

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

M.K., Appellant

and

**U.S. POSTAL SERVICE, TUCKER POST
OFFICE, Tucker, GA, Employer**

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**Docket No. 20-0293
Issued: June 22, 2020**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 20, 2019 appellant filed a timely appeal from a September 6, 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

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted July 19, 2018 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 6, 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.*

FACTUAL HISTORY

On July 20, 2018 appellant, then a 32-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 19, 2018 she sustained a strain of the lower back when she was involved in a head-on vehicle collision while in the performance of duty. On the reverse side of the claim form the employing establishment acknowledged that appellant was injured in the performance of duty, but controverted her claim, noting that medical evidence had not been provided establishing that the employment incident caused a medical condition.

OWCP received July 19, 2018 hospital discharge notes which indicated that appellant was seen by Rolandine Vaughan, a physician assistant, for musculoskeletal pain. In an accompanying work excuse note, Ms. Vaughan excused appellant from work from July 19 through 21, 2018.

In an August 1, 2018 development letter, OWCP informed appellant that the evidence of record 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 submit the necessary evidence. No additional evidence was received.

By decision dated September 5, 2018, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment incident. It concluded, therefore, that the requirements have not been met to establish an injury as defined by FECA.

On August 27, 2019 appellant requested reconsideration.

OWCP received a July 23, 2018 handwritten letter, with an illegible physician's signature, which noted that appellant had been involved in a work-related head on vehicle collision four days prior. It indicated that appellant had a history of a stroke 10 years prior, and a documented seizure following the vehicle collision. The letter noted that appellant currently presented with a headache and gait instability and it requested that appellant be further evaluated for post-traumatic head injury and cerebrovascular accident (CVA) dysfunction.

In a July 24, 2018 report, Dr. David Zhou, a Board-certified specialist in emergency medicine, noted appellant's complaints of an ongoing headache after experiencing a seizure following a motor vehicle collision. He reviewed laboratory testing and a computerized tomography (CT) scan of appellant's head and diagnosed seizure and headache.

In an October 11, 2018 report, Dr. Samuel Milton, a Board-certified specialist in physical medicine and rehabilitation, noted that appellant suffered a left middle cerebral artery (MCA) CVA on January 29, 2008, resulting in right hemiparesis, aphasia, and acute left MCA stroke. He noted that appellant was involved in a motor vehicle collision in July 2018 which was complicated by post-traumatic brain injury seizures. Dr. Milton examined appellant and diagnosed stroke, early post-traumatic seizures, aphasia, hemiplegia dominant side, and other late effects of CVA.

In a December 13, 2018 partial report, Dr. Milton noted that appellant continued to experience weakness in her right hand and had difficulty communicating with others, reading long passages, and finding words. He again diagnosed stroke, early post-traumatic seizures, aphasia, hemiplegia dominant side, and other late effects of CVA.

By decision dated September 6, 2019, OWCP denied modification of the September 5, 2018 decision, finding that the medical evidence of record was insufficient to establish “a firm diagnosis that could be reasonably associated” with the accepted July 19, 2018 employment 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 period 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 has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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. The second component is whether the employment incident caused a personal injury.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ 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 incident identified by the claimant.⁹

In a 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

³ *Supra* note 1.

⁴ *Y.W.*, Docket No. 19-1877 (issued April 30, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *C.B.*, Docket No. 20-0250 (issued April 28, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ 20 C.F.R. § 10.115; *H.A.*, Docket No. 18-1253 (issued April 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.H.*, Docket No. 19-1891 (issued April 3, 2020); *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *L.P.*, Docket No. 19-1812 (issued April 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *C.B.*, *supra* note 5; *Leslie C. Moore*, 52 ECAB 132 (2000).

physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

ANALYSIS

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

In support of her claim, appellant submitted several medical reports which diagnosed a seizure. The record reflects that appellant was initially seen by a physician on July 23, 2018 who noted appellant's history of seizure following the accepted employment-related July 19, 2018 vehicle collision. In a July 24, 2018 report, Dr. Zhou diagnosed a seizure following appellant's July 19, 2018 employment incident. In October 11 and December 13, 2018 reports, Dr. Milton also noted that appellant was involved in a motor vehicle collision in July 2018, which was complicated by post-traumatic brain injury seizures. He diagnosed early post-traumatic seizures. The Board, therefore, finds that the diagnosis of seizure/early post-traumatic seizure constitutes a medical diagnosis in connection with the accepted July 19, 2018 employment incident.

As the medical evidence of record establishes a diagnosed condition, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship. Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹¹

CONCLUSION

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

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); V.W., Docket No. 19-1537 (issued May 13, 2020).

¹¹ Y.W., *supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the September 6, 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: June 22, 2020
Washington, DC

Christopher J. Godfrey, 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