United States Department of Labor
Employees' Compensation Appeals Board

J.L., Appellant **and** **DEPARTMENT OF VETERANS AFFAIRS, TENNESSEE VALLEY HEALTH CARE SYSTEM -- ALVIN C. YORK CAMPUS, Murfreesboro, TN, Employer**	)	**Docket No. 20-0717** **Issued: October 15, 2020**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 12, 2020 appellant filed a timely appeal from an August 21, 2019 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 a head injury causally related to the accepted May 8, 2017 employment incident.

FACTUAL HISTORY

On August 31, 2017 appellant, then a 57-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on May 8, 2017 she sustained a head injury when she fell to the floor while in the performance of duty. She reported that she became dizzy after standing up, fell, and

[1] 5 U.S.C. § 8101 *et seq.*

hit the front of her head on the desk and the side and back of her head on the floor as she was falling down. Appellant was found lying on the floor unconscious by a coworker. She did not stop work.

In a May 9, 2017 report, Rebecca Durbin, a certified physician assistant, recounted that appellant was treated "after passing out at work yesterday." Appellant indicated that she was alone when she passed out and that she hit the right side of her head when she fell down to the floor. Ms. Durbin conducted an examination and noted a negative neurological examination. She diagnosed concussion with loss of consciousness of 30 minutes or less.

A May 11, 2017 magnetic resonance imaging (MRI) scan of appellant's brain revealed probable left globe enucleation, chronic left maxillary sinus disease, and otherwise negative MRI scan of the brain without evidence of acute intracranial abnormality.

In a June 14, 2017 report, Mary Angela Smith, an advanced practice registered nurse, noted that appellant was seen for complaints of headache and eye pressure. She indicated that appellant attributed her condition to looking at a computer screen every day. Ms. Smith diagnosed allergic contact dermatitis due to plants and headache.

In a June 16, 2017 report, Dr. James Crager, a Board-certified internist specializing in cardiovascular disease, indicated that an echocardiogram revealed that appellant's left ventricular systolic function was normal and that trace mitral valve regurgitation was present.

Appellant continued to receive treatment from Ms. Smith. In reports dated August 3 to December 7, 2017, Ms. Smith noted appellant's complaints of continued migraine headaches three to four times a week. Cardiovascular examination revealed regular rate and rhythm, and no edema or varicosities of the extremities. Ms. Smith diagnosed headache and migraine without aura.

In an April 12, 2018 report, Staci Caudill, a registered nurse, recounted that appellant was treated for complaints of daily headaches that lasted hours to all day. She reviewed appellant's history and reported examination findings. Ms. Caudill assessed migraine, chronic daily headaches, and left occipital neuralgia.

In work status notes dated May 24 and 30, 2018, Ms. Smith indicated that appellant was seen in the office on those dates and requested that appellant be excused from work for the period May 22 to June 15, 2018 "for migraines."

Dr. Andrew Cook, a Board-certified anesthesiologist, in a June 7, 2018 report, noted that appellant was referred by neurology for consideration of occipital nerve ablation. He indicated that appellant reported a history of migraine headaches and daily headaches. Upon physical examination, Dr. Cook observed tenderness to palpation over the posterior occipital region on the left and pain in the posterior neck region. He diagnosed cervicogenic headache.

In a June 13, 2018 report, Ms. Smith indicated that appellant was seen for complaints of a migraine. She conducted an examination and reported diagnoses of chronic migraines.

In a June 25, 2018 development letter, OWCP informed appellant that her claim was initially accepted as a minor injury, but was now being formally considered because she had filed a claim for wage-loss compensation. It advised her of the factual and medical evidence necessary to establish her claim and also provided a questionnaire for completion. In a separate letter of even

date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to provide the requested factual and medical evidence.

On July 2, 2018 appellant responded to OWCP's development questionnaire. She described that on May 8, 2017 she got up from her desk to get a fax when she felt lightheaded. Appellant noted that, when she went to sit back down in her chair, it slid from underneath her and caused her to lose her balance and she fell to the ground hitting her head on the desk. She noted that the wheel on her office chair was broken. Appellant indicated that she had no history of fainting spells or a heart condition. She reported that she had experienced an increase in intensity in headaches since she hit her head.

