

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

S.B., Appellant)	
)	
and)	Docket No. 19-0634
)	Issued: September 19, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
INDEPENDENCE ANNEX, Charlotte, NC,)	
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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 30, 2019 appellant filed a timely appeal from a January 7, 2019 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the January 7, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that acceptance of her claim should be expanded to include binaural hearing loss causally related to her accepted August 12, 2017 employment injury.

FACTUAL HISTORY

On August 15, 2017 appellant, then a 39-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on August 12, 2017, she injured her right ankle, right hip, and right shoulder when she fell, striking the side of her vehicle, while stepping out of her vehicle onto uneven pavement while in the performance of duty. She stopped work on August 13, 2017.

On August 12, 2017 Dr. Arthur A. Olyai, an osteopathic physician Board-certified in emergency medicine, examined appellant immediately after her alleged employment incident. He noted that she complained of right ankle pain after falling while at work. Appellant related that the pain radiated from her ankle, all the way up into her head, however she also indicated that she did not hit her head, and that this was not a syncopal event. He diagnosed ankle sprain.

In a report dated August 15, 2017, Sir Wesley Funchess Jr., a physician assistant, noted appellant's hip and foot complaints. He related appellant's history of injury as: "this past Saturday she stepped out of her work truck and fell due to new construction on the street."

In a supplemental statement dated August 15, 2017, appellant indicated that she stepped out of her vehicle and onto uneven pavement, which caused her to twist her ankle and hit the inside of her vehicle with her hip and shoulder.

On September 6, 2017 Dr. Everlyn L. Hall-Baker, Board-certified in family practice, reported that appellant was previously seen by a physician assistant and was informed of right shoulder, right hip, and right foot complaints arising from a fall on August 12, 2017. She related appellant's history of injury as: "Patient stepped from vehicle to pavement and ankle gave way and patient fell backwards and body hit inside of door or postable vehicle."

By decision dated October 3, 2017, OWCP accepted appellant's claim for right ankle sprain.

OWCP subsequently received an October 3, 2017 report from Dr. Jason Silva, a Board-certified orthopedic surgeon. He related that appellant was seen for right hip and shoulder pain due to an August 12, 2017 injury. Dr. Silva noted: "On August 12, 2017 she fell getting out of a[n] [employing establishment] truck. Her ankle twisted and she fell back in the truck hitting her shoulder and hip."

In a report dated October 27, 2017, Larry P. Lease, a physician assistant, diagnosed lateral vestibular neuronitis. He noted that appellant had a three-week history of intermittent vertigo and a feeling of persistent imbalance, for which she had spent several days in a hospital for "stroke protocol."

In a statement dated December 30, 2017, appellant requested that the acceptance of her claim be expanded to include injuries to her right hip, right shoulder, back, and inner ear as a result of the accepted August 12, 2017 employment injury. She related that she hit her head inside her vehicle which caused inner ear damage resulting in severe and “permanent” vertigo, and binaural hearing loss.

On January 11, 2018 OWCP expanded acceptance of appellant’s claim to include sprain of right rotator cuff capsule. Appellant continued to seek medical treatment for her accepted conditions.

In a letter dated February 16, 2018, appellant indicated that, due to her inner ear damage, hearing loss, severe vertigo, and migraines, she was unable to drive her mail vehicle and requested reasonable accommodations from the employing establishment.³

In a report dated September 25, 2018, Dr. Karen E. Daniels-Mitchell, a Board-certified family practitioner, examined appellant and diagnosed “bilateral hearing loss,” migraines, tinnitus, and vertigo, and referred appellant to an otolaryngologist for further evaluation.

In a letter dated September 28, 2018, appellant requested that her accepted medical conditions be expanded to include binaural hearing loss, tinnitus, vertigo, migraines, “vision issues,” sinus tachycardia, elevated blood pressure, paresthesia, and depression.

In a development letter dated November 29, 2018, OWCP advised appellant that it was in receipt of her request for alleged “consequential” injuries. It informed her that the evidence submitted was insufficient and requested additional medical evidence regarding her “mental health medical conditions and sensorineural hearing loss.” This evidence was to include a rationalized medical report from her treating physician explaining causal relationship between her alleged conditions and the accepted employment injury. OWCP afforded appellant 30 days to submit the necessary evidence.

