United States Department of Labor
Employees' Compensation Appeals Board

D.R., Appellant	)	
and	)	**Docket No. 18-0232**
	)	**Issued: October 2, 2018**
U.S. POSTAL SERVICE, PROCESSING & DELIVERY CENTER, Brooklyn, NY, 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 13, 2017 appellant filed a timely appeal from two July 21, 2017 merit decisions and a September 26, 2017 nonmerit 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 to consider the merits of the case.

ISSUES

The issues are: (1) whether appellant has established that the acceptance of her claim should be expanded to include the conditions of traumatic cervical syndrome, cervical radiculopathy, and post-traumatic stress disorder (PTSD) as causally related to the March 8, 2017 employment injury; (2) whether appellant has established total disability commencing April 23, 2017 causally related to the March 8, 2017 employment injury; and (3) whether OWCP's Branch of Hearings and Review properly denied appellant's request for review of the written record under 5 U.S.C. § 8124 as untimely filed.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 8, 2017 appellant, then a 35-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she sustained a cut above her left eye when a co-employee struck her as they were passing each other. She stopped work on March 9, 2017.

On a form report signed on March 8, 2017, Dr. Chidubem Iloabachie a Board-certified emergency room physician, stated that he treated appellant for a puncture wound to her left eyelid related to an incident at work on that date. He treated and released appellant to return to regular work as of March 9, 2017. In a duty status report (Form CA-17) of the same date, Dr. Iloabachie indicated that appellant was prohibited from driving a vehicle, climbing, or kneeling.

In April 3, 2017 notes, Dr. Marjorie R. Levitan, a Board-certified internist, indicated that appellant would be off work from April 9 through 30, 2017 due to a trauma on her left eye and blurred vision. She stated that appellant could return to work on May 1, 2017.

By development letter dated April 5, 2017, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim. It afforded her 30 days to submit the necessary evidence.

In a statement dated April 28, 2017, appellant indicated that about 1:40 a.m. on March 8, 2017, as she was walking to the loading side of machinery, as directed by her supervisor, she was hit with a metal pole by a co-employee. She indicated that she was hit in the side of her face, causing a puncture wound to her left eyelid. Appellant noted that she felt pain and noticed bleeding and swelling. She completed a claim form and was escorted to the emergency room by a manager of distribution operations.

OWCP accepted appellant's claim for puncture wound of left eyelid.

In an April 13, 2017 report, Dr. Larry M. Neuman, a family practitioner, noted that appellant presented for a follow up visit complaining of headaches, neck pain, anxiety, and sleep disturbance for approximately six weeks' duration. After conducting a physical examination, he listed his clinical impressions as: (1) post-concussion syndrome with a contusion of the left orbit; (2) traumatic cervical syndrome; and (3) PTSD. In an April 27, 2017 note, Dr. Neuman stated that appellant remained disabled due to multiple injuries sustained in a work-related accident.

In an attending physician's report (Form CA-20) signed on May 4, 2017, Dr. Levitan noted that appellant was struck by a metal pole. She indicated by checking a box marked "yes" that appellant had orbital trauma and PTSD, which she believed was caused or aggravated by her employment incident. Dr. Levitan noted that she first examined appellant on March 30, 2017 and that appellant had been totally disabled since March 9, 2017.

By letter dated June 2, 2017, the employing establishment requested that appellant's claim be fully developed. A Health and Resource Management specialist noted that appellant was treated at the emergency department only for a puncture wound on her left eyelid. She noted that during a predisciplinary interview of December 29, 2016, appellant stated that she has a chronic condition and would file for leave under the Family and Medical Leave Act. The specialist also noted that

appellant had informed her supervisor that she had a serious (terminal) condition. She further contended that fact of injury and causal relationship had not been established.

On June 9, 2017 appellant filed a claim for compensation (Form CA-7) for total disability commencing April 23, 2017.

In a May 18, 2017 report, Dr. Vikas Varma, a Board-certified orthopedic surgeon, conducted a physical examination and noted that his findings were suggestive of blunt trauma to the head and neck area predominantly on the left side, left orbital trauma, and blunt concussion of the left side of the cranium. He also diagnosed orbital trauma with medial displacement of the medial wall of the maxillary antrum with edema and blood products in the maxillary and nasal sinuses with narrowing of the frontoethmoidal recess. Dr. Varma further found possible edema along the pterygoid muscles, progressive on and off headaches, and intermittent dizziness. He explained that these episodes were accompanied with no significant tonic-clonic activity, but were accompanied with complete loss of consciousness. Dr. Varma listed the differential diagnosis as vertebrobasilar syndrome and vertical strabismus. For causal relationship, he stated: "March 8, 2017."