Appellant submitted a position description and witness statements from G.M. and L.M.

In a January 11, 2018 report, Dr. William Watson, a Board-certified neurologist, indicated that appellant was referred to the neurology clinic for complaints of headache occurring about four to five times per week. He noted a family history of migraines and that her initial onset of headaches occurred when she was a teenager, but that she had severe headaches occurring twice a week since June 2017. Dr. Watson also described that, in May 2017, appellant fell and hit her head at work and lost consciousness for an unknown amount of time. He reported that her headaches increased in frequency, intensity, and duration post-head injury. Upon physical examination, Dr. Watson observed trigger and tender points in the left upper back, neck, and left occipital area. He assessed migraine without aura, chronic daily headaches, post-traumatic headache, concussion, occipital neuralgia of the left side, and myofascial pain syndrome.

In a July 5, 2018 report, Dr. Richard M. Dartt, a family physician, noted appellant's complaint of migraines and pain in the base of her neck. Upon physical examination, he reported normal psychiatric evaluation and musculoskeletal examination. Dr. Dartt diagnosed migraine without aura. He indicated that appellant had symptoms of migraines, blurry vision, and was very photo sensitive, which made it very difficult for her to work.

In a July 9, 2018 report, Ms. Caudill indicated that appellant was seen at the clinic for follow-up of headaches. She noted that appellant reported having daily headaches and described the May 8, 2017 employment incident. Ms. Caudill conducted an examination and diagnosed migraine, chronic daily headaches, and left occipital neuralgia.

In a July 12, 2018 report, Dr. Dartt recounted that appellant was seen that day for a narrative report needed for a workers' compensation claim. Upon physical examination, he observed normal psychiatric and musculoskeletal examinations. Dr. Dartt diagnosed unspecified migraine, unspecified fall, and generalized anxiety disorder. He related that after the May 8, 2017 fall appellant became lightheaded and went to sit down in a chair that rolled out from underneath her at work. Dr. Dartt indicated that she hit her head on the desk and floor, lost consciousness, and had a concussion due to the fall. He reported that appellant has had migraines on a weekly basis since the fall. Dr. Dartt opined that she could not return to work. He noted that appellant was required to spend the day reading a computer screen, which exacerbated the headaches. Dr. Dartt recommended that she continue to follow-up with neurology.

By decision dated August 3, 2018, OWCP denied appellant's claim. It accepted that the May 8, 2017 incident occurred as alleged and that the incident was determined to be unexplained and as such, fell under the coverage of FECA. OWCP noted that the conditions of migraines,

chronic daily headaches, post-traumatic headaches, concussion, and left-side occipital neuralgia had been diagnosed. However, it denied appellant's claim finding that she had failed to establish causal relationship between the accepted employment incident and the diagnosed conditions.

On September 6, 2018 appellant requested reconsideration.[2] She alleged that the broken rolling office chair caused her to lose her balance, hit her head on her desk, and fall to the floor unconscious for an unknown period of time. Appellant also explained that a neurologist had diagnosed her with a concussion with TBI with migraines.

In reports dated July 16 and August 14, 2018, Ms. Smith reviewed appellant's history and conducted an examination. She reported that appellant had continued migraines since suffering a fall at work and hitting her head in 2017. Ms. Smith completed a work status note dated August 14, 2018, which indicated that appellant could not return to work until she was seen by neurology on September 23, 2018.

Appellant submitted an August 29, 2018 letter by Dr. Dartt, who explained that she was initially seen on May 9, 2017 following an incident at work in which she passed out and hit her head on a desk. Dr. Dartt reported that she had a history of headaches and that he continued to see her for continued headaches. He further reported that, since the incident at work that resulted in a direct blow to the head, appellant had increased frequency and severity of headaches.

By decision dated December 3, 2018, OWCP denied modification of the August 3, 2018 decision.

On May 24, 2019 appellant requested reconsideration. She provided a timeline of the May 8, 2017 incident and reiterated that her head injury "would have never happened if the wheel of [appellant'] office chair had not broken off."

OWCP received additional medical evidence. In reports dated November 21 and December 10, 2018, Ms. Smith reviewed appellant's history and noted examination findings. She diagnosed migraine without aura. Ms. Smith reported that appellant had failed multiple treatment modalities for appellant's migraines, which had been a chronic and ongoing issue for quite some time.

