United States Department of Labor
Employees' Compensation Appeals Board

C.D., Appellant	)	
and	)	
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, FEDERAL AIR MARSHAL SERVICE, East Elmhurst, NY, Employer	)	**Docket No. 15-0035** **Issued: September 22, 2016**

Appearances:
Bryan A. Sunisloe, Esq., for the appellant[1]
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 October 6, 2014 appellant, through counsel, filed a timely appeal from an April 8, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] Appellant timely requested an oral argument before the Board, pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated September 7, 2016, the Board denied appellant's request. *Order Denying Request for Oral Argument*, Docket No. 15-35 (issued September 7, 2016).

the Federal Employees' Compensation Act[3] (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 established an injury in the performance of duty on June 25, 2013, as alleged.

On appeal appellant, through counsel, contends that the medical evidence established a causal relationship between appellant's employment incident and the diagnosed medical conditions.

FACTUAL HISTORY

On June 25, 2013 appellant, then a 31-year-old federal air marshal, filed a traumatic injury claim alleging that on that date he felt light-headed and dizzy after finishing his "QFA," and that he walked into the field office's men's locker room and "threw up" two or three times. He noted that he passed out and lost consciousness immediately thereafter. The employing establishment, through David Wichterman, program manager, controverted the claim and stated that appellant reported for duty at 7:00 a.m., performed the usual exercises from 7:15 a.m. to 7:30 a.m. and then proceeded "to throw up and pass out, striking his head on the floor."

In support of his claim, appellant submitted medical records from Queens Health Network Emergency Services dated June 28, 2013, including lab tests and a diagnosis of syncope -- vasovagal by Dr. Reuben Strayer, a physician Board-certified in emergency medicine. The notes indicate that two years previously appellant had an episode of syncope after exercise.

Dr. Das L. Kareti, a physician Board-certified in clinical neurophysiology, internal medicine and neurology, noted in a July 15, 2013 report, that, while appellant was in New York undergoing a physical fitness test three weeks prior, he experienced an acute syncopal episode after 30 minutes of physical fitness testing. He noted that appellant felt like throwing up, went to the sink, and passed out on the floor. Dr. Kareti noted that, while appellant was passing out, he hit his head on a locker and again on the floor and was told that he was passed out for 10 to 15 minutes. Since the incident, appellant has been experiencing depression, severe anxiety attacks, problems with balance, equilibrium, right facial numbness, constant headaches which start in the back of his head and radiate to the front, forgetfulness, and repeating the same thing. Appellant had another syncopal episode two years previously and a closed head injury from an automobile accident when he was 12 years old. Dr. Kareti listed his impression as history of syncope, closed head injury three weeks ago followed by persistent headaches, right facial numbness, equilibrium off, and depression.

In a July 24, 2013 follow up, Dr. Kareti determined that a magnetic resonance imaging (MRI) scan report of appellant's brain was negative for any acute lesion and that his electroencephalogram was normal without any seizure activity. He suspected that appellant was suffering from mixed type of headaches, namely migraine and muscle contraction type.

[3] 5 U.S.C. § 8101 *et seq.*

Dr. Kareti asked appellant to not drive, as he should be symptom free for six months before driving.

By decision dated August 16, 2013, OWCP denied appellant's claim as the medical evidence was not sufficient to establish a medical condition in connection with the claimed event and/or work factors.

In an August 26, 2013 attending physician's form report, Dr. Namir Stephan, a Board-certified internist, diagnosed migraine and muscle tension headaches. He noted the loss of consciousness and fall followed by headaches on June 25, 2013. Dr. Stephan noted no preexisting injury or disease. He checked a box marked "yes" to indicate that this condition was caused or aggravated by appellant's employment activity. Dr. Stephan advised that he had treated appellant with pain medication and referred him to a specialist. He found appellant was totally disabled commencing June 25, 2013.

In an August 28, 2013 report, Dr. Jay Pradhan, a physician Board-certified in cardiovascular disease, internal medicine and interventional cardiology, noted seeing appellant for a one-month follow up for evaluation of syncope, recurrent in nature. He noted that from history, it was apparent that appellant had an episode of vasovagal syncope secondary to dehydration. Dr. Pradhan noted that appellant had a similar episode two years back during his physical training. He noted that appellant's 2-D echocardiogram and carotid Doppler ultrasound were within normal limits. Dr. Pradhan opined that he would not suspect any definite cardiac pathology to explain his syncopal episode, and noted that he was under neurologist evaluation at the current time.

In an undated report received by OWCP on September 10, 2013, Dr. Stephan confirmed that appellant suffered a closed head injury and concussion on June 25, 2013 resulting from a fall while exercising at work. He noted that appellant continued to have headaches and difficulty with balance and has been evaluated by a neurologist.