On April 27, 2017 Dr. Neuman performed a functional capacity evaluation (FCE) and offered a permanent impairment rating. In a May 18, 2017 report, he noted that appellant came in for a follow-up and complained about chronic headaches, neck pain, anxiety, depression and sleep disturbances for over two months duration. Dr. Neuman diagnosed appellant with post-concussion syndrome with traumatic cervical syndrome and PTSD. In a June 5, 2017 report, he noted that he first saw appellant on March 30, 2017. Dr. Neuman listed her chief complaints as headaches, neck pain, and anxiety and depression with manifestations including sleep disturbances. He listed his clinical impressions as post-concussion syndrome, traumatic cervical syndrome, and PTSD.

By decision dated July 21, 2017, OWCP denied expansion of the acceptance of appellant's claim to include traumatic cervical syndrome with cervical radiculopathy and PTSD. It determined that the evidence of record did not establish that these conditions were caused or aggravated by the accepted work-related injury of March 8, 2017. In a separate decision of even date, OWCP denied wage-loss compensation as appellant did not provide medical evidence of causal relationship between the accepted employment injury and her alleged disability.

On an appeal request form dated August 25, 2017, received by OWCP on August 30, 2017, appellant requested review of the written record by a representative of OWCP's Branch of Hearings and Review. The request was sent with a Priority Mail stamp of August 25, 2017.

In an August 18, 2017 report, Dr. Varma listed appellant's diagnoses as vertebrobasilar syndrome and vertebral strabismus. Appellant was told to avoid lifting, pulling, and pushing heavy things. Dr. Varma opined that appellant was totally disabled from work at this time due to head and neck injury sustained with this work-related accident.

In a September 26, 2017 decision, OWCP's hearing representative denied appellant's request for a review of the written record as it was not filed within 30 days after the issuance of OWCP's final decision. She also reviewed appellant's request at her discretion and determined that the issue in the case could be equally well considered by requesting reconsideration and

submitting evidence not previously considered which established that the injuries of appellant's traumatic cervical syndrome, cervical radiculopathy, and PTSD are due to her federal employment injury of March 8, 2017. The hearing representative noted that appellant must also provide medical evidence establishing that she was entitled to disability compensation for the period April 23, 2017 and continuing due to the March 8, 2017 employment injury.

LEGAL PRECEDENT -- ISSUE 1

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[2] To establish 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.[3] 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.[4] The weight of medical evidence is determined by its reliability, its probative value, its conflicting quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[5]

ANALYSIS -- ISSUE 1

The Board finds that the evidence of record is insufficient to establish that the conditions of traumatic cervical syndrome, cervical radiculopathy, and PTSD were causally related to the accepted employment injury.

The first mention in the medical evidence of a potential injury to any part of her body other than her eye was in the April 13, 2017 report of Dr. Neuman, wherein he noted that appellant was complaining of headaches and neck pain of five weeks duration associated with anxiety and sleep disturbances. Dr. Neuman diagnosed post-concussion syndrome with contusion of the left orbit, traumatic cervical syndrome, and PTSD. However, Dr. Neuman failed to address appellant's employment injury or causal relationship in his April 13, 2017 report. There is also no discussion of causal relationship in the FCE performed on April 27, 2017. 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.[6]

In a brief April 27, 2017 note, Dr. Neuman indicated that appellant remained disabled due to multiple injuries sustained in a work-related accident. However, he did not describe the

[2] *See V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[3] *See M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

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

[5] *See M.B.*, Docket No. 17-1773 (issued May 24, 2018).

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

employment incident or provide any reason for his conclusion. In a June 5, 2017 report, Dr. Neuman noted that appellant was injured in a work-related accident on March 8, 2017 when she was struck by a metal pole in her left orbit causing her to sustain injuries to her head and neck. He also described her treatment in the emergency room. Although Dr. Neuman provided a brief description of the work injury and noted that appellant was injured in that accident, he did not explain how the diagnosed conditions of post-concussion syndrome, traumatic cervical syndrome, and PTSD were causally related to the employment injury. A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident or work factors were sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish claim.[7]

Dr. Levitan first saw appellant on March 30, 2017 and treated appellant for a trauma to her left eye and blurred vision. She also noted in a May 4, 2017 report that appellant suffered from orbital trauma and PTSD that was caused or aggravated by the employment injury of March 8, 2017. However, Dr. Levitan failed to explain her conclusion. The Board has held that a physician's opinion that consists of checking a box marked "yes" on a form report, without supporting medical rationale, is of diminished probative value in establishing causal relationship.[8] Accordingly, her opinions were also insufficient to expand the claimed conditions.

