

FACTUAL HISTORY

On October 23, 2014 appellant, then a 33-year-old Federal Air Marshal, filed an occupational disease claim (Form CA-2) alleging that he developed daily headaches caused by his federal employment duties. He explained that, after returning home from a mission to Belgium on October 15, 2014, he began to experience headaches daily. Appellant did not suffer from any type of injury during the mission and was not experiencing headaches prior to leaving for this work assignment.

By letter dated November 12, 2014, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was afforded 30 days to respond.

On November 18, 2014 appellant responded to the OWCP questionnaire, stating that the employment-related exposure which contributed to his condition was a result of frequent and extended exposure to flight conditions. He explained that he first began experiencing headaches on his return work mission from Belgium on October 15, 2014. When in flight, appellant began to experience pain in the top of his head that gradually increased during and after the flight. He noted that he experienced the same type of pain on subsequent flights and continued to experience headaches on a daily basis. Appellant noted no similar conditions in the past with no history of daily headaches.

In a November 12, 2014 attending physician's report (Form CA-20), Dr. Harry N. Gustin, Board-certified in family medicine, reported that appellant complained of consistent headaches since returning from Europe on October 15, 2014. He checked the box marked "yes" when asked if he believed that the condition was caused or aggravated by the employment activity, noting secondary to flying and possibly secondary to elevation, and sleep deprivation.

In a November 13, 2014 medical note, Dr. Bethany A. Cummings, an osteopath, reported that appellant was treated in the emergency department and was restricted from flying for work until he was cleared by his workers' compensation case and neurology. She explained that he had headaches for 28 days since October 15, 2014, which were complicated by unusual tremors, cause unknown.

By letter dated November 14, 2014, OWCP requested the employing establishment provide information regarding appellant's employment duties.

On December 8, 2014 the employing establishment responded to OWCP questionnaire, stating that it concurred with appellant's allegations. It reported that appellant's employment duties involved sitting for prolonged periods in a pressurized cabin of an aircraft, approximately five days per week. OWCP noted that on October 15, 2014 he sat in a pressurized cabin of an aircraft for 8 hours and 30 minutes.

In a January 7, 2015 diagnostic report, Dr. Tajammul Ehsan, a Board-certified neurologist, reported that an electroencephalogram study was within normal limits.

By decision dated January 21, 2015, OWCP denied appellant's claim, finding that the medical evidence of record failed to establish that his injury was causally related to his accepted federal employment duties.

By letter dated January 29, 2015 appellant, through counsel, requested a telephone hearing before a hearing representative of the Branch of Hearings and Review. In support of his claim, he submitted numerous prescription notes, work restrictions, limited-duty assignments, and progress notes from physician assistants documenting appellant's ongoing treatment. The relevant medical reports are set forth below.

In a November 12, 2014 encounter report, Dr. Gustin reported that appellant returned from an overseas trip on October 15, 2014 and noticed he developed daily headaches after returning with some discomfort in his left eye. Appellant thought it could be related to his allergies and provided himself with an allergy shot, which he required every five to six days, but obtained no relief. He continued to take pain medication with no relief and last flew on November 4, 2014. Dr. Gustin diagnosed persistent daily headaches of unknown etiology and recommended a computerized tomography (CT) scan.

In a November 13, 2014 diagnostic report, Dr. Neil Crowe, a Board-certified neurologist, reported that a CT scan of the head was read as normal.

In a December 18, 2014 diagnostic report, Dr. Patrick David Ireland, a Board-certified neurological surgeon, reported that a magnetic resonance imaging (MRI) scan angiogram of the head revealed normal findings. In a different MRI scan angiogram of the head taken that same date, Dr. Ireland reported that the study revealed a potentially abnormal magnetic resonance venogram of the head demonstrating decreased flow signal in the left transverse sinus which could represent an area of partial thrombosis or stenosis.

In a December 30, 2014 diagnostic report, Dr. Patrick M. Capone, a Board-certified neurologist, reported that a brain MRI scan was within normal limits.

In a March 17, 2015 Form CA-20, Dr. Shabih Hasan, a Board-certified neurologist, reported that appellant's chronic headaches began on October 15, 2014 and were associated with barometric pressure changes and shift work. He indicated that appellant's neurological examination was normal, but his polysomnography (PSG) examination was abnormal. Dr. Hasan checked the box marked "yes" when asked if the condition was caused or aggravated by the employment activities described. Appellant was restricted to light-duty administrative work.

