United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant	)	
and	)	**Docket No. 16-0265**
	)	**Issued: May 16, 2016**
SOCIAL SECURITY ADMINISTRATION, Baltimore, MD, Employer	)	

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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 23, 2015 appellant filed a timely appeal from June 29 and October 28, 2015 merit decisions 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 has established that she sustained a traumatic injury causally related to the accepted May 1, 2015 employment incident.

FACTUAL HISTORY

On May 15, 2015 appellant, then a 38-year-old benefit authorizer, filed a traumatic injury claim (Form CA-1) alleging that on May 1, 2015 she experienced pain and swelling to her head, eye, and nose when the trunk lid of her car fell on her, in the employing establishment parking

[1] 5 U.S.C. § 8101 *et seq.*

lot. She noted that her face was still painful to touch and she experienced headaches and dizziness. Appellant stopped work on May 8, 2015 and returned on May 12, 2015. On the back of the claim form, the employing establishment indicated that she was not injured in the performance of duty because the alleged incident occurred during a lunch break.

Appellant submitted a handwritten May 1, 2015 medical record by an unknown provider which indicated that she complained of pain as a result of her car trunk hitting her nose and eye.

On May 7, 2015 appellant was examined in the emergency room by Dr. Richard Nguyen, Board-certified in emergency medicine, and Carrie L. Parrott, a certified nurse practitioner, who described in a May 7, 2015 report that appellant was six days post injury to her head that occurred when she closed the trunk of her car and it struck her nose and right anterior cheek. Dr. Nguyen reviewed appellant's history and conducted an examination. He related that her computerized tomography (CT) scan of her head showed no acute finding. Dr. Nguyen provided a diagnosis of concussion and recommended that appellant follow-up with her primary care physician if her condition did not improve in three to four days. He advised that she could return to work on May 12, 2015.

In a May 7, 2015 head CT scan examination report, Dr. Angela Yim, a Board-certified diagnostic radiologist, related appellant's complaints of headache. She observed that there was no evidence for midline shift, mass effect, or intracranial hemorrhage. Dr. Yim reported that the examination was unremarkable.

Appellant was also treated by Marilyn B. Andrews, a certified nurse practitioner, who noted in May 4 to June 9, 2015 reports that appellant complained of pain, headaches, and dizziness. Ms. Andrews related that appellant was examined in the emergency room on May 7, 2015 and diagnosed with a concussion. She reviewed appellant's history and recounted that appellant was hit in the head when the trunk lid of her car fell on her. Upon examination, Ms. Andrews observed that appellant appeared uncomfortable and lay down on the examination table throughout most of the examination. She examined appellant's back and observed tenderness in the upper cervical back with increased muscle tension. Ms. Andrews reported that appellant's eyes were conjunctivae and normal and her ear canals and membranes were intact. Examination of appellant's nose and mouth were normal. Ms. Andrews diagnosed chronic post-traumatic headache, cervicalgia, and unspecified vertigo. She prescribed pain medication and advised that appellant should remain off work until reevaluated.

Ms. Andrews also provided disability notes dated May 14 and 21, 2015, which indicated that appellant had an appointment on those dates and would be unable to return to work until June 8, 2015.

By letter dated May 28, 2015, OWCP advised appellant that the evidence of record was insufficient to establish her claim. It requested that she submit detailed factual evidence to demonstrate that the May 1, 2015 incident occurred as alleged, in the performance of duty, and medical evidence to demonstrate that she sustained a diagnosed condition causally related to the accepted incident. OWCP also requested that appellant complete a questionnaire regarding the circumstances surrounding the injury, and whether it occurred in the performance of duty. It afforded her 30 days to submit the requested information.

In a June 25, 2015 statement, Ava Corner, appellant's supervisor, reported that management was contacted by a nurse at the employing establishment about appellant's injury. She stated that appellant's injury was visible on her face, nose, and eyes and that appellant showed signs of dizziness, slurring of words, and weakness. Ms. Corner noted that management was concerned about appellant's health and completed a Form CA-1.

In a June 25, 2015 statement, Loreda Steppe, a benefit authorizer and appellant's coworker, recounted that on May 1, 2015 appellant asked her where the nurse's office was located. She noted that appellant looked disoriented and dazed. When Ms. Steppe asked if appellant was okay, appellant stated that the trunk of her car hit her face.

In an undated statement, Brandon Cheung, a human resource specialist, indicated that appellant completed the appropriate workers' compensation paperwork, but there was a delay in filing because of confusion with the online filing process. He claimed that she properly informed her manager of the injury and timely submitted the necessary documents.

