United States Department of Labor
Employees' Compensation Appeals Board

A.R., Appellant	)	
and	)	**Docket No. 14-1709**
	)	**Issued: March 13, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Burlington, WI, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 31, 2014 appellant filed a timely appeal from a July 9, 2014 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.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on December 23, 2013.

FACTUAL HISTORY

On December 27, 2013 appellant, then a 63-year-old rural carrier, filed a traumatic injury claim alleging that on December 23, 2013 she injured her right shoulder in the performance of duty. She indicated that she "put her car in a ditch" while entering a customer's driveway.

[1] 5 U.S.C. § 8101 *et seq.*

Appellant noted that she got out of her car and walked through snow and trees to seek help, when she fell causing injury to her shoulder and back. She stopped work on December 24, 2013.

In a December 23, 2013 statement, appellant indicated that, after her accident, she was walking to get help and fell. She stated that her back and right shoulder hurt.

A December 27, 2013 treatment note and work excuse from a nurse revealed that appellant was seen in the emergency room and could return to work on January 2, 2014. The nurse noted that a computerized tomography (CT) scan of the brain was normal with no evidence of traumatic injury to the head, brain, or calvarium. The nurse indicated that appellant had a prior CT scan on October 30, 2013.

In a December 27, 2013 statement, Tammy S. Castillo, appellant's postmaster, noted that appellant fell on her route on December 23, 2013 after her car went into a ditch in a customer's driveway. She indicated that, when appellant called her supervisor, she noted that she injured her back and shoulder. Furthermore, appellant informed Ms. Castillo that on December 23, 2013 when she was at home, and not on the clock, she passed out or fainted while getting out of the bathtub and fell to the floor. She related that appellant's son tried to help and called 911. Ms. Castillo explained that the next day, appellant indicated that she may have hit her eye when she fell on her route. She indicated that she asked appellant if she thought she hit her eye when she fell, or if she knew she hit her eye when she fell. Appellant told another employee that, when she fell to the floor at home, her son hit her with the door when he tried to enter the bathroom to help her. Ms. Castillo questioned whether appellant's absence from work was work related because while appellant fell in the snow on December 23, 2013, she also fell at home when she passed out when getting out of the bathtub that same night and hit the back of her head when she fell to the floor.

In a letter dated January 10, 2014, Peggy Rappe, a health and human resource specialist with the employing establishment, controverted the claim. She explained that appellant indicated that, while delivering her route, her car slid into a ditch. Ms. Rappe stated that she exited her vehicle and fell in the snow, after which her back and shoulder hurt. She stated that appellant reported the incident to her supervisor and indicated that she did not wish to file a claim. When appellant reported to work the next day, she notified her manager and another employee that she had passed out at home the evening of December 23, 2013, while exiting the bathtub and she hit her head on the floor. Ms. Rappe indicated that appellant subsequently claimed that she "may have hit her eye when she fell on her route on December 23, 2013 and that she now wanted to complete a CA-1." She noted that appellant remained off work.

In a December 30, 2013 disability certificate, Dr. Nihal Herath, a Board-certified neurologist, recommended medical leave for 10 days. On January 8, 2014 he placed appellant off work for a month. On February 10, 2014 Dr. Herath released her to work on February 11, 2014 with walking restricted to three hours per day for two weeks.

In a January 16, 2014 letter, OWCP advised appellant that additional factual and medical evidence was needed. It asked that she further explain how the injury occurred. OWCP also explained that a physician's opinion explaining how the reported work incident caused or contributed to appellant's condition was crucial to her claim.

OWCP subsequently received a January 10, 2014[2] letter from Ms. Rappe who noted that appellant was recently involved in three accidents. They included a nonwork accident in September 2013, when she hit a cow; a nonwork accident on December 22, 2013, when she fell on the driveway and fainted when she got home hitting her head on a wall; and an accident on December 23, 2013, when she fell in the snow after she slid into a ditch while working. Ms. Rappe referred to a January 3, 2014 treatment note, which revealed that appellant had continued problems since her September 2013 vehicle accident with a cow.[3]

OWCP received various medical records. Dr. Linda Lee, a Board-certified internist, placed appellant off work from December 26 to 27, 2013. In a December 31, 2013 note, Dr. Jolanta M. Twardy, a Board-certified internist, indicated that appellant was a mail carrier who was recently involved in a motor vehicle accident, her second one of the year. She advised that appellant presented to the emergency room after she fainted in the bathroom. Dr. Twardy diagnosed a concussion. In a January 6, 2014 emergency room report, Dr. James V. Pavlich, an emergency physician and osteopath, advised that appellant presented with complaints of intermittent dizziness, lightheadedness, headaches, and weakness since a reported syncopal episode five days earlier at home, when exiting the shower. He diagnosed postconcussion syndrome. OWCP also received nursing notes and physical therapy reports.

