion syndrome related to the September 21, 2009 car accident, but concluded that they

were not causally related as appellant's symptoms were not evinced until a month or two later, after her emotional break. Dr. Schneider reviewed her CT scans and opined that a possible cerebral atrophy was "an incidental finding, as certainly whatever atrophy [was] present was there before September, and before September she was at her baseline level of cognitive functioning…."

By decision dated May 3, 2013, OWCP affirmed its prior decision, as modified, accepting appellant's claim for contusion of face, scalp, and neck, except eyes, but finding that the evidence was insufficient to establish a traumatic brain injury and an aggravation of her preexisting bipolar condition.

On April 25, 2014 appellant, through counsel, requested reconsideration and submitted reports dated June 4, 2013 through March 16, 2014 from Dr. Brian Greenlee, an attending psychiatrist, who indicated that she had a prior diagnosis of bipolar and panic disorder and diagnosed unspecified episodic mood disorder, panic disorder without agoraphobia, traumatic brain injury, and cholesterolemia. Dr. Greenlee opined that she had no medical condition complicating her psychiatric condition or treatment prior to the mild traumatic brain injury on September 21, 2009, which aggravated her episodic mood disorder and resulted in significant cognitive difficulties including impairment of attention and executive functioning.

By decision dated August 8, 2014, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 of FECA, that an injury[4] was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. 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 sufficient evidence, generally only in the form of medical evidence, to establish that the employment

[3] *Supra* note 1.

[4] OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[5] *See T.H.*, 59 ECAB 388 (2008). *See also Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[7]

ANALYSIS

OWCP has accepted that the employment incident of September 21, 2009 occurred at the time, and in the place, and manner alleged. The issue is whether appellant's traumatic brain injury and an aggravation of her preexisting bipolar condition resulted from the September 21, 2009 employment incident. The Board finds that she did not meet her burden of proof to establish a causal relationship between the conditions for which compensation is claimed and the employment incident.

The Board finds that Dr. Schneider's report does not support appellant's claim. Dr. Schneider found that she was neurologically awake, alert, and oriented. Appellant's speech was clear and fluent. She scored 30 on the MMSE. Appellant could do serial 7s without difficulty. Her cranial nerves were unremarkable and funduscopic examination was benign. Regarding appellant's memory complaints, Dr. Schneider opined that this problem reflected impaired concentration related to significant affective and emotional stress. He noted that it was difficult to exclude a mild postconcussion syndrome related to the September 21, 2009 car accident, but concluded that they were not causally related as her symptoms were not evidence until a month or two later, after her emotional break. Dr. Schneider reviewed appellant's CT scans and opined that a possible cerebral atrophy was "an incidental finding, as certainly whatever atrophy [was] present was there before September, and before September [appellant] was at her baseline level of cognitive functioning."

In his reports, Dr. Granacher diagnosed bipolar disorder, panic disorder, closed head injury due to a motor vehicle accident on September 21, 2009 with aggravation of cognitive function, and cognitive disorder due to closed head injury on September 21, 2009, with associated mild cerebral atrophy on CT scan. He explained that "persons with bipolar illness are exquisitely sensitive to head trauma" and opined that appellant's head injury biomechanically destabilized her moods and caused a significant impairment of attention such that she was not capable of competitive work. However, Dr. Granacher failed to explain why she showed slight improvement when tested using the *Connor's Continuous Performance Test -- II* from January 14 to March 30, 2010. The Board finds that he failed to provide a rationalized opinion explaining how the September 21, 2009 motor vehicle accident caused a traumatic brain injury or aggravated appellant's bipolar disorder. Dr. Granacher noted that her condition occurred

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[6] *Id. See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Id. See Gary J. Watling*, 52 ECAB 278 (2001).

while she was driving to work, but such generalized statements do not establish causal relationship because they merely repeat her allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.[8] He failed to provide an opinion adequately addressing how the September 21, 2009 incident contributed to appellant's traumatic brain injury and preexisting bipolar condition. Thus, the Board finds that the reports from Dr. Granacher are insufficient to establish that she sustained an employment-related injury.

In his reports, Dr. Greenlee indicated that appellant had a prior diagnosis of bipolar and panic disorder and diagnosed unspecified episodic mood disorder, panic disorder without agoraphobia, traumatic brain injury, and cholesterolemia. He opined that she had no medical condition complicating her psychiatric condition or treatment prior to the mild traumatic brain injury on September 21, 2009, which aggravated her episodic mood disorder and resulted in significant cognitive difficulties including impairment of attention and executive functioning. The Board finds that Dr. Greenlee did not provide sufficient medical rationale explaining how appellant's conditions were caused or aggravated by hitting her head on a steering wheel on September 21, 2009. Therefore, the Board finds that the reports from Dr. Greenlee are insufficient to establish her claim.

The reports from Ms. Pile, a physician's assistant, and Ms. Granacher, a licensed clinical social worker do not constitute competent medical evidence as they do not contain rationale by a physician relating appellant's disability to her employment.[9] As such, the Board finds that appellant did not meet her burden of proof with these submissions.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained a traumatic brain injury and an aggravation of her preexisting bipolar condition causally related to the September 21, 2009 employment incident, she has failed to meet her burden of proof to establish a claim for compensation.

On appeal, counsel contends that OWCP failed to recognize that appellant met her burden of proof by submitting probative, well-reasoned, and rationalized medical opinion evidence to support her claim for compensation, wrongfully disregarded the medical evidence submitted, and failed to further develop the medical evidence in processing and evaluating her claim. For the reasons stated above, the Board finds that counsel's arguments are not substantiated.

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.

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[8] *See K.W.*, Docket No. 10-98 (issued September 10, 2010).

[9] *See* 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." *See also Paul Foster,* 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi,* 42 ECAB 677 (1991); *Barbara J. Williams,* 40 ECAB 649 (1989).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a traumatic brain injury and an aggravation of her preexisting bipolar condition causally related to a September 21, 2009 employment incident as alleged.

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 2015
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