In a report dated December 18, 2018, Dr. William H. Roberts, a Board-certified otolaryngologist, evaluated appellant who complained of binaural hearing loss. He noted that appellant related that she was in an automobile accident on August 12, 2017 and struck her head on the metal portion of her vehicle. Dr. Roberts indicated that she immediately noticed the onset of hearing loss with tinnitus, and subsequently had episodes of vertigo with headaches. He reviewed an audiogram from October 15, 2018, and diagnosed “bilateral” sensorineural hearing loss. Dr. Roberts opined that there was causal relationship between appellant’s hearing loss and her trauma.

By decision dated January 7, 2019, OWCP denied expansion of the acceptance of appellant’s claim to include binaural hearing loss, finding that the evidence of record did not demonstrate that the employment-related incident occurred as she described. It noted that

³ By decision dated April 12, 2018, OWCP terminated appellant’s wage-loss compensation as her disability due to the accepted employment injury had ceased. The claim remained open for medical benefits.

appellant had not mentioned a head injury when she first filed her claim or in her initial narrative statement, and that the medical evidence did not support a head injury.

LEGAL PRECEDENT

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.⁴ To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit 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 claimant.⁶ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁷

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.⁸ Section 10.126 of Title 20 of the Code of Federal Regulations provides that a decision shall contain findings of fact and a statement of reasons. The Board has held that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁹

ANALYSIS

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

In her initial CA-1 claim form, appellant alleged that she injured her right ankle, right hip, and right shoulder when she fell, striking the side of her vehicle, while stepping out of her vehicle onto uneven pavement. By decision dated October 3, 2017, OWCP accepted that appellant's August 12, 2017 employment-related fall resulted in a right ankle sprain. It later expanded the acceptance of the claim to include sprain of right rotator cuff capsule. Appellant subsequently requested that her accepted conditions be expanded to include binaural hearing loss, tinnitus,

⁴ *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁶ *T.K., id.; I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *See H.H.*, Docket No. 16-0897 (issued September 21, 2016); *James Mack*, 43 ECAB 321 (1991).

⁸ 5 U.S.C. § 8124(a).

⁹ *L.M.*, Docket No. 13-2017 (issued February 21, 2014); *D.E.*, Docket No. 13-1327 (issued January 8, 2014); *L.C.*, Docket No. 12-0978 (issued October 26, 2012); Federal (FECA) Procedure Manual Part 2 -- Claims, *Disallowances* Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

vertigo, migraines, “vision issues,” sinus tachycardia, elevated blood pressure, paresthesia, and depression. In a development letter dated November 29, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish that she sustained additional “mental health medical conditions and sensorineural hearing loss” causally related to the August 12, 2017 employment injury. By decision dated January 7, 2019, OWCP denied expansion of the acceptance of appellant’s claim only with regard to binaural hearing loss, finding that the evidence of record did not demonstrate that the employment-related incident occurred as she described.

The Board notes that OWCP treated appellant’s request to expand the accepted conditions as a claim for a new injury when it found that the factual and medical evidence did not support a head injury. However, OWCP had already accepted that the August 12, 2017 fall occurred as alleged when it initially accepted a right ankle sprain. Where an employee claims that an additional condition not accepted by OWCP was due to the employment injury, the only burden on appellant is to establish that the additional condition is causally related to the employment injury.¹⁰

As noted above, 5 U.S.C. § 8124(a) provides: “[OWCP] shall determine and make a finding of facts and make an award for or against payment of compensation.” Also, 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP shall contain findings of fact and a statement of reasons. It has a responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that the claimant can understand the basis for the decision, as well as the precise defect and the evidence needed to overcome the denial of his traumatic injury claim.

The Board finds that OWCP failed to make findings of fact and provide a statement of reasons regarding whether the medical evidence of record established causal relationship between appellant’s accepted August 12, 2017 employment injury and her diagnosed binaural hearing loss. The Board further finds that OWCP failed to make findings of fact and provide a statement of reasons regarding whether appellant’s claim should be expanded to include the additional requested conditions. Thus, appellant was unable to understand the precise defect of the claim and the kind of evidence which would overcome it.

The case shall therefore be remanded to OWCP for a proper decision, to include findings of fact and a clear and precise statement of reasons as to whether appellant’s claim should be expanded to include additional conditions. Following further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹⁰ *Supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 19, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board