In a January 29, 2014 statement, appellant advised that on December 23, 2013 she was delivering a package when her vehicle slid to the side of the driveway. She noted that she walked to the house and a tow truck was called. As appellant was waiting, she walked back to her vehicle and fell as she stepped onto the driveway. Her glasses flew and she bumped her head on the driveway and injured her shoulder. Appellant noted that she was towed and as she was on her way, she "couldn't understand mail box grazing my car." She stated that her equilibrium was off and she lost her mirror. Appellant related that her right eye also bothered her but she did not think much of it at the time, as she had a 1975 car accident where she was burned which left her eye "always red and irritating." She stated that she completed an accident report when she returned to the employing establishment and then went home where she passed out after taking a bath. Appellant advised that she worked on December 24, 2013 when work was light, and made it through the day. However, she indicated that she did not feel right. After trying to work on December 26, 2013 appellant became dizzy and went to a walk-in clinic where she was diagnosed with dehydration. She stated that she felt worse on December 27, 2013 and her physician instructed her to go to the emergency room where she was diagnosed with a concussion. Appellant asserted that her passing out in her bathroom the night of December 23, 2013 was due to the fall at work earlier that day. In an accompanying January 27, 2014 statement, Sharon Zock, a coworker, indicated that, while she was on her route, she received a

[2] The letter was actually dated January 10, 2013; however, this appears to be a typographical error.

[3] A January 3, 2014 physical therapy progress note also noted that appellant was involved in three accidents in the past few months. After the September 2013 motor vehicle accident, appellant stated that she was not tested or diagnosed with a concussion but, in hindsight, she noted that she did have some problems with concentration, inability to play a game, irritation with reading, and a decreased sleep pattern. After the fall on the driveway on December 22, 2013, she related that her equilibrium was off and she hit three mailboxes while delivering mail. Appellant related that she was not able to walk a straight line. She stated that she went home to take a bath and felt faint getting out of the tub, causing her to hit her head on the wall.

telephone call from appellant informing her that she "hit a few mailboxes and tore the mirror off her car." She did not specify on what date this telephone call occurred.

By decision dated February 24, 2014, OWCP denied appellant's claim on the grounds that the medical evidence did not show that the claimed medical condition was causally related to the established work events.

On May 28, 2014 appellant's representative requested reconsideration and asserted that the evidence was sufficient to establish the claim. In an accompanying May 21, 2014 statement, appellant clarified that she did not have three motor vehicle accidents. She noted that on October 20, 2013, she hit a cow and had a whiplash injury. Appellant indicated that she did not hit her head, the air bag did not deploy, and the windshield was intact. She explained that she missed two weeks of work and returned to full duty. Regarding the December 23, 2013 incident, appellant explained that she turned into a driveway on her route, and it was icy and her vehicle slid to the side of the driveway. After she exited the vehicle for help, she fell and hit her head. Afterward, appellant's vehicle was towed from the driveway and she completed her route, but she was disoriented and grazed several mailboxes. She filed an accident report at work when she was done with her route. Later, that evening, appellant went home and took a bath. As she exited the bath tub, she felt faint and then passed out and fell against the bathroom door. Appellant's son called 911 when she did not respond. However, while he was on the telephone, she awakened and felt like she would be ok. Appellant asserted that the second and third accidents were due to her work incident on December 23, 2013. She provided a copy of her driving record.

Appellant also provided medical records. In a February 10, 2014 report, Dr. Herath noted that she was initially seen on November 27, 2013. He advised that appellant was referred by her primary physician for headaches following a motor vehicle accident on October 20, 2013 when her car hit a cow while driving about 55 miles an hour. Appellant related that she developed a headache, occasional dizziness without vertigo, some neck pain, as well as arm and hand numbness, and a whiplash injury. Due to this injury, Dr. Herath diagnosed post-traumatic headaches, cervicalgia, possible cervical radiculopathy, and possible carpal tunnel syndrome. He indicated that appellant underwent an EMG nerve conduction study which revealed mild left-sided carpal tunnel syndrome and "minimal chronic left-sided satellite curves six and seven radiculopathies." Appellant was seen on December 11, 2013, for follow-up evaluation and treated with medications for headache. Dr. Herath recommended continued therapy for her neck pain and right radiculopathy. He next saw appellant on December 30, 2013 for positional dizziness and disequilibrium following a fall on ice on December 23, 2013, which occurred while delivering mail. Dr. Herath advised that her previously reported headaches had significantly improved. He diagnosed postconcussion syndrome, "given the patient's reported history of fall on ice while delivering mail." Dr. Herath referred appellant for physical therapy and placed her off work for 10 days while going through therapy. On January 8, 2014 he reevaluated appellant and noted that she was experiencing some depression. Dr. Herath repeated his diagnosis of "postconcussion syndrome secondary to falling on ice which is being work related as patient reports." He also diagnosed "positional dizziness and disequilibrium" secondary to the fall. In a February 24, 2014 report, Dr. Herath noted appellant's work restrictions and recommended further evaluations.

