

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
D.C., Appellant)	
)	
and)	Docket No. 18-1358
)	Issued: June 13, 2019
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF INVESTIGATION, New York, NY,)	
Employer)	
_____)	

Appearances:
Appellant, pro se
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 2, 2018 appellant filed a timely appeal from an April 18, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 that her diagnosed medical conditions were causally related to the accepted April 12, 2018 employment incident.

FACTUAL HISTORY

On May 4, 2017 appellant, then a 40-year-old investigative specialist, filed a traumatic injury claim (Form CA-1) alleging that on April 12, 2017 she sustained a bilateral vertebral

¹ 5 U.S.C. § 8101 *et seq.*

dissection and cerebral stroke when driving her employing establishment vehicle during surveillance activity while in the performance of duty. She explained that, when she turned her head rapidly to check the traffic movement behind her, she sustained a “dissection of the left and right [vertebral] arteries which [caused] a blood clot, and then a cerebral stroke.”

On the reverse side of the claim form appellant’s supervisor indicated that appellant was injured in performance of duty. She noted that appellant was driving her assigned vehicle when she “turned her head rapidly.” The supervisor did not indicate a date when appellant stopped work.

In a development letter dated May 12, 2017, OWCP informed appellant that additional factual and medical evidence was necessary to establish her claim. It also requested that she complete a factual questionnaire regarding the injury. OWCP afforded appellant 30 days to submit the requested evidence.

OWCP subsequently received an April 12, 2017 report from an emergency medical technician, an April 12, 2017 sinus bradycardia test report, and an April 17, 2017 admission and patient discharge instructions from Mount Sinai Hospital.

An April 12, 2017 computerized tomography (CT) scan of the head read by Dr. Marvin Weingarten, a Board-certified diagnostic radiologist, was found to be within normal limits.

OWCP also received April 12, 2017 treatment notes in which Dr. Robin S. Kim, an emergency medicine specialist, diagnosed a nonintractable headache, unspecified, and chronicity pattern, unspecified.

In an April 12, 2017 report, Dr. Purushottam Tiwari, a family medicine specialist, diagnosed dizziness, possible stroke.

An April 17, 2017 magnetic resonance imaging (MRI) scan of the brain read by Dr. Stephen Greenberg, a Board-certified diagnostic radiologist, revealed acute/subacute infarct of the posteromedial left cerebellar hemisphere with restricted diffusion, and no mass effect on the fourth ventricle or hydrocephalus.

An April 17, 2017 magnetic resonance intracranial angiogram (MRA) read by Dr. Greenberg revealed fetal origin of right posterior cerebral artery from the right internal carotid artery, aplastic A1 segment of the right anterior cerebral artery with normal caliber A2 segmented cross-filled from the left anterior cerebral artery by way of a patent anterior communicating artery, and patent superior cerebellar arteries bilaterally.

An April 18, 2017 MRA read by Dr. Greenberg revealed focal dissection of the left vertebral artery as it exited the left transverse foramen at the C1 level, extending over a length of approximately three centimeters, with intramural hematoma over the proximal one centimeter, and patent false lumen over the distal two centimeter.

OWCP received an April 19, 2017 report from Dr. Gabriella Tantino, a neurologist, who indicated that appellant was seen for a stroke and follow up of left cerebellar stroke and bilateral vertebral dissection. Dr. Tantino advised appellant to avoid sudden neck movements, vigorous exercise, heavy lifting, chiropractic manipulation, and yoga.

In a May 8, 2017 report, Dr. Deborah Horowitz, Board-certified in internal medicine, noted that appellant was under her care for treatment of bilateral vertebral artery dissection and a left cerebellar infarction. She explained that appellant had no residual deficits and her prognosis was excellent. Dr. Horowitz advised that appellant could not do any heavy lifting, but she was able to drive. She diagnosed cerebral stroke and bilateral vertebral artery dissection and indicated that appellant could work with restrictions.

By decision dated June 19, 2017, OWCP denied appellant's claim, finding that she had not met her burden of proof to establish causal relationship between her diagnosed medical conditions and the accepted April 12, 2017 employment incident.²

On July 17, 2017 appellant requested reconsideration.

In an April 12, 2017 report, Dr. Chantal Gabriel, an emergency medicine physician explained that, while driving, appellant's vision began to change and it seemed like it "rotated," appellant had difficulty steering due to upper extremity weakness, and could not focus on the road. At some point, while driving, appellant felt like she was going to pass out, but stated that "she was trying to fight it off." When she got home, she went to an urgent care center for evaluation. While there appellant began to experience pain in the back of her eyes. She also reported associated symptoms of feeling "shaky," diaphoresis, and weakness in both extremities (more on her right side), nausea, vomiting, and a headache and dizziness. Dr. Gabriel opined that her impression/differential diagnosis was hyperglycemia, but that a final diagnosis was pending.

OWCP received an unsigned and undated statement from the employing which confirmed that no accident occurred, no police report was filled, and no investigation was conducted.