In a March 31, 2015 medical records review, the employing establishment found that appellant's medical condition of headaches prohibited his performance as a Federal Air Marshal. It noted that his treating physician, Dr. Hasan, diagnosed chronic frequent headaches with multiple restrictions on his physical activities. Dr. Hasan also restricted appellant from flying for over one year. The employing establishment noted that these restrictions made him unable to "detect, deter, and defeat hostile acts targeting U.S. air carriers, airports, passengers, and crews" because of an inability to "perform arduous tasks" required of the Federal Air Marshal position.

It determined that appellant was considered medically disqualified for work as a law enforcement officer for the Federal Air Marshal.

In an April 7, 2015 Form CA-20, Dr. Hasan reported that appellant's headaches began on October 15, 2014 when returning from work overseas which would turn into migraines when flying. Findings revealed a normal neurological examination and an abnormal PSG obstructive sleep apnea hypoventilation syndrome. Dr. Hasan diagnosed chronic daily headaches associated with barometric pressure changes and shift work schedule.

By letter dated June 26, 2015, the Office of Personnel Management (OPM) deemed appellant disabled for his position as Federal Air Marshal due to headaches. In another letter dated June 25, 2015, OPM notified him that his application for disability retirement under the Federal Employees Retirement System (FERS) had been approved.

In a July 20, 2015 medical report, Dr. Hasan reported that appellant's condition of migraine headaches resulted in time off of work. On November 13, 2014 appellant was advised by his primary physician to go to the emergency room (ER) due to visual disturbances associated with a headache. Results from his visit to the ER were inconclusive and he was referred to a neurologist for further treatment. On December 15, 2014 appellant was cleared to return to work by his neurologist and worked in a light-duty status. Dr. Hasan reported that he first began treating appellant in February 2015 and diagnosed him with chronic headaches. He explained that the condition was caused by barometric pressure changes (flying) and sleep deprivation (shift work), both issues related to his employment as a Federal Air Marshal. Appellant remained on a light-duty status until May 2015, at which time he was reassessed and placed on a new treatment plan to help reduce headache frequency and intensity. Dr. Hasan recommended that appellant avoid prolonged exposure to fluorescent lighting. Appellant was later removed from his position due to these work restrictions. Dr. Hasan opined that appellant's diagnosis of chronic headaches was caused by the barometric pressure changes and shift work related to the flying requirements of a Federal Air Marshal. Therefore, his work release/restrictions were directly and causally related to his work-related medical condition/injury.

A hearing was held on August 4, 2015. At the hearing, appellant testified that he had no prior history of headaches or migraines which began during his flight from Belgium on October 15, 2014. He reported that his headaches were worse when flying and improved slightly after landing and leaving the pressurized cabin. Appellant explained that his employment duties entailed flying five days a week with constant time zone changes, which would disrupt his sleep. He further explained that his allergies were no longer a problem since he began his allergy shots and was having no issues with his condition on October 15, 2014. The hearing representative requested a more detailed report from his physician which provided a medical opinion based on a complete and accurate history to explain how changing time zones and flying in a pressurized cabin could cause the headaches as opposed to sleep apnea. She stated that sleep apnea was not typically work related and that headaches were a very common side effect of sleep apnea. The record was held open for 30 days. No response was received within the allotted time.

By decision dated September 28, 2015, the hearing representative affirmed OWCP's January 21, 2015 decision, finding that the medical evidence of record failed to establish that appellant's chronic headaches were causally related to his accepted federal employment duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.² These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.³

In order to determine whether an employee actually sustained an 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 which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁶ The opinion of the physician 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. This medical opinion must include an accurate history of the employee’s employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician’s opinion.⁷

² Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

³ Michael E. Smith, 50 ECAB 313 (1999).

⁴ Elaine, *supra* note 2.

⁵ See Roy L. Humphrey, 57 ECAB 238, 241 (2005); Ruby I. Fish, 46 ECAB 276, 279 (1994).

⁶ See 20 C.F.R. § 10.110(a); John M. Tornello, 35 ECAB 234 (1983).

⁷ James Mack, 43 ECAB 321 (1991).

ANALYSIS

OWCP accepted that appellant's employment duties required long periods of sitting in a pressurized cabin while flying five days per week. It denied his claim, however, because the evidence failed to establish a causal relationship between those activities and his chronic headaches. The Board finds that the medical evidence of record is insufficient to establish that appellant developed chronic headaches causally related to factors of his federal employment as a Federal Air Marshal.