In a March 21, 2014 report, Dr. Carley N. Sauter, a Board-certified physiatrist, noted that appellant described an onset of symptoms in October 2013, when her car struck a cow. She indicated that appellant had symptoms after the accident that included neck pain, bilateral arm pain, headaches, and dizziness. Appellant also reported low back pain and left hip pain. An electromyogram (EMG) revealed mild left C6-7 radiculopathy. Appellant was treated for a whiplash-type injury, underwent physical therapy, and returned to work full time. Dr. Sauter advised that appellant had a work injury on December 23, 2013 when her vehicle slid off of a driveway and, after she got out of the car to get help, she fell and struck her head on the ice with a concussion. She also noted that appellant later had syncope and fell from a chair, possibly striking her head. Dr. Sauter advised that a few days later, appellant was seen in urgent care and the emergency room, where she was diagnosed with a concussion. She related that appellant was having headaches and dizziness since the second incident along with neck pain. Dr. Sauter noted that appellant returned to work part time but was now off work as her claim was denied. In March 21 and April 21, 2014 reports, she noted appellant's work restrictions. In a May 19, 2014 report, Dr. Sauter advised that appellant was improving and recommended a return to full duty with self-limitations for neck and back pain. She advised that driving clearance needed to be obtained through neurology.

A May 7, 2014 report from Dr. Frederick G. Freitag, a family physician and osteopath, stated that appellant hit a cow in October 2013. Dr. Freitag indicated that on December 23, 2013 appellant was pulling into a driveway on "glare ice" and landed in a culvert. He noted that as she went to get help, she fell on the ice, struck her head, had a concussion, and had problems with equilibrium afterwards. Dr. Freitag noted that she passed out later that evening. He related that she developed blurred vision and continued to have balance issues and was diagnosed with a concussion, with mostly frontal headaches and some occipital headaches.

OWCP also received diagnostic reports. They included an October 20, 2013 x-ray of the thoracic spine which revealed no acute fracture or subluxation, and an October 30, 2013 CT of the head that showed no acute intracranial findings. A December 27, 2013 CT of the head showed no evidence of traumatic injury to the brain or calvarium. February 27, 2014 x-rays of the cervical and lumber spine showed mild cervical degenerative disc disease and moderate multilevel degenerative changes of the lumbar spine. Additionally, a March 8, 2014 cervical spine MRI scan revealed multilevel ventral impressions on the anterior subarachnoid space from C3-4 to C6-7 with the most pronounced findings at C5-6, some foraminal narrowing and loss of height with superior endplate deformity of the anterior aspect of T3 vertebral body requiring correlation with old trauma. A May 9, 2014 brain MRI scan showed nodular isointense soft tissue in the anterior medial aspect of the left temporal region possible related to a meningioma. Also submitted were reports from nurses, nurse practitioners, and physician's assistants in addition to reports previously of record.

By decision dated July 9, 2014, OWCP denied modification of the prior decision.

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 of FECA[4] and that an injury was sustained in the performance of duty.[5] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[7] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[8] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

Rationalized medical opinion evidence is generally required to establish causal relationship. 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.[10]

ANALYSIS

Appellant alleged that on December 23, 2013 she was injured after her car slid into a ditch while going into a customer's driveway. Her initial report of the incident advised that she got out of her car to get help and fell as she walked through snow and trees. The Board finds that the most contemporaneous evidence supports that an incident occurred where appellant drove a work vehicle into a ditch while entering a driveway as alleged. Although appellant subsequently asserted that she also struck her head on the driveway when she fell, this assertion is not supported by her most contemporaneous accounts of the fall. Both her December 27, 2013 notice of traumatic injury and her December 23, 2013 description of the incident make no mention of any head trauma. *See S.S.*, 59 ECAB 315 (2008) (the Board has held that contemporaneous evidence is entitled to greater probative value than later evidence).

However, with regard to the medical evidence, it is insufficiently rationalized to establish the second component of fact of injury, that the employment incident caused an injury. The medical evidence contains no reasoned explanation of how the specific employment incident on

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987).

[8] *John J. Carlone*, 41 ECAB 354 (1989).

[9] *Id.* For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

December 23, 2013 caused or aggravated an injury, including how the work incident caused her to fall at home and strike her head later that evening. The Board notes that this is particularly important in light of the previous incident in September 2013, when her car hit a cow while she was driving about 55 miles per hour and thereafter she received treatment for a whiplash injury and headaches.