In an October 16, 2013 report, Dr. Kareti noted that he examined appellant for a follow up of his postconcussion-related headaches secondary to his closed head injury which he sustained when he fell down at his work on June 25, 2013. He further noted that appellant was still experiencing severe headaches three or four times a week for which he took prescribed medication and that he was also receiving prophylaxis treatment for his chronic headaches. Dr. Kareti noted that appellant was seeing a therapist to work on postconcussion-related sequelae, namely memory issues and mood problems.

By decision dated January 21, 2014, OWCP modified its prior decision to reflect that fact of injury had been established, but the basis for denial of the claim was that appellant had not established that his concussion and ongoing symptoms were causally related to the syncopal episode.

On February 20, 2014 appellant, through counsel, requested reconsideration.

In a January 15, 2014 report, Dr. Kareti stated that he last saw appellant on October 16, 2013. He listed his impressions as postconcussion headaches and features of depression with anxiety features and panic attacks.

In a February 4, 2014 report, Dr. Kareti noted that he had treated appellant since July 15, 2013, three weeks after he sustained a closed head injury at work, which was documented in his initial evaluation. He stated that he did not find dehydration to be the cause of the syncopal episode. Dr. Kareti advised that postconcussion headache was a firm neurological diagnosis secondary to the injury. He also opined that appellant's current neurological status is the result of the June 25, 2013 employment injury. Dr. Kareti asked OWCP to reconsider its decision and grant appellant his legitimate benefits.

In a February 13, 2014 report, Dr. Karen Noelle Clark, a clinical psychologist, noted that she had been treating appellant with psychotherapy since January 16, 2014. She noted that he presented with symptoms of head trauma and residual effects of depression and anxiety, is easily frustrated and overwhelmed, and experiences serious and frequent headaches, memory lapses, disorientation confusion, panic attacks, and depression. Dr. Clark noted that appellant's medical condition was "a direct result of his fall, which caused him to hit his head. This occurred during his work hours and duties." Dr. Clark noted that the disability has already lasted eight months, and is likely to last more than one year. She opined that appellant will not be able to resume his professional duties and should apply for disability retirement. Dr. Clark listed his diagnosis as dementia due to head trauma and adjustment disorder with anxiety and depression.

In a February 21, 2014 report, Dr. Stephan diagnosed migraines and muscle tension, and opined that these conditions were causally related to an employment activity of June 25, 2013.

By decision dated April 8, 2014, OWCP denied modification of the August 16, 2013 decision because the evidence submitted did not provide an explanation supported by medical rationale of how the accepted work incident caused or aggravated the diagnosed conditions.

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, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.[4]

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 or exposure, which is alleged to have occurred.[5] In order to meet his or her burden of proof to establish the fact that he or she sustained an injury

[4] *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

[5] *See Elaine Pendleton*, 40 ECAB 1143 (1989).

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.[6]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 of the claimant, 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.[8]

ANALYSIS

Appellant alleged that he sustained a traumatic injury as a result of a June 25, 2013 employment incident. He has established that the incident occurred as alleged and has established a medical diagnosis. OWCP, however, denied appellant's claim as he failed to establish that his accepted medical diagnoses were due to the accepted employment incident.

The medical records from Queens Health Network from June 28, 2013, including the opinion of Dr. Strayer, do not provide an opinion with regard to causal relationship. Dr. Pradhan merely addressed appellant's cardiac condition, and gave no opinion with regard to causal relationship. Dr. Stephan opined that appellant's closed head injury and concussion resulted from a fall while exercising at work, but he failed to explain his opinion as to causal relationship, even though he was asked to address that issue.

As a clinical psychologist, Dr. Clark's report is entitled to the same weight as a physician.[9] She did not describe a history of the June 25, 2013 employment incident, but concluded that appellant's condition resulted from hitting his head due to a fall at work. Additionally, Dr. Clark did not explain how the mechanism of the fall resulted in the debilitating condition. Thus, her report is of diminished probative value and is insufficient to establish appellant's claim.

Dr. Kareti opined that appellant's postconcussion headaches and current neurological status were the result of what happened at work on June 25, 2013. He described the employment incident in his July 15, 2013 report, and conducted follow-up examinations wherein he continued to indicate his belief that appellant's medical condition was caused or aggravated by his

[6] *Linda S. Jackson*, 49 ECAB 486 (1998).

[7] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[8] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[9] Per FECA, the definition of the term physician "includes surgeons, podiatrists, dentists, clinical psychologists ... within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2).

employment activity. However, Dr. Kareti provided only conclusory statements on causal relationship. He failed to provide sufficient medical rationale to explain the basis for his conclusory opinion. The Board has found that such unrationalized medical opinions are of little probative value and are insufficient to establish causal relationship.[10]

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 has failed to establish an injury in the performance of duty on June 25, 2013, as alleged.

ORDER

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

Issued: September 22, 2016
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

[10] *T.V.*, Docket No. 16-0656 (issued July 27, 2016). *See also T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).