United States Department of Labor
Employees' Compensation Appeals Board

V.J., Appellant	)	
and	)	**Docket No. 17-0358**
	)	**Issued: July 24, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case submitted on the record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 6, 2016 appellant, through counsel, filed a timely appeal from a September 6, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 met her burden of proof to establish an injury causally related to the accepted August 15, 2015 employment incident.

[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] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 20, 2015 appellant then a 51-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that, while at work on August 15, 2015, she passed out and hit her head a couple of times.[3] In a September 23, 2015 letter, G.S., a human resources specialist with the employing establishment, advised that the employing establishment was controverting the claim based on fact of injury and causal relationship. He noted that appellant claimed that she suffered an injury when she passed out and did not recall striking her head a couple of times as stated by a witness. G.S. also advised that, while appellant indicated that the injury occurred on August 15, 2015, she did not file a claim or give notification until September 13, 2015 and did not sign the form until September 20, 2015. He also related that her medical documentation was not dated until September 16, 2015 and she had not provided any medical documentation that her injury occurred on or near the alleged date. G.S. explained that appellant made inconsistent statements and refused medical treatment while at the employing establishment on the date of injury. He advised that it was the employing establishment's contention that appellant had a prior ailment which caused the incident that took place on August 15, 2015. G.S. also indicated that appellant did not provide medical documentation explaining how the injury was causally related to her employment. He requested that the claim be denied as appellant had not established either fact of injury or causal relationship.

In a September 16, 2015 treatment note, Samantha Morgan, a physician assistant, noted that appellant was under her care and should be excused from work until further testing for headaches and postconcussion syndrome.

In e-mail correspondence dated September 21, 2015, L.H., the plant manager, explained that appellant had come into the employing establishment that day and turned in a Form CA-1 claiming that she sustained a concussion during an incident that took place on August 15, 2015. She noted that appellant wanted to speak to the manager on duty, D.W., but he was running the work floor sections and the immediate supervisor did not have time to "deal with [appellant's] drama and antics; therefore, I met with [appellant] and her husband." L.H. explained that the management portion was not complete and the accident information had not been submitted. She indicated that the claim would be controverted and an investigation would be conducted with regard to appellant's failure to report a claim and submit documentation in a timely manner. L.H. explained that, during their conversation, appellant made many inconsistent statements. She noted that appellant refused all medical treatment on the date of the incident and claimed that her behavior was due to the concussion she sustained.

In an August 15, 2015 e-mail, Angeletta Holtman, a physician assistant, who responded to the incident involving appellant, noted that when she responded to the medical alert, she found appellant on the floor and being assisted by coworker, C.B., and Joy Shakespeare, a physician assistant, along with manager of operations R.D. She also noted that appellant had an inhaler, for bronchitis, which was empty. Ms. Holtman suggested that appellant may have overdosed on the inhaler. In an August 15, 2015 statement, Ms. Shakespeare also described what happened on

[3] Appellant asserted on the claim form that the shop steward incorrectly claimed that her fall was due to headaches. She further asserted that she was unable to write a full statement after the claimed employment incident. Appellant noted that witness C.B. was the basis of her information that she had hit her head a couple of times.

August 15, 2015. She responded to the incident and found appellant on the floor and being assisted by C.B.

OWCP received several statements. In an August 15, 2015 statement, C.B. explained that on the date, she saw appellant shaking like a person having a seizure. She indicated that when she spoke to appellant, she appeared disoriented, began rambling, and did not know where she was. C.B. indicated that appellant was trying to say something, but could not get it out. She explained that in a split second, appellant fell onto a conveyor belt and then she hit the floor. C.B. explained that appellant was actually holding onto the conveyor belt as if she was trying to lift herself up. She believed that appellant was having a seizure. C.B. also noted that appellant indicated that her chest was hurting and she could not breathe. Additionally, appellant's head and leg was hurting and she did not know why. C.B. further noted that after medical personnel arrived, she was directed to write a statement.

Evidence received included an August 15, 2015 statement from J.B., a coworker, who noted he saw appellant on that date, but she did not answer him with regard to her duty status. In a separate statement, also dated August 15, 2015, D.A., a coworker, noted that on that date he saw appellant walking with something on her face and she was breathing heavy and quick. He noted that afterwards, medics were called. A copy of a medic alert log sheet accompanied his statement. In an August 16, 2015 statement, J.S., a tour 1 worker, explained his actions with regard to the medic alert that occurred on August 15, 2015, which included blocking off the area and keeping people away. Additional statements from bystanders who did not actually witness the incident, but were present, were also received. They included statements from C.G., A.C., and R.D., a manager of distribution operations.

In a September 20, 2015 statement, appellant indicated that she came to work on August 15, 2015 and went to see R.D. with regard to whether she could go to "3760 again please." She noted that he advised her that she needed paperwork and pointed his finger at her without giving her the opportunity to explain that she was not feeling well. Appellant indicated that as she was walking, she was not feeling well and passed out by a piece of machinery. She noted that C.B. ran over and tried to help her. Afterwards, C.B. told her that she hit her head twice.