Dr. Varma, in a May 18, 2017 report, described the history of appellant's employment injury and reviewed the findings from his physical examination. He diagnosed blunt trauma to the head and neck area predominantly on the left side, left orbital trauma, and blunt concussion of the left side of the cranium. Dr. Varma also noted orbital trauma with medial displacement of the medial wall of the maxillary atrium, possible edema along the pterygoid muscle, progressive on and off headaches, and intermittent dizziness. He noted symptoms accompanied with nausea and vomiting suggesting peripheral vision most likely secondary to concussive vestibulopathy. Dr. Varma listed differential diagnoses as vertebrobasilar syndrome and vertical strabismus. With regard to causal relationship, he simply stated: "March 8, 2017." Dr. Varma never provided any rationalized medical explanation for this conclusion. He did not explain how physiologically appellant's employment injury caused or contributed to these diagnosed conditions. Dr. Varma's opinion is therefore of limited probative value.[9]

Finally, Dr. Iloabachie, the emergency room physician, who treated appellant on the date of the March 8, 2017 injury, only discussed appellant's injury to her left eyelid. No other injuries were noted. The Board notes that the claim was accepted for puncture wound of the left eyelid.

A medical opinion not fortified by medical rationale is of diminished probative value.[10] None of the medical evidence provided sufficient rationale explaining how the March 8, 2017

[7] *L.A.*, Docket No. 17-0842 (issued May 16, 2018).

[8] *C.P.*, Docket No. 18-0178 (issued May 23, 2018). *See also Calvin E. King*, 51 ECAB 394 (2000).

[9] *See K.K.*, Docket No. 17-1061 (issued July 25, 2018).

[10] *C.H.*, Docket No. 17-0488 (issued September 12, 2017); *W.W.*, Docket No. 09-1619 (issued June 2, 2017).

employment injury caused or aggravated appellant's traumatic cervical syndrome, cervical radiculopathy, and PTSD.

Accordingly, the Board finds that appellant has not submitted sufficient rationale medical evidence supporting causal relationship between any of the additional claimed conditions and the March 9, 2017 employment injury.[11]

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA[12] has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.[13] For each period of disability claimed, the employee has the burden of proof to establish that she was disabled from work as a result of the accepted employment injury.[14] Whether a particular injury causes an employee to become disabled from work, and the duration of the disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.[15]

Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[16] When the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, she is entitled to compensation for any loss of wages.[17]

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.[18]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish total disability beginning April 23, 2017 causally related to the accepted puncture of her left eyelid.

[11] *Id.*

[12] *Supra* note 1.

[13] *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *see also Nathaniel A. Milton*, 47 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

[14] *Id.*

[15] *See Edward H. Horton*, 41 ECAB 301 (1989).

[16] *S.M.*, 58 ECAB 166 (2008); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

[17] *Merle J. Marceau*, 53 ECAB 197 (2001).

[18] *Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also K.A.*, Docket No. 17-1718 (issued February 12, 2018).

The issue of disability from work can only be resolved by competent medical evidence.[19] Dr. Iloabachie, who initially treated appellant for a left eye injury in the emergency room on the date of the March 8, 2017 employment accident, released appellant to regular work as of March 9, 2017. Therefore, Dr. Iloabachie did not conclude that appellant was disabled.

On April 3, 2017 Dr. Levitan opined that appellant was out of work due to trauma to her left eye and blurred vision, and could return to work on May 1, 2017. As he did not explain how appellant's blurred vision was due to the accepted eyelid puncture, he did not provide any rationalized medical explanation regarding appellant's disability.[20] On May 4, 2017 Dr. Levitan listed appellant's period of total disability as March 9, 2017 until present, but again he did not explain his conclusion.

