

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury causally related to the accepted July 21, 2016 employment incident.

FACTUAL HISTORY

On July 25, 2016 appellant, then a 46-year-old consumer safety inspector, filed a traumatic injury claim (Form CA-1) alleging that on July 21, 2016 his government vehicle was struck from behind by a speeding car and he injured his back, neck, and head while in the performance of duty.

In an August 19, 2016 development letter, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence from appellant. OWCP afforded him 30 days to respond.

On July 26, 2016 Dr. Amin Shendy Abdelmeseeh, a Board-certified family practitioner, examined appellant and diagnosed vertigo, right sensorineural hearing loss, and neck pain. He noted that appellant was involved in a motor vehicle accident (MVA) on July 21, 2016 during which he was rear-ended, which resulted in neck and back pain. Appellant reported severe headache with dizziness.

On August 22, 2016 Dr. Ray C. Chang, a Board-certified otolaryngologist, examined appellant due to right sensorineural hearing loss and vertigo. He noted that appellant had experienced vertigo intermittently for two years and that his symptoms had worsened after his July 21, 2016 MVA. Dr. Chang reported that appellant denied striking his head in the July 21, 2016 MVA. He also noted appellant's prior history of a 2005 MVA, which resulted in a head injury and right facial paralysis. Dr. Chang diagnosed skull fracture, injury to cranial nerve, right sensorineural hearing loss, and vertigo. He completed a form report on August 30, 2016 and again diagnosed right sensorineural hearing loss and vertigo.

In a September 7, 2016 note, Dr. Diana J. Lee, an optometrist, diagnosed hyperopia, astigmatism, presbyopia, facial palsy, hyperphoria, binocular vision disorder, and injury to the cranial nerve. She reported that appellant felt dizzy since his July 21, 2016 MVA and that he had occasionally experienced double vision. Dr. Lee also noted that he had facial paralysis after a right-sided nerve injury.

On September 14, 2016 appellant underwent a brain magnetic resonance imaging (MRI) scan, which was read as unremarkable. In a September 15, 2016 note, Dr. Paul Jia Sheng Hsiang, a Board-certified family practitioner, diagnosed chronic cranial nerve injury and skull fracture. He noted that appellant was involved in an MVA.

By decision dated September 19, 2016, OWCP denied appellant's claim, finding that he had not met his burden of proof to establish causal relationship between his accepted July 21, 2016 MVA and his diagnosed medical conditions.

On October 11, 2016 appellant requested reconsideration of the September 19, 2016 decision. He asserted that, following his July 21, 2016 MVA, he became dizzy, unable to see well, lost hearing in his right ear, his face became semi-paralyzed, and the right side of his body felt

heavy. Appellant alleged that he sustained significant loss of hearing in his right ear, loss of sight, and damage to the third, fifth, and eighth cranial nerves. He alleged that he was experiencing brain disequilibrium resulting in falls.

In support of his request, appellant submitted a note dated May 9, 2017 from Dr. Esther Y. Hsiang, a neurologist, who diagnosed vertigo and disequilibrium. OWCP also received July 31 and August 22, 2017 notes from Dr. Michael Seung Oh, a Board-certified neurologist, who listed appellant's symptoms and diagnosed post-concussion syndrome.

By decision dated September 7, 2017, OWCP denied modification of the September 19, 2016 decision.

On October 3, 2017 appellant requested reconsideration of the September 7, 2017 decision and submitted additional medical evidence. In an August 22, 2017 note, Dr. Oh examined appellant and diagnosed post-concussion syndrome and vertigo. On August 30, 2017 Dr. Hsiang completed a note diagnosing severe vertigo and right-sided weakness. In a note dated October 2, 2017, Dr. Oh listed appellant's clinical symptoms of post-concussion syndrome including imbalance, vertigo, and headaches after his MVA on July 21, 2016.

By decision dated February 8, 2018, OWCP denied modification of the September 7, 2017 decision.

On May 4, 2018 appellant requested reconsideration and submitted additional medical evidence.

In an August 22, 2016 report, Dr. Chang diagnosed right sensorineural hearing loss and vertigo. He checked a box marked "yes" to indicate that the employment incident described was the competent producing cause of the injury and disability. Dr. Chang reported that appellant's condition was consistent with post-traumatic hearing loss and vertigo. He again noted that appellant had denied that he struck his head during the July 2016 MVA.

On September 15, 2016 Dr. Hsiang noted appellant's history of an MVA, noted that appellant was rear ended, and noted that he continued to experience vertigo. He checked a box marked "yes" to indicate that the occurrence described was the competent producing cause of the injury and disability. Dr. Hsiang diagnosed a cranial nerve injury.

In a May 9, 2017 report, Dr. Hsiao described appellant's history of the MVA in July 2016 during which appellant was rear ended by a car traveling 60 miles per hour. She noted that appellant's history was unclear regarding a head injury and that he reported everything was blurry and he was confused. Appellant reported subsequent right facial numbness, worsened right facial paralysis, and persistent dizziness. He also noted that his right arm and leg felt slow. Dr. Hsiao also noted appellant's 2005 MVA which resulted in mild right facial weakness, parietal fracture, and "ear eruption." She diagnosed vertigo and disequilibrium since appellant's second concussion in 2016. Dr. Hsiao also discussed post-concussive symptoms.