By letters dated October 5, 2015, OWCP informed appellant of the type of evidence needed to support her claim and afforded her 30 days to respond. Additional information was also requested from the employing establishment.

In an August 2, 2015 disability certificate, Dr. Stephen Matse, a Board-certified internist and osteopath, explained that, due to a medical condition and new medication started, it would be wise to have appellant on light duty for six to eight weeks for her safety as well as her workers.

In an October 26, 2015 statement, G.H., appellant's husband, noted that on August 15, 2015 he received a telephone call from his wife's telephone at about 6:15 a.m. and on the other end was a police officer. He explained that he was advised to go to his wife's job as there was an accident at work. G.H. noted that her coworker, C.B., also called him to ask how close he was. He related that she indicated that appellant hit her head on a metal steel machine and her head hit the floor.

On October 30, 2015 OWCP received appellant's October 20, 2015 responses to its questionnaire. Appellant explained that she was behind the mechanics store room and asked the manager on duty if she could stay in another day. She referred to another manager, whom she indicated was yelling and causing a hostile environment. Appellant denied any history of fainting spells, heart condition, or epileptic seizures. She argued that she worked in a hostile working condition and she struck the steel machine with her head and the concrete. Appellant also noted that C.B. was afraid to give her a statement because of the manager on duty. Regarding why she did not report her injury until September 20, 2015, appellant explained that she had a doctor's note to report to light duty. However, after a couple of weeks, she began experiencing worsening headaches and nausea, blurriness, and double vision. Appellant explained that she visited an urgent care center on September 10, 2015 and she was advised at that time to file a claim. She indicated that the first time the supervisor would not sign it. Appellant indicated that the second time on September 20, 2015, she went to the job she asked for the plant manager. She denied any similar or preexisting conditions prior to the injury.

By decision dated November 5, 2015, OWCP denied appellant's claim. It found that the claim was denied because appellant had not submitted any medical evidence containing a medical diagnosis in connection with the accepted injury or events. OWCP noted that the record also contained reports from a physician assistant. However, it explained that the reports from a physician assistant were of no probative value as they were not considered a physician as defined under FECA and, therefore, not competent to provide a medical opinion.[4]

On November 17, 2015 appellant's then-counsel requested a telephonic hearing before an OWCP hearing representative. He requested status updates on March 17 and May 2, 2016. The hearing was scheduled for July 8, 2016.

In a letter dated July 27, 2016, appellant's then-counsel provided a July 21 2016 report from Dr. Evgeniy Shchelchkov, a Board-certified neurologist, as well as office notes and records beginning with her initial office visit and other visits on October 28, December 10, 2015, and January 27, 2016. He explained that Dr. Shchelchkov consistently diagnosed appellant with post-concussion syndrome superimposed upon severe generalized anxiety disorder. Appellant's then-counsel indicated that the basis of the diagnosis was that the injury of August 15, 2015 caused or directly related to the diagnosed condition. He also provided treatment notes from a psychiatrist, Dr. Mona Mikhail, a Board-certified psychiatrist. Dr. Mikhail treated appellant from February 22 through July 6, 2016. Appellant's then-counsel noted that Dr. Mikhail's February 22, 2016 report was consistent with the opinion of Dr. Shchelchkov in diagnosing postconcussion syndrome and aggravation of anxiety. Dr. Mikhail argued that appellant had provided the requisite medical evidence to support that the diagnosed conditions were attributable to the injury of August 15, 2015, wherein she struck her head not once, but twice on postal equipment and then the concrete floor. Appellant's then-counsel argued that the medical evidence was now provided as to the causative link between the fact of injury and the diagnosed condition. He also indicated that it was uncontroverted in the record and the prior decision should be set aside and the claim accepted.

[4] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physicians assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); *Charley V.B. Harley*, 2 ECAB 208 (1949) (the Board held that medical opinion, in general, can only be given by a qualified physician). *See also* 5 U.S.C. § 8101(2).

In an October 28, 2015 report, Dr. Shchelchkov indicated that appellant was a new patient seen for headache and postconcussional syndrome. He indicated that appellant stated that the complaints began on August 15, 2015 and the pain had a pounding and throbbing quality, which since the onset, appellant's condition was gradually worsening. Dr. Shchelchkov noted that her symptoms were aggravated by activity, lifting, and relieved by rest. He indicated "fall, job[-] related accident" and related that appellant indicated that she fell at work and "ever since that time, has had a constant headache, tremulousness, trouble sleeping and functioning." Dr. Shchelchkov diagnosed: postconcussional syndrome, and chronic post-traumatic headache, not intractable, fall on same level, unspecified.

