

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

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<b>S.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0643</b>
	)	<b>Issued: January 27, 2021</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, INDEPENDENCE ANNEX, Charlotte, NC, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 29, 2020 appellant filed a timely appeal from a January 17, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the January 17, 2020 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 the acceptance of her claim should be expanded to include binaural hearing loss, tinnitus, migraines, and vertigo as causally related to her accepted August 12, 2017 employment injury.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

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 stepped out of her vehicle onto uneven pavement and fell, striking the side of her vehicle, while in the performance of duty. She stopped work on August 13, 2017. 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. OWCP accepted her claim for right ankle sprain and a sprain of right rotator cuff capsule.

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

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

On September 6, 2017 Dr. Everlyn L. Hall-Baker, Board-certified in family practice, related appellant's history of injury as: "[Appellant] stepped from vehicle to pavement and ankle gave way and [she] fell backwards and body hit inside of door or postable vehicle."

In an October 3, 2017 report, Dr. Jason Silva, a Board-certified orthopedic surgeon, noted that "[o]n August 12, 2017 [appellant] 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."

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<sup>3</sup> Docket No. 19-0634 (issued September 19, 2019).

On 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.

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.<sup>4</sup>

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. Appellant was referred to an otolaryngologist for further evaluation.

By letter dated September 29, 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 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 appellant’s treating physician explaining causal relationship between her alleged conditions and the accepted employment injury. OWCP afforded appellant 30 days to submit the necessary evidence.

A report dated December 18, 2018 by Dr. William H. Roberts, a Board-certified otolaryngologist, revealed that he evaluated appellant who complained of binaural hearing loss. He noted that she 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 appellant 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 she had not mentioned a head injury when she initially filed her claim or in her initial narrative statement, and that the medical evidence did not support a head injury.

On January 30, 2019 appellant filed an appeal with the Board. By decision dated September 19, 2019, the Board set aside OWCP’s January 7, 2019 decision and remanded the case

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<sup>4</sup> 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.

for OWCP to issue a *de novo* decision, which included findings of fact and a clear and precise statement of reasons as to whether her claim should be expanded to include additional conditions.<sup>5</sup>

Following the Board's decision, OWCP referred appellant and the case record, including a statement of accepted facts (SOAF) and a list of questions, to Dr. John F. Ansley, a Board-certified otolaryngologist.<sup>6</sup>

OWCP received evidence pertaining to appellant's emotional conditions as well as evidence relating to treatment of her binaural hearing loss, tinnitus, migraines and vertigo.

In a report dated October 5, 2018, Dr. Isaac F. Dingle, an otolaryngologist, diagnosed migraine variant, dizziness, and bilateral sensorineural hearing loss. He reported that appellant's audiogram was unchanged from the prior year, and that he had informed her that he did not believe that her dizziness was related to a peripheral inner ear disorder, but rather was all related to her migraine.

In an undated report, received November 9, 2019, Dr. Roberts indicated that appellant was injured in a work-related accident in August of 2017 during which she struck her head and resulted in several permanent neurologic deficits of tinnitus, visual defect due to poor depth perception, vertigo with head movements, and migraine headaches. He noted that her maximum date of improvement was unknown, but that she was fit to return to duty with restrictions of no driving. Dr. Roberts further indicated that appellant had 12 percent hearing loss. Copies of his October 30 and December 2, 2019 reports and October 30, 2019 audiograms were received.

In his October 30, 2019 report, Dr. Roberts reported that on August 12, 2017 appellant struck her head on the metal portion of a mail truck while working. Appellant immediately noticed the onset of hearing loss with tinnitus and subsequently had episodes of vertigo with migraines. She also had three hospitalizations for vertigo and stroke-related symptoms. Appellant denied a previous history of noise exposure, previous ear surgery trauma or infections. Dr. Roberts diagnosed bilateral sensorineural hearing loss, tinnitus of both ears and vertigo. He opined that there was a causal relationship between appellant's permanent hearing loss and her August 12, 2017 head trauma, noting that she reiterated that she experienced a syncope event due to dehydration, stress, anxiety, and hunger that day. Dr. Roberts opined that she reached maximum medical improvement and that she needed hearing enhancements or amplification and reasonable accommodations.