On June 25, 2015 appellant responded to OWCP's development letter. She provided a history that she went to her personal car, which was parked in the front parking lot of the employing establishment, to retrieve a toiletry item from the trunk of her car during an approved lunch break. The trunk of the car fell down on appellant's head and hit her nose and portion of her face right under her right eye. Appellant immediately felt burning, throbbing, and pain in her head and experienced dizziness and a throbbing headache. She returned to the building, asked her coworker where the nurse's suite was, and was evaluated in the nurse's suite for 45 minutes to 1 hour. Appellant's supervisor was informed of the incident and walked appellant back to her desk to complete the proper workers' compensation paperwork. Appellant reported that after a few days she went to the emergency room because she continued to experience constant severe headaches, dizziness, and was unable to function normally throughout her day. She was diagnosed with a closed head injury concussion and advised not to return to work. Appellant continued to experience pain, dizziness, and headaches. She received medical treatment from Ms. Andrews and was advised not to return to work.

By decision dated June 29, 2015, OWCP denied appellant's claim. It found that the factual evidence was insufficient to establish that the May 1, 2015 incident occurred as alleged and in the performance of duty, and that the medical evidence failed to demonstrate that she sustained a diagnosed condition causally related to the alleged incident.

On July 30, 2015 OWCP received appellant's request for reconsideration. Appellant stated that the documents she submitted to Mr. Cheung were late in being uploaded to the system and were not considered prior to the June 29, 2015 OWCP decision. She resubmitted statements from Mr. Cheung and Ms. Steppe, her June 25, 2015 statement, the handwritten May 1, 2015 medical note, Dr. Nguyen's May 7, 2015 report, and Ms. Andrews' May 4 and 21, and June 9, 2015 reports.

Appellant also submitted June 6, 2015 emergency room records by an unknown provider, which indicated that she was complaining of headaches after being accidently struck on her face by the trunk of her car.

By decision dated October 28, 2015, OWCP affirmed the June 29, 2015 denial decision with modification. It accepted that the May 15, 2015 incident occurred as alleged, and in the performance of duty, but denied appellant's claim as the medical evidence of record was insufficient to establish that she sustained a diagnosed condition causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[3] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.[5] 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.[6] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[7] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.[8]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[9] 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.[10] The weight of the medical evidence is determined by its reliability, its probative

[2] *Id*.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[9] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[11]

ANALYSIS

Appellant alleged that on May 1, 2015 she sustained injuries to her head, eye, and nose when the trunk lid of her car fell on her. She stopped work on May 8, 2015 and returned on May 12, 2015. OWCP accepted that the May 1, 2015 incident occurred as alleged, and in the performance of duty, but denied appellant's claim finding that the medical evidence of record was insufficient to establish that she sustained a diagnosed condition causally related to the accepted incident.

The Board finds that appellant has not established a diagnosed condition causally related to the accepted incident. While appellant alleged injury to her head, eye, and nose, the Board notes that no diagnosis was offered regarding her alleged eye and nose conditions.

Appellant was examined in the emergency room by a nurse practitioner, and Dr. Nguyen who noted in a May 7, 2015 report that she was struck in the head by the trunk lid of her car. Dr. Nguyen reviewed her history and conducted an examination. He related that a CT scan demonstrated no acute findings. Dr. Nguyen diagnosed a concussion. Although he described the May 1, 2015 employment incident and provided a medical diagnosis, he did not offer an opinion as to whether the May 1, 2015 incident caused or contributed to appellant's concussion. The Board has held that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.[12]

Similarly, Dr. Yim's May 7, 2015 diagnostic report also fails to establish causal relationship as she did not provide any opinion on the cause of her condition. As these reports do not contain any rationalized medical opinion explaining how the May 1, 2015 employment incident resulted in appellant's head condition, they are insufficient to establish her traumatic injury claim.

Appellant was also examined by Ms. Andrews, a nurse practitioner, from May 4 to June 9, 2015. Ms. Andrews accurately described the May 1, 2015 work incident and diagnosed concussion. These reports, however, are of no probative value because nurse practitioners are not considered physicians as defined under FECA.[13] Ms. Andrews' opinion, therefore, also fails to establish a causal relationship. The additional May 1 and June 6, 2015 records by an unknown provider similarly do not establish appellant's traumatic injury claim because medical evidence

[11] *James Mack*, 43 ECAB 321 (1991).

[12] *John W. Montoya*, 54 ECAB 306 (2003).

[13] Section 8102(2) 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. 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

lacking proper identification is of no probative medical value.[14] As these reports are of no probative value, they are insufficient to establish her traumatic injury claim.

The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.[15] Appellant did not provide a rationalized medical opinion based on an accurate background which described or explained the medical process through which the May 1, 2015 incident could have caused her alleged injuries. Accordingly, she did not meet her burden of proof to establish that she sustained an injury causally related to the accepted employment incident of May 1, 2015.

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 did not establish that she sustained a traumatic injury causally related to the accepted May 1, 2015 employment incident.

[14] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[15] *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, 57 ECAB 137 (2005).

ORDER

IT IS HEREBY ORDERED THAT the October 28 and June 29, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 16, 2016
Washington, DC

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

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

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