In December 10, 2015 and January 27, 2016 reports, Dr. Shchelchkov noted that appellant was seen for a head injury which began on August 15, 2015. He noted that appellant indicated pain of a pounding throbbing quality which gradually worsened. Dr. Shchelchkov advised that the symptoms were relieved by rest and aggravated by activity and lifting. He indicated that appellant fell at work and ever since that time, she had a constant headache, tremulousness, trouble sleeping, and functioning. Dr. Shchelchkov advised that she was not much better, still stuttering and having neck pain. He examined appellant, provided findings and diagnosed: postconcussional syndrome, and chronic post-traumatic headache, not intractable, fall on same level, unspecified.

In a January 27, 2016 disability certificate, Dr. Shchelchkov placed appellant off work until her follow-up appointment on March 31, 2016.

In a July 21, 2016 report, Dr. Shchelchkov noted that appellant continued to see him for follow up regarding her postconcussion syndrome which started after her head injury that she received on August 15, 2015. He advised that he saw appellant on January 27 and March 31, 2016. Dr. Shchelchkov related that she showed some improvement with her left headache, with less stuttering and less anxiety episodes, but that she continued with all of the symptoms on a daily basis. He advised that appellant underwent a magnetic resonance imaging (MRI) scan of the brain, which was unremarkable, while a cervical spine MRI scan revealed a minimal degree of degenerative disc disease. Dr. Shchelchkov opined that "to a reasonable degree of medical certainty, I conclude in my medical opinion that appellant's symptoms are directly related to her closed head injury that she received at work on August 15[, 2015]." He indicated that he was pleased that she was improving, although very slowly. Dr. Shchelchkov changed his prognosis from guarded to beneficial and to expect continued improvement.

OWCP also received treatment notes dating from February 22 to July 6, 2016 from Dr. Mikhail. In her February 22, 2016 notes, Dr. Mikhail indicated that appellant's chief complaints were anxiety, stress, and panic attacks.[5] She advised that appellant had her first panic attack on August 13, 2015. Dr. Mikhail noted that appellant was under so much stress and in 2010 a coworker ran her over with a tow motor. She referenced mental abuse and also mistreatment and some types of harassment. Dr. Mikhail diagnosed anxiety and stress.

By decision dated September 6, 2016, an OWCP hearing representative affirmed the November 5, 2015 decision. The hearing representative explained that the evidence submitted was sufficient to establish that appellant hit her head on the conveyor belt, and the incident fell

[5] The writing was difficult to decipher.

within the coverage of FECA. However, the claim remained denied as the medical evidence submitted was insufficient to establish causal relationship between the diagnosed conditions and the accepted August 15, 2015 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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 timely filed within the applicable time limitation period of FECA[7] and that an injury was sustained in the performance of duty.[8] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[9]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. 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.[10] 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.[11]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[12] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[13] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[14]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury causally related to the accepted August 15, 2015 employment incident.

---

[6] *Supra* note 2.

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

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

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

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

[11] *Id*.

[12] *Robert G. Morris*, 48 ECAB 238 (1996).

[13] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[14] *Id.*

The medical reports of Dr. Shchelchkov indicated that appellant was a new patient seen for headache and postconcussional syndrome. He explained that she indicated her complaints began on August 15, 2015. Dr. Shchelchkov noted "fall, job[-]related accident" and explained that appellant fell at work and "ever since that time, has had a constant headache, tremulousness, trouble sleeping[,] and functioning." He opined that "to a reasonable degree of medical certainty, I conclude in my medical opinion that her symptoms are directly related to her closed head injury that she received at work on August 15[, 2015]." Dr. Shchelchkov diagnosed postconcussional syndrome, and chronic post-traumatic headache, not intractable, fall on same level, unspecified. However, the record reflects that appellant had some conditions prior to her fall, which required medication. Dr. Shchelchkov did not explain how he concluded that the fall attributed to her condition as opposed to the preexisting condition. While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal.[15] A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[16]

OWCP also received treatment notes dating from February 22 to July 6, 2016 from Dr. Mikhail. In her February 22, 2016 notes, appellant indicated that her chief complaints were anxiety, stress, and panic attacks. Dr. Mikhail explained that appellant had her first panic attack on August 13, 2015. The Board notes that this was two days prior to the August 15, 2015 incident at work. Dr. Mikhail also noted that appellant was affected by stress related to an incident in 2010 when a coworker ran her over by a tow motor. She diagnosed anxiety and stress. The Board notes that she attributed appellant's conditions to other incidents predating the August 15, 2015 incident at work and failed to provide any opinion on a causal link between the diagnosed conditions and the accepted employment incident.[17] The Board finds that these reports are of limited probative value.

The record also contains reports from physician assistants. However, these reports are of no probative value as a physician assistant is not considered a physician as defined under FECA and, therefore, is not competent to provide a medical opinion.[18]

As appellant did not submit a rationalized medical opinion supporting that she sustained an illness or an injury causally related to the accepted August 15, 2015 employment incident, she has not met her burden of proof to establish an employment-related traumatic injury.

[15] *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

[16] *Samuel Senkow*, 50 ECAB 370 (1999); *Thomas A. Faber*, 50 ECAB 566 (1999).

[17] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[18] *See supra* note 4.

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 not met her burden of proof to establish an injury causally related to the accepted August 15, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2018
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