In a December 12, 2019 report, Dr. Ansley noted the history of the August 12, 2017 work injury, as reported on the SOAF, was that appellant exited her vehicle near a curb, fell and hit the side of the truck and hurt her hip and shoulder. There was no mention of a head injury on the SOAF; however, appellant reported to him that she had in fact fallen backwards and struck her head and suffered an injury at the time. Dr. Ansley performed an audiogram and indicated that

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<sup>5</sup> *Supra* note 3. The Board noted that OWCP had accepted that the August 12, 2017 fall occurred as alleged when it initially accepted a right ankle strain and that appellant's only burden when claiming additional conditions not accepted by OWCP is to establish causal relationship to the employment injury.

<sup>6</sup> Appellant filed claims for compensation (Form CA-7) for schedule award and wage-loss compensation effective April 14, 2018 and continuing. These claims, however, have not been adjudicated.

she has bilateral symmetric mild-to-moderate sensorineural hearing loss and tinnitus and that hearing aids were needed. He opined that appellant's bilateral symmetric mild-to-moderate sensorineural hearing loss and tinnitus were not due to the work incident and that it was uncommon to see bilateral symmetric hearing loss from trauma. Relying on the SOAF, Dr. Ansley opined that the August 12, 2017 work incident was insufficient to cause a hearing loss. He explained that hearing loss secondary to trauma typically required a significant blow to the head which was sometimes accompanied by temporal bone fracture or ossicular dislocation. Dr. Ansley opined that he would expect a head injury of significant severity to lead to a hearing loss, but, in this case, it was less likely that the injury caused a hearing loss. He further noted that appellant suffers from and has been treated for vestibular migraines. Dr. Ansley explained that vestibular migraines will lead to vertiginous symptoms and headaches. He opined that it was more likely that appellant's vestibular symptoms are related to her migraines. Dr. Ansley further opined that, since there was no head injury during the fall, then appellant's tinnitus, vertigo or hearing loss were not caused or worsened by the accepted work-related incident. Similarly, given the lack of evidence to support direct trauma to appellant's head, there was no symptomatic vertigo with a hearing loss. Dr. Ansley concluded that, without history of a head injury of significant severity, her work-related fall did not lead to the onset of hearing loss or tinnitus or worsened her conditions.

By decision dated January 17, 2020, OWCP denied appellant's request to expand the acceptance of her claim to include the conditions of binaural hearing loss, tinnitus, migraines and vertigo. It found that the weight of the medical opinion rested with the December 12, 2019 report of Dr. Ansley, OWCP's second opinion examiner.

### **LEGAL PRECEDENT**

When 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.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>9</sup> 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 employment injury.<sup>10</sup> The weight of medical evidence is determined by its reliability, its probative

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<sup>7</sup> *C.W.*, Docket No. 19-1747 (issued September 2, 2020); *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>8</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *Id.*

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include binaural hearing loss, tinnitus, migraines and vertigo causally related to her accepted August 12, 2017 employment injury.

In his December 12, 2019 second opinion report, Dr. Ansley noted that the August 12, 2017 employment injury did not involve appellant hitting her head, as described in the SOAF, and described his findings. He concluded that her bilateral symmetric mild-to-moderate sensorineural hearing loss, tinnitus, and vertigo were not due to the employment incident. Dr. Ansley noted that it was uncommon to see bilateral symmetric hearing loss from trauma. He explained that hearing loss secondary to trauma typically required a significant blow to the head, which was sometimes accompanied by temporal bone fracture or ossicular dislocation. Dr. Ansley further noted that appellant suffers from vestibular migraines, which lead to vertiginous symptoms and headaches. He opined that it was more likely that her vestibular symptoms are related to her migraines. Dr. Ansley further opined that, since there was no head injury during the fall, then appellant's tinnitus, vertigo or hearing loss were not caused or worsened by the accepted work-related incident. Similarly, given the lack of evidence to support direct trauma to her head, there was no symptomatic vertigo with a hearing loss. Dr. Ansley concluded that, without history of a head injury of significant severity, appellant's work-related fall did not lead to the onset of hearing loss or tinnitus or worsened her conditions. As his report is sufficiently rationalized and based on an accurate factual history, his opinion constitutes the weight of the medical evidence.<sup>12</sup>