OWCP received appellant's undated responses to OWCP's questionnaire on August 1, 2017. Appellant denied having any similar disability or symptoms prior to the employment incident. She explained that immediately after she made a quick turn of her head, she felt pain in her neck, her vision was affected, and she began to suffer other symptoms.

In a May 8, 2017 report, Dr. Horowitz noted that appellant was under his care for bilateral vertebral artery dissection and a left cerebellar infarction. She recommended that appellant not perform heavy lifting, and indicated that she was unable to drive.

By decision dated October 12, 2017, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant a merit review.

On December 5, 2017 appellant again requested reconsideration. She indicated that she was submitting additional evidence from her physician, Dr. Horowitz.

² OWCP also noted that appellant had two prior claims involving motor vehicle accidents. The prior claims included a June 1, 2011 traumatic injury under File No. xxxxxx977, and a July 21, 2016 traumatic injury under File No. xxxxxx241, for a head injury. OWCP explained that it was unclear whether there was a correlation between her mini stroke symptoms and the two previous motor vehicle accidents in 2010 and 2016, or if there were any other similar injuries she might have sustained prior to April 12, 2017.

In a September 19, 2017 report, Dr. Horowitz advised that appellant was under her care from April 17 to 19, 2017. She noted the employment incident and explained that appellant's MRI scan revealed a cerebellar stroke and bilateral vertebral artery dissections. Dr. Horowitz opined: "[h]ead turning while driving can be a cause of vertebral dissections; this may have been related to the development of the dissections in this case. The stroke resulted from the dissections. Concussions in the past are unlikely to be related."

OWCP also received hospital records from Mount Sinai Hospital dating from April 17, 2017. The records included nursing notes, laboratory reports, nursing assessments, and discharge instructions. Dr. Indira Gowda, an emergency medicine physician, diagnosed vertebral artery dissection and cerebellar infarction.

In a letter dated April 11, 2018, appellant advised OWCP that she had not received a response to her request for reconsideration.

By decision dated April 18, 2018, OWCP denied modification of the June 19, 2017 decision finding that the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 of FECA,⁴ 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.⁵ 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.⁶

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁷ Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁸ The second component is whether the employment incident caused a personal

³ *Id.*

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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).

⁷ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

injury.⁹ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.¹⁰

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹² 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).¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her diagnosed medical conditions were causally related to the accepted April 12, 2017 employment incident.

In an April 12, 2017 report, Dr. Gabriel opined that her impression/differential diagnosis was hyperglycemia, but that a final diagnosis had not been established. As she did not provide a firm diagnosis causally related to the accepted employment incident, the Board finds this report is of limited probative value.¹⁴

Dr. Horowitz saw appellant on April 17 and May 8 and 19, 2017 and diagnosed cerebral stroke and bilateral vertebral artery dissection. In a September 19, 2017 report, she opined: "[h]ead turning while driving can be a cause of vertebral dissections; this may have been related to the development of the dissections in this case. The stroke resulted from the dissections. Concussions in the past are unlikely to be related." This opinion on causal relationship was speculative as she indicated that head turning while driving "can" be a cause of vertebral dissections and "may" be related to the development of dissections. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.¹⁵ The physician's opinion must be expressed in terms of a reasonable degree of medical

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *D.D.*, Docket No. 18-0648 (issued October 15, 2018); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹¹ *T.H.*, *supra* note 7 at 388, 393; *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹³ *Id.*

¹⁴ *J.P.*, Docket No. 14-87 (issued March 14, 2014).

¹⁵ *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

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).¹⁶

Although Dr. Kim, Dr. Gowda, Dr. Tiwari, and Dr. Tantino also provided firm diagnoses, they offered no opinion regarding the cause of the diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁷

The record contains April 12, 2017 hospital admissions records, discharge instructions, and an April 12, 2017 report from an emergency medical technician. These forms were not signed or reviewed by a physician. Medical opinions, in general, can only be given by a qualified physician.¹⁸ A report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence.¹⁹

OWCP also received nursing notes dated April 12, 2017. These notes lack probative value as healthcare providers such as physician assistants, physical therapists, or nurse practitioners are not considered physicians as defined under FECA.²⁰ Therefore, these reports are also of no probative value regarding causal relationship.

The diagnostic reports of record dated April 12 to 18, 2017 are also insufficient to establish appellant's claim. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and the diagnosed conditions.²¹

As appellant submitted insufficient evidence to establish an injury caused by her accepted employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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.

¹⁶ See *supra* note 13.

¹⁷ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁸ *E.K.*, Docket No. 09-1827 (issued April 21, 2010); see 5 U.S.C. § 8101(2) (defines the term physician to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

¹⁹ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

²⁰ *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). See also *M.M.*, Docket No. 16-1617 (issued January 24, 2017).

²¹ See *L.M.*, Docket No. 18-0473 (issued October 22, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her diagnosed medical conditions were causally related to the accepted April 12, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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