In a June 27, 2017 form report, Dr. Shawn K. Higuchi, a Board-certified neurologist, described appellant's history including the 2005 MVA resulting in head trauma and right facial weakness, parietal bone fracture, and ear eruption. He reported that in July 2016 appellant was

rear ended by a vehicle traveling 60 miles per hour, and while appellant had no definite loss of consciousness, he had experienced confusion and blurry vision. Dr. Higuchi noted appellant's ongoing symptoms of dizziness, balance issues, light-headedness, right hearing loss, and tinnitus. He checked a box marked "yes" indicating that the employment incident described was the competent producing cause of the injury and disability. However, Dr. Higuchi also reported that appellant's dizziness and right hearing loss were of uncertain etiology. He noted that he could not explain appellant's symptoms from a neurological standpoint.

On July 31, 2017, in a form report, Dr. Oh noted appellant's history of an MVA in July 2016 and his subsequent symptoms including imbalance. He checked a box marked "yes" to indicate that the employment incident described was the competent producing cause of the injury and disability. Dr. Oh also reported appellant's 2005 MVA which caused right facial weakness and parietal skull fracture. He found that appellant's headaches, dizziness, and concentration issues were suggestive of post-concussion syndrome. Dr. Oh also suggested that appellant had some anxiety or depression.

On August 30, 2017 Dr. Hsiang diagnosed vertigo and muscle weakness. In a form report dated October 10, 2017, he checked a box marked "yes" to indicate that the occurrence described was the competent producing cause of the injury and disability. In a report dated October 10, 2017, Dr. Hsiang completed a similar form report. He checked a box marked "yes" to indicate that the employment incident described was the competent producing cause of the injury and disability. Dr. Hsiang diagnosed vertigo, cranial nerve injury, and skull fracture.

On April 17, 2018 Dr. Guirguis S. Hanna, a Board-certified physiatrist, described appellant's July 21, 2016 MVA as occurring on the freeway when traffic stopped and appellant was rear ended. Appellant reported that he lost consciousness for about five minutes and immediately developed neck and back pain. Later, appellant developed vertigo, diminished hearing in the right ear with tinnitus, and weakness on the right side of his body. Dr. Hanna noted that appellant continued to lose balance and fall. He reviewed appellant's medical treatment and on physical examination found facial asymmetry with diminished raising of the right eyebrow and weakness of the right orbicularis oris as well as diminished hearing in the right ear. Dr. Hanna also reported give-way weakness of his right upper and lower limbs. He noted that appellant's diagnostic studies were normal. Dr. Hanna diagnosed post-concussion syndrome, cranial nerve injury, right sensorineural hearing loss, disequilibrium, and vertigo. He checked a box marked "yes" to indicate that the employment incident was the competent producing cause of the injury and disability. Dr. Hanna also opined that there was a direct causal relationship between appellant's current symptoms and the work-related MVA on July 21, 2016. He determined that appellant developed permanent aggravation of preexisting problems as a result of the July 21, 2016 MVA.

In a March 1, 2018 report, Dr. Tik Lung Dion Fung, a Board-certified neurologist, diagnosed syncope. He checked a box marked "yes" to indicate that the occurrence described was the competent producing cause of the injury and disability. Dr. Fung noted appellant's prior history of head trauma put him at risk for post-traumatic seizures and dissection. However, he also noted that he suspected that anxiety and depression played a major role and that appellant was seeking permanent disability from work. On March 23, 2018 Dr. Fung reported continued signs

of cranial nerve damage, right arm and leg weakness, as well as imbalance. He also noted that appellant had recurrent episodes of loss of consciousness.

On April 10, 2018 Dr. Abdelmeseeh noted appellant's history of a July 21, 2016 MVA during which he was rear ended resulting in neck pain and back pain which "had resolved." Appellant reported a severe headache with dizziness. Dr. Abdelmeseeh diagnosed vertigo and neck pain.

In an April 10, 2018 report, Dr. Kathy Lin Chuang, Board-certified in emergency medicine, examined appellant due to his history of recurrent vertigo, which was present since his July 21, 2016 MVA. She noted that appellant fainted and fell onto an old chair with an exposed nail and punctured his left thumb.

By decision dated June 4, 2018, OWCP denied modification of the February 8, 2018 decision.

On June 6, 2018 the employing establishment provided the July 21, 2016 traffic collision report which indicated that appellant was stopped and the other car was changing lanes when the MVA occurred. The other driver indicated that she was going 15 miles per hour one car length behind appellant when he stopped in front of her and she was unable to brake to stop prior to hitting appellant's vehicle.

On September 24, 2018 appellant requested reconsideration of the June 4 2018 decision. In support of his request, he submitted an August 14, 2018 report from Dr. Hanna, which he contended was sufficient to meet his burden of proof.