In a November 12, 2018 neurocognitive assessment report, Dr. Frederick Schmitt, a neuropsychologist, reviewed appellant's history and reported her complaints of continued debilitating headaches two to three times per week. He conducted a neurobehavioral examination and assessed that she had major neurocognitive disorder, multiple etiologies, and mild severity with behavioral disturbance. Dr. Schmitt recommended a review of appellant's headache medications, adjustment of psychotropic medications, and psychotherapy.

Appellant also submitted medical records from a neurology institute dated September 19, 2018 and February 27, 2019, which indicated that she was treated for a follow-up regarding her chronic migraine and post-concussive headache due to a May 2017 accident.

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[2] OWCP received an August 7, 2018 letter by appellant wherein she requested a status update on her workers' compensation claim. Appellant reported that she had missed almost seven months of work. She indicated that her neurologist and primary care physician had labeled the injury concussion and traumatic brain injury (TBI) with migraines related from hitting her head on the desk and floor.

By decision dated August 21, 2019, OWCP denied modification of the December 3, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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]

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.[7] 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.[8] Second, the employee must submit evidence, in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[9]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 factor(s) identified by the employee.[11] The weight of the medical

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[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); *S.P.*, 59 ECAB 184 (2007).

[8] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *See S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

[11] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.[12]

In a case in which 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.[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a head injury causally related to the accepted May 8, 2017 employment incident.

In a January 11, 2018 report, Dr. Watson recounted that appellant had a history of headaches since she was teenager and indicated that the headaches increased in frequency and intensity following the May 2017 employment incident. He conducted an examination and assessed migraine without aura, chronic daily headaches, post-traumatic headache, concussion, occipital neuralgia of the left side, and myofascial pain syndrome. Dr. Watson, however, did not offer an opinion on the cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[14] This report is therefore insufficient to establish appellant's claim.

Likewise, Dr. Crager's June 16, 2017 report, Dr. Dartt's July 5, 12 and August 29, 2018 reports, Dr. Cook's June 7, 2018 report, and Dr. Schmitt's November 12, 2018 report are also insufficient to establish that appellant's diagnosed conditions are causally related to the accepted May 8, 2017 employment incident as none of the physicians opined on the cause of her diagnosed conditions.[15] As such, the Board finds that these reports are also insufficient to establish her claim.

Appellant also submitted reports dated June 14, 2017 to December 10, 2018 by Ms. Smith and reports dated April 12 and July 9, 2018 by Ms. Caudill. The Board has held, however, that medical reports signed solely by a nurse are of no probative value, as nurses are not considered physicians as defined under FECA, and therefore are not competent to provide a medical opinion.[16]

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[12] *James Mack*, 43 ECAB 321 (1991).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

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

[15] *See J.H.*, Docket No. 19-0838 (issued October 1, 2019); *S.G.*, Docket No. 19-0041 (issued May 2, 2019).

[16] Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

For this same reason, Ms. Durbin's May 9, 2017 report is also of no probative value because a physician assistant is not considered a physician under FECA.[17]

Appellant further submitted medical records from a neurology institute dated September 19, 2018 and February 27, 2019, which indicated that she was treated for a follow-up regarding her chronic migraine and post-concussive headache due to a May 2017 accident. The Board has found that medical evidence lacking proper identification is of no probative medical value.[18] Accordingly, these reports are insufficient to establish appellant's claim.

The May 9, 2017 MRI scan report is also insufficient to establish appellant's claim. The Board has held that reports of diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship between her employment duties and the diagnosed conditions.[19]

On appeal appellant alleges that she would not have hit her head on the desk and floor, which led to her TBI and headaches, if not for her broken office chair rolling out from underneath her. However, she has not submitted the rationalized medical evidence which is necessary to establish that her head injury is causally related to the accepted May 8, 2017 employment incident in which she fell to the floor and hit her head. Thus, the Board finds that appellant 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 a head condition causally related to the accepted May 8, 2017 employment incident.

[17] *Id.*; *see also R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners are not considered physicians as defined under FECA); *George H. Clark*, 56 ECAB 162 (2004).

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

[19] *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2020
Washington, DC

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

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

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