Appellant submitted several reports from her physicians. In a February 10, 2014 report, Dr. Herath noted first treating appellant on November 27, 2013 following the October 20, 2013 incident with the cow[11] for which he diagnosed post-traumatic headaches, cervicalgia, possible cervical radiculopathy, and possible carpal tunnel syndrome. He explained that on December 30, 2013 appellant presented with positional dizziness and disequilibrium following a December 23, 2013 fall on the ice while delivering mail. Dr. Herath advised that her previously reported headaches had significantly improved. He diagnosed postconcussion syndrome "given the patient's reported history of fall on ice while delivering mail" and also advised that she had "postconcussion syndrome secondary to falling on ice which is being work related as patient reports." Dr. Herath also diagnosed "positional dizziness and disequilibrium" secondary to this injury. The Board finds that while the physician attributed the postconcussion syndrome and positional dizziness and disequilibrium to the work incident, he does not explain how he arrived at his conclusion. The need for rationale is especially important in light of the fact that he was still treating appellant for the head injury involving the collision with the cow.[12] Furthermore, Dr. Herath did not address how this incident may have caused appellant to fall at home later in the day on December 23, 2013 nor did he indicate a familiarity with appellant's fall at home.[13] Other reports from Dr. Herath did not specifically address the cause of appellant's condition.

The record also contains several reports from Dr. Sauter. In a March 21, 2014 report, Dr. Sauter noted that, after appellant's collision with the cow, she was treated and returned to work full time. She advised that appellant then had a work injury on December 23, 2013 when her vehicle slid off of a driveway. Dr. Sauter related that appellant got out of the car to get help but she fell and struck her head on the ice and sustained a concussion. She also noted that appellant later had syncope and fell from a chair, possibly struck her head. Dr. Sauter noted appellant's subsequent treatment and opined that she was having headaches and dizziness since the work incident along with neck pain. The Board notes that, while she noted the history of injury, it is unclear if she is merely repeating the history provided by appellant or expressing her own medical opinion. Regardless, Dr. Sauter has provided no medical reasoning to support a supportive causation opinion. Moreover, her opinion is also based on an inaccurate factual background since the most contemporaneous evidence does not support that appellant had any head trauma when she fell in the customer's yard in the aftermath of her motor vehicle accident on December 23, 2013.[14]

[11] As noted, *infra*, appellant indicated that the collision with the cow occurred in September 2013.

[12] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[13] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

[14] *See id.*

In a May 7, 2014 report, Dr. Freitag noted that appellant hit a cow in October 2013. He also indicated that on December 23, 2013 she was pulling into a driveway on "glare ice" and landed in a culvert. Dr. Freitag noted that, as appellant went to get help, she fell on the ice, struck her head, had a concussion, and had problems with equilibrium afterwards. He noted that she passed out later that evening. Dr. Freitag related that she developed blurred vision and continued to have balance issues and was diagnosed with a concussion, with mostly frontal headaches and some occipital headaches. The Board notes that in this report, Dr. Freitag noted the history and provided a diagnosis. However, Dr. Freitag also did not provide any medical rationale explaining why the work incident caused or contributed to appellant's diagnosed condition. Moreover, his report is also based on an inaccurate factual background as the evidence, as explained, does not support that appellant sustained head trauma from the work incident on December 23, 2013.

The record also contains other medical reports, including reports of diagnostic testing. However, these reports are insufficient to establish the claim as they do not specifically address how the December 23, 2013 work incident contributed to a diagnosed medical condition.[15] OWCP also received records from nonphysicians such as nurses, physician's assistants, and physical therapists. However, health care providers such as nurses, physician's assistants, and physical therapists are not physicians under FECA. Thus, their opinions have no probative medical weight.[16]

Because the medical reports submitted by appellant do not address how the December 23, 2013 work incident caused or aggravated a back, shoulder, eye, or head condition, these reports are of limited probative value and are insufficient to establish that the December 23, 2013 work incident of driving a car into a ditch caused or aggravated a specific injury.

On appeal, appellant argued that, while she hit a cow in a previous incident, she did not lose time from work. She argued that she was sure she suffered a head injury after she exited her vehicle on December 23, 2013 to seek help. Appellant also argued that the injury aggravated her preexisting condition having to do with her brain because she was disoriented, dizzy, and ultimately passed out. Furthermore, she explained that because she had a brain injury on December 23, 2013, it was not surprising that she was confused by exactly what happened. The Board notes that the most contemporaneous factual evidence, appellant's own December 23, 2013 statement, does not support that she struck her head when she fell after she exited her vehicle on December 23, 2013. Furthermore, as explained, the medical evidence does not sufficiently explain how the work incident caused or contributed to a diagnosed medical condition. 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.

[15] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (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).

[16] *See Jane A. White*, 34 ECAB 515, 518 (1983); 5 U.S.C. § 8101(2) (defines the term "physician"). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on December 23, 2013.

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2015
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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