United States Department of Labor
Employees' Compensation Appeals Board

A.W., Appellant	)	
and	)	**Docket No. 18-1796**
	)	**Issued: March 15, 2019**
U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA, 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 September 24, 2018 appellant filed a timely appeal from an August 17, 2018 merit 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 over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish muscle tension headaches and cervical and trapezius muscle spasms causally related to accepted factors of her federal employment.

FACTUAL HISTORY

On July 12, 2018 appellant, then a 52-year-old maintenance office support clerk, filed an occupational disease claim (Form CA-2), alleging that due to her noisy workstation she developed

[1] 5 U.S.C. § 8101 *et seq.*

severe, throbbing recurring pain on one side of her head radiating down her neck and shoulders. She further alleged that as a result of "extreme, constant loud jagged noise" she experienced intense headaches with ringing and mild-to-moderate pain in both ears due to factors of her federal employment. Appellant indicated that she first became aware of her medical condition on June 28, 2018 and first realized that it was caused or aggravated by her federal employment on June 29, 2018. She stopped work on June 28, 2018 and then returned to work on July 6, 2018.

In a routing slip dated June 29, 2018, appellant indicated that her duty station did not qualify for a hearing conservation program because several machines had been removed post Hurricane Katrina and the last documented sound-level survey found that no employees were being exposed to sound levels greater than 85 decibels, on the A scale. Since that time, and as recent as June 2018, she stated that a Delivery Bar Code Sorter (DBCS) machine, sometimes referred to as a "jogger," had been installed adjacent to the maintenance parts room, which was the office where she was assigned. When in operation, appellant described the DBCS machine as giving off "an extreme arduous, deafening, continuous sound" when in motion. She stated that she was unable to focus due to the noise and suffered continuous headaches. Appellant further indicated that she was unable to perform her usual duties, which included oral communications throughout her tour of duty, when the machine was in operation due to the noise.

By development letter dated July 17, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant subsequently submitted two accident reports indicating that she had complained of loud noise from a #15 DBCS jogger module machine that was causing her to experience headaches. She first notified the employing establishment of her injury on June 28, 2018.

Appellant further submitted three reports dated June 29, 2018, including two form reports, a duty status report and an attending physician's report, Form CA-17 and Form CA-20 respectively, from Dr. Susan L. Vaught, an internist. Dr. Vaught diagnosed history of high cholesterol, muscle tension headache, muscle spasms of the neck, and trapezius muscle spasm and asserted that appellant had been exposed to a new instrument at work with loud vibratory noise, which was located on the other side of a partition behind her desk. She opined that, since the machine had been moved three days prior, appellant had right-sided headaches and poor concentration. Although appellant took precautions to protect her hearing while preforming her job, it did not block out the noise. Dr. Vaught also found that appellant's head pain had radiated to her right posterior neck and upper right shoulder. In an attending physician's report (Form CA-20), Dr. Vaught explained that "repeated loud (above vocal baseline) noise can and often trigger muscle spasms and tension headaches." She advised that appellant was totally disabled from work until relieved from the increased noise, and recommended better hearing protection or moving away from the new machine noise.

In a report dated July 9, 2018, Dr. Devra Sirot, a family medicine specialist, noted that appellant was seen for a follow-up examination of her muscle tension headache and reported that she felt much better and was getting better earplugs for work to block out the noise.

A statement from the employing establishment dated August 1, 2018 confirmed that appellant's duty station was not required to have a hearing conservation program. It acknowledged that the machine was unusually noisy, but three different employees simultaneously used their smartphone applications and failed to register a reading of 90 decibels (on the A scale) or greater, at the machine. The employing establishment noted that appellant's office was no less than 15 feet from the machine's location and was separated by a wall of 1/2-inch plywood. The jogger was only used while jogging mail, which meant that the noise was not present for a period of time greater than 30 minutes, continuously.

Appellant subsequently submitted an August 3, 2018 narrative statement reiterating that the rattling, vibrating noise coming from DBCS #15 was adjacent to her office and did not have a ceiling; therefore, she was exposed to the sound all day. She further indicated that her office was an open area on the workroom floor. Appellant asserted that the machine ran every day anywhere from 8 to 16 hours per day. She also submitted a position description in support of her claim.

By decision dated August 17, 2018, OWCP found that appellant had established that she was exposed to loud noise in the performance of duty, but denied the claim because the medical evidence of record was insufficient to establish a causal relationship between her diagnosed conditions and the accepted employment exposure.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability for which compensation is claimed is causally related to the employment injury.[2] 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.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[4]

[2] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[3] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

[4] *D.R.*, Docket No. 09-1723 (issued May 20, 2010). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[5] 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 employee.[6] Neither, the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[7]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish muscle tension headaches and cervical and trapezius muscle spasms causally related to the accepted factors of federal employment.

Appellant identified the factors of employment that she believed caused her conditions which included constant exposure to noise from a DBCS machine/jogger at work, which OWCP accepted as factual. However, in order to establish that she sustained an employment-related injury, she must also submit rationalized medical evidence which explains how her medical conditions were caused or aggravated by the implicated employment factors.[8]

Appellant returned to Dr. Sirot for a follow-up examination of her muscle tension headache on July 9, 2018. He reported that she felt much better and was getting better earplugs for work to block out the noise. 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.[9] Thus, this evidence is insufficient to establish causal relationship between appellant's federal employment duties and her diagnosed conditions.

In her reports, Dr. Vaught diagnosed muscle tension headache, muscles spasms of neck, and trapezius muscle spasm and asserted that appellant had been exposed to a new instrument at work with loud vibratory noise, which was located on the other side of a partition behind her desk. She opined that since the machine had been moved three days prior, appellant had right-sided headaches and poor concentration. Dr. Vaught also found that appellant's pain had radiated to her right posterior neck and upper right shoulder. In her attending physician's report (Form CA-20), she explained that "repeated loud (above vocal baseline) noise can and often triggers muscle spasms and tension headaches." The Board finds that Dr. Vaught's opinion regarding the cause

[5] *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[6] *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[7] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[8] *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

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

of appellant's muscle spasms and headaches is speculative and equivocal in nature.[10] Dr. Vaught failed to provide sufficient medical rationale explaining how being exposed to noise from a DBCS machine/jogger at work either caused or contributed to appellant's diagnosed conditions. Her opinion was based, in part, on temporal correlation. The Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[11] Dr. Vaught did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led her to conclude that appellant's employment factors caused or contributed to the diagnosed conditions. For these reasons, the Board finds that the reports from Dr. Vaught are also insufficient to establish that appellant sustained an employment-related injury.

As appellant has not submitted rationalized medical evidence sufficient to support her claim that she sustained an injury causally related to the accepted employment factors, 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish muscle tension headaches and cervical and trapezius muscle spasms causally related to the accepted factors of her federal employment.

[10] Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

[11] *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2019
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