In an August 14, 2018 report, Dr. Hanna disagreed with OWCP's assessment of his prior report and listed appellant's symptoms of five days after the MVA as headache, vertigo, neck, and back pain. He noted that appellant continued to have dizziness and imbalance, as well as developing weakness on the right side of his body. Dr. Hanna noted that, although appellant indicated that he had recovered from the 2005 MVA, he continued to exhibit vertigo, fifth cranial nerve deficit, and possible eighth cranial nerve damage as a result of that preexisting injury. He opined that these conditions were stable and that appellant was able to carry out most normal activities. Dr. Hanna noted that appellant stopped work in April 2017 as it became unsafe for him to drive or walk without assistance due to dizziness, tinnitus, blurry vision, and weakness of the right side of his body. He concluded that as a direct effect of the work-related MVA appellant sustained irreversible change in his underlying conditions and adverse alteration in the course of his preexisting conditions. Dr. Hanna opined that appellant's primary diagnosis was post-concussion syndrome, which was not demonstrable on the MRI scan or other electrodiagnostic studies. He explained that a concussion was a brain injury caused by a force transmitted to the head from direct or indirect contact with the head, face, or neck, which results in either a collision between the brain and skull or in a strain on the neural tissue and vasculature. Dr. Hanna also explained that a concussion could occur with violent shaking or movement of the head or body. He noted that the impact or strain was believed to cause the symptoms of concussion through a cascade characterized by abrupt neuronal depolarization, release of excitatory neurotransmitters, ionic shifts, altered glucose metabolism and cerebral blood flow, and impaired axonal function. Dr. Hanna further noted that in a car accident the head might be violently flung forward or to the

side and since the brain rests in a pool of cerebrospinal fluid and is not directly secured, it can be jostled and smashed against the inside of the skull. He explained that patients did not have to lose consciousness to have a concussion or post-concussion syndrome and that post-concussion syndrome does not appear to be associated with the severity of the initial injury. Dr. Hanna noted that appellant was rear ended on July 21, 2016 and that the MVA occurred in the performance of duty. He concluded that the above constituted the biomechanical explanation of how appellant's condition resulted from the July 21, 2016 injury. Dr. Hanna found that there was a direct causal relationship between appellant's diagnosed conditions and the employment-related MVA on July 21, 2018.

By decision dated October 22, 2018, OWCP denied modification of the June 4, 2018 decision.

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 timely filed within the applicable time limitation period of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ 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.⁵

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. There are two components involved in establishing fact of injury. 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. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁶

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.⁸

ANALYSIS

The Board finds that this case is not in posture for a decision.

In support of his claim, appellant provided an August 14, 2018 report from Dr. Hanna indicating that he was aware of appellant's underlying conditions as the result of the 2005 MVA including vertigo, fifth cranial nerve deficit, and possible eighth cranial nerve damage as a result of that injury. However, he found that the July 21, 2016 MVA resulted in new and exacerbated conditions. Dr. Hanna found that appellant sustained dizziness, tinnitus, blurry vision, and weakness of the right side of his body. He concluded that as a direct effect of the work-related July 21, 2016 MVA, appellant sustained irreversible change in his underlying conditions and adverse alteration in the course of his preexisting conditions.

Dr. Hanna provided a detailed explanation of a concussion and how this condition resulted in appellant's primary diagnosis of post-concussion syndrome. He explained that a concussion was a brain injury caused by a force transmitted to the head from direct or indirect contact with the head, face, or neck which results in either a collision between the brain and skull or in a strain on the neural tissue and vasculature. Dr. Hanna also explained that a concussion could occur with violent shaking or movement of the head or body. He noted that the impact or strain was believed to cause the symptoms of concussion through a cascade characterized by abrupt neuronal depolarization, release of excitatory neurotransmitters, ionic shifts, altered glucose metabolism and cerebral blood flow, and impaired axonal function. Dr. Hanna further noted that in a car accident the head might be violently flung forward or to the side and since the brain rests in a pool of cerebrospinal fluid and is not directly secured, it can be jostled and smashed against the inside of the skull. He explained that patients did not have to lose consciousness to have a concussion or post-concussion syndrome and that post-concussion syndrome does not appear to be associated with the severity of the initial injury. Dr. Hanna concluded that this was the biomechanical explanation of how appellant's condition resulted from the July 21, 2016 injury. Although Dr. Hanna's reports are insufficient to discharge appellant's burden of proving that his current post-concussion syndrome was caused or aggravated by the July 21, 2016 MVA, his opinion is sufficient to require further development of the case record by OWCP.

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 45 ECAB 345(1989).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *D.S.*, Docket No. 17-1359 (issued May 3, 2019).

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.⁹

On remand OWCP should refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts. Its referral physician should provide an evaluation and a rationalized medical opinion as to whether appellant's post-concussion syndrome was caused or aggravated by the accepted July 21, 2016 employment incident. After such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: August 7, 2019
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

⁹ *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).