In a July 20, 2015 medical report, Dr. Hasan diagnosed chronic headaches which he opined that were caused by the barometric pressure changes and shift work related to the flying requirements of a Federal Air Marshal. The Board finds that the reports of his are not well rationalized. Dr. Hasan failed to discuss the findings of appellant's diagnostic studies as it related to appellant's diagnosis, of particular importance given that much of the testing revealed normal findings. While he provided a firm medical diagnosis of chronic headaches, he failed to provide an adequate explanation regarding the cause of appellant's condition. Dr. Hasan noted a history of headaches beginning on October 15, 2014 during a flight and determined that the headaches were caused by barometric pressure changes (flying) and sleep deprivation (shift work). His statement on causation fails to provide a sufficient explanation as to the mechanism of injury pertaining to this occupational disease claim, namely, how flying in a pressurized cabin and altered sleep patterns would cause or aggravate appellant's chronic headaches.⁸ Without explaining how physiologically these employment duties caused or contributed to the diagnosed condition, his opinion on causal relationship is equivocal in nature and of limited probative value.⁹

The Board further notes that appellant stopped work on November 13, 2014 and returned in a modified-duty capacity on December 15, 2014. Dr. Hasan failed to provide an explanation as to why appellant's chronic headaches continued despite not having been exposed to the occupational factors stated to have caused his condition. His CA-20 forms did not provide greater clarification and noted findings of normal neurological examination and an abnormal PSG obstructive sleep apnea hypoventilation syndrome. Yet Dr. Hasan failed to discuss how these results related to appellant's current condition and occupational exposure. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹⁰ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹¹ As Dr. Hasan failed to provide a well-rationalized opinion that

⁸ *S.W.*, Docket 08-2538 (issued May 21, 2009).

⁹ *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

¹⁰ *Id.*

¹¹ *See Lee R. Haywood*, 48 ECAB 145 (1996).

appellant's chronic headaches were caused or aggravated by his occupational employment duties, his medical reports fail to establish that appellant's injuries are a result of a work-related occupational exposure.¹²

The remaining medical evidence of record is also insufficient to establish causal relationship between appellant's chronic headaches and his federal employment duties. Dr. Cumming's November 13, 2014 medical note explained that appellant had headaches for 28 days since October 15, 2014 for which the cause was unknown. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹³ While Dr. Gustin's November 12, 2014 Form CA-20 checked the box marked "yes" when asked if he believed that the condition was caused or aggravated by the employment activity, the Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.¹⁴ The reports of Dr. Ehsan, Dr. Ireland, Dr. Crowe, and Dr. Capone interpreted diagnostic imaging studies and provided no opinion on the cause of appellant's injury.¹⁵ Without any mention of appellant's employment duties, any findings made could not be related to his claim to establish causal relationship.¹⁶

The reports from the physician assistant are also insufficient to establish appellant's claim as they were not signed by a physician. Registered nurses, physical therapists, and physician assistants are not considered physicians as defined under FECA and their opinions are of no probative value.¹⁷ Thus, the Board finds that the medical evidence of record fails to support that appellant developed chronic headaches as a result of his federal employment duties.¹⁸

Appellant's belief that his federal employment duties caused his chronic headaches is not in question. However, that belief, even if sincerely held, does not constitute the medical evidence necessary to establish causal relationship. Any medical opinion evidence appellant may submit to support his claim should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment factors, in particular

¹² *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

¹³ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁴ *See Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

¹⁵ *D.H.*, Docket No. 11-1739 (issued April 18, 2012).

¹⁶ *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

¹⁷ 5 U.S.C. § 8102(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. FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. Reports from physician assistants lack evidentiary weight as they are not physicians as defined under FECA. *See* 5 U.S.C. § 8101(2); *Roy L. Humphrey*, *supra* note 5 at 238, 242.

¹⁸ *R.M.*, Docket No. 11-1921 (issued April 10, 2012).

physiologically, caused or aggravated his chronic headaches.¹⁹ In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between his chronic headaches and his federal employment duties. Thus, appellant has failed to meet his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he developed chronic headaches causally related to factors of his federal employment as a Federal Air Marshal.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated September 28, 2015 is affirmed.

Issued: May 11, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁹ *T.G.*, Docket No. 14-751 (issued October 20, 2014).