Dr. Varma related in his August 18, 2017 report that appellant was totally disabled due to head and neck conditions, however, OWCP has only accepted puncture wound of the left eyelid as causally related to the accepted employment injury. He did not relate appellant's disability to the accepted condition. Dr. Varma's report is of limited probative value as it does not establish that residuals of the accepted condition caused total disability.[21]

Dr. Neuman did not provide an opinion on disability in his April 13, 2017 report. He did provide a functional evaluation report on April 27, 2017, but did not explain why appellant would have any disability from her job. Dr. Neuman also did not address disability in his June 5, 2017 report. Because he did not address the issue of appellant's inability to work, the Board finds that these medical reports were of limited probative value.[22]

Appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence causal relationship between her claimed disability and the accepted condition of puncture wound of left eyelid.[23] The Board finds that appellant has not submitted sufficient medical evidence to establish employment-related disability for the period claimed due to her accepted medical condition.[24]

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.

[19] *R.E.*, Docket No. 16-1916 (issued March 8, 2018).

[20] *Supra* note 15.

[21] *Supra* note 17.

[22] *See B.C.*, Docket No. 17-0589 (issued November 15, 2017).

[23] *Id.*

[24] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

LEGAL PRECEDENT -- ISSUE 3

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before an OWCP representative, provides in pertinent part: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary … is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[25] Section 10.615 of OWCP's federal regulations, implementing this section of FECA provides that a claimant who requests a hearing can choose between two formats, either an oral hearing or a review of the written record by an OWCP hearing representative.[26] As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.[27] The date of filing is fixed by postmark or other carrier's date marking.[28]

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing[29] when the request is made after the 30-day period for requesting a hearing,[30] when the request is for a second hearing on the same issue,[31] and when the request is made after a reconsideration request was previously submitted.[32] In these instances, OWCP will determine whether a discretionary hearing should be granted, and if not, will so advise the claimant with reasons.[33]

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly denied appellant's request for a review of the written record as untimely filed.

OWCP's regulations provide that the request for a hearing or review of the written record must be sent within 30 days of the date of the decision for which a hearing is sought. Because

[25] 5 U.S.C. § 8124(b)(1).

[26] *See* 20 C.F.R. § 10.615.

[27] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[28] *Rudolph Bermann*, 28 ECAB 354, 360 (1975).

[29] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

[30] *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

[31] *R.H.*, Docket No. 07-1658 (issued December 17, 2007); *S.J.*, Docket No. 07-1037 (issued September 12, 2007). Section 10.616(a) of OWCP's regulations provides that the claimant seeking a hearing must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision. 20 C.F.R. § 10.616(a).

[32] *See supra* note 27.

[33] *See supra* note 30.

appellant's mailed request was postmarked August 25, 2017, more than 30 days after the July 21, 2017 decisions, it was untimely and she was not entitled to a hearing as a matter of right.

Although appellant's request for a review of the written record was untimely, OWCP has discretionary authority to grant the request and it must exercise such discretion.[34] OWCP's hearing representative exercised her discretion and denied appellant's hearing request as she determined that the issues could equally well be addressed by a request for reconsideration before OWCP.

The Board finds that the hearing representative properly exercised her discretionary authority in denying appellant's request for a hearing.[35] The only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logical and probable deduction from established facts.[36] In this case, the evidence of record does not establish that OWCP abused its discretion in denying appellant's request for a hearing. Accordingly, the Board finds that OWCP properly denied appellant's hearing request.

On appeal appellant contends that she did not receive the July 21, 2017 decision until July 29, 2017. However, the record reflects that OWCP mailed the decision to appellant's address of record and there is no indication that the decision was returned as undeliverable.[37] Accordingly, appellant's argument on appeal is without merit.

CONCLUSION

The Board finds that appellant has not established that the acceptance of her claim should be expanded to include the conditions of traumatic cervical syndrome, cervical radiculopathy, and PTSD. Appellant has also not established total disability commencing April 23, 2017 causally related to the accepted March 8, 2017 employment injury. Finally, the Board finds that OWCP's Branch of Hearings and Review properly denied appellant's request for review of the written record under 5 U.S.C. § 8124 as untimely filed.

[34] *F.M.*, Docket No. 18-0161 (issued May 18, 2018); *R.V.*, Docket No. 17-1286 (issued December 5, 2017).

[35] *Mary B. Moss*, 40 ECAB 640, 647 (1989). Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise or judgment, or actions taken which are contrary to both logical and probable deductions from the facts. *See André Thyratron*, 54 ECAB 257, 261 (2002).

[36] *Samuel R. Johnson*, 51 ECAB 612 (2000).

[37] Under the mailbox rule, it is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. *See A.C. Clyburn*, 47 ECAB 153 (1995).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 26 and July 21, 2017 are affirmed.

Issued: October 2, 2018
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