The Board finds that the earliest contemporary medical reports corroborate Dr. Ansley's opinion that appellant did not strike her head during the August 12, 2017 employment injury. In his August 12, 2017 report, Dr. Olyai related that she complained of pain from her right ankle to her head, but that she denied hitting her head during the employment incident. Dr. Hall-Baker reported on September 6, 2017 and Dr. Silva reported on October 3, 2017 that appellant twisted her ankle and fell backwards into her truck, striking her shoulder, and hip. Neither Dr. Hall-Baker, nor Dr. Silva related that appellant struck her head. The remaining evidence of record is also insufficient to establish causal relationship.

In her September 25, 2018 report, Dr. Daniels-Mitchell diagnosed "bilateral hearing loss," migraines, tinnitus, and vertigo. However, she did not provide an opinion on causation. In an October 5, 2018 report, Dr. Dingle diagnosed migraine variant, dizziness, and giddiness, sensorineural hearing loss of both ears. He opined that appellant's dizziness was not related to a peripheral inner ear disorder, but rather her migraines. However, Dr. Dingle did not address the cause of her 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

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<sup>11</sup> *D.R.*, Docket No. 19-0954 (issued October 25, 2019); *H.H.*, Docket No. 16-0897 (issued September 21, 2016); *James Mack*, 43 ECAB 321 (1991).

<sup>12</sup> *R.J.*, *supra* note 7.

relationship.<sup>13</sup> Therefore, these reports are of no probative value and are insufficient to establish appellant's claim.

In his December 18, 2018, October 30, 2019 and undated reports, Dr. Roberts opined that appellant had struck her head on August 12, 2017 which resulted in several permanent neurologic deficits of bilateral sensorineural hearing loss, tinnitus, visual defect due to poor depth perception, vertigo with head movements, and migraine headaches. He opined that there was a causal relationship between her permanent hearing loss and her August 12, 2017 head trauma, noting that she indicated that she experienced a syncope event due to dehydration, stress, anxiety, and hunger that day. While Dr. Roberts provided an affirmative opinion on causal relationship, his reports are based on an inaccurate history of injury. OWCP accepted the mechanism of injury, as reported by appellant on her CA-1 form, that she had exited vehicle near curb, fell on the uneven pavement and hit side of truck, injuring her hip, right shoulder, and right ankle. As previously noted, the record does not substantiate that she hit her head during the employment incident. The Board has held that medical reports must be based on a complete and accurate factual and medical background. Medical opinions based on an incomplete or inaccurate history are of limited probative value.<sup>14</sup> Therefore, the reports from Dr. Roberts are insufficient to establish causal relationship.

OWCP also received reports from physician assistants. However, these reports do not constitute competent medical evidence because physician assistants are not considered physicians as defined under FECA.<sup>15</sup>

As appellant has not submitted a rationalized medical opinion establishing that her diagnosed conditions of binaural hearing loss, tinnitus, migraines, and vertigo are causally related to her accepted August 12, 2017 employment injury, the Board finds that she has not met her burden of proof.

On appeal, appellant asserts that the medical evidence supports that she suffered work-related head trauma that caused tinnitus, visual deficit due to poor depth perception, vertigo with head movements, migraine headaches, and sensorineural hearing loss. As explained above, however, the medical evidence of record is insufficient 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.

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<sup>13</sup> *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>14</sup> *A.W.*, Docket No. 17-0285 (issued May 25, 2018); *C.L.*, Docket No. 14-1585 (issued December 16, 2014); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>15</sup> Section 8101(2) of FECA provides that 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). *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); *see also C.K.*, Docket No. 19-1549 (issued June 30, 2020) (physician assistants are not considered physicians under FECA).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include binaural hearing loss, tinnitus, migraines, and vertigo causally related to her accepted August 12, 2017 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 17, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2021  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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