

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

_____)	
L.T., Appellant)	
)	
and)	Docket No. 21-0155
)	Issued: October 6, 2021
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Chicago, IL,)	
Employer)	
_____)	

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 November 13, 2020 appellant filed a timely appeal from an August 10, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (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 diagnosed medical condition causally related to the accepted December 20, 2018 employment incident.

¹ The Board notes that, following the August 10, 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.*

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

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

On December 21, 2018 appellant, then a 62-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 20, 2018 at 12:30 p.m. she sustained a head contusion when an all-purpose container (APC) bar closure fell down and struck her head while in the performance of duty.⁴ She explained that the APC bar was not secured in the APC closure latch. Appellant stopped work on December 20, 2018 and returned to work on December 24, 2018.

In a December 20, 2018 medical report, Dr. James Devries, Board-certified in emergency medicine, noted that appellant was injured that day when she was loading shelves and some materials fell on her head. He observed that she had a history of a slipped disc in her neck and noted that she sustained no lacerations or any evidence of a basilar skull fracture on examination. Dr. Devries diagnosed an injury of the head and neck pain. In a medical note of even date, he requested that appellant be excused from work from December 20 to 22, 2018 due to her injury.

In an attending physician's report (Form CA-20), also dated December 20, 2018, Dr. Devries indicated that appellant was loading mail when she fell forward and struck her head. He diagnosed a blunt head injury.

On December 20, 2018 Dr. Miral Jhaveri, a Board-certified radiologist, performed a computerized tomography (CT) scan of appellant's brain, noting no acute intracranial abnormality. In a separate diagnostic report of even date, Dr. Sudeep Bhabad, a Board-certified radiologist, conducted a CT scan of her cervical spine, noting no acute displaced fracture, compression deformity or traumatic subluxation as well as multilevel degenerative changes.

In a January 17, 2019 medical report, Dr. Chmell, a Board-certified orthopedic surgeon, observed that appellant sustained an injury at work when she was struck in the head by an APC door. He noted that she experienced headaches, head and neck pain, as well as left-sided cervical spasms and tenderness with a positive Spurling's test. Dr. Chmell reviewed a CT scan of appellant's head that did not reveal any brain injury, as well as a CT scan of her cervical spine that demonstrated multilevel disc protrusions. He diagnosed bilateral CTS, cervical disc displacement, a left shoulder rotator cuff tear and right lateral elbow epicondylitis with respect to her continued treatment under OWCP File No. xxxxxx767. Dr. Chmell subsequently diagnosed multilevel cervical disc protrusion with radiculopathy in the left upper extremity with respect to the present case and the December 20, 2018 employment incident. In a duty status report (Form CA-17) of even date, he noted that appellant was hit on the head and neck by an APC and provided work restrictions.

³ *Order Remanding Case*, Docket No. 19-1357 (issued March 30, 2020).

⁴ OWCP assigned File No. xxxxxx535 to this claim. The Board notes that OWCP previously accepted an occupational disease claim for tenosynovitis of the hands and wrists, bilateral carpal tunnel syndrome (CTS), a displaced cervical intervertebral disc, and a complete left rotator cuff rupture due to factors of her federal employment under OWCP File No. xxxxxx767.

In medical notes dated January 17 and February 14, 2019, Dr. Chmell continued to diagnose bilateral CTS, cervical disc displacement and a left shoulder rotator cuff tear with respect to OWCP File No. xxxxxx767 and a cervical disc protrusion.

In a February 14, 2019 medical report, Dr. Chmell noted that appellant was experiencing severe neck and head pain and that she demonstrated marked limitation in motion with tenderness and muscle spasms in her cervical spine since the December 20, 2018 employment incident. On physical examination he reiterated his prior diagnoses. Dr. Chmell recommended that appellant undergo a magnetic resonance imaging (MRI) scan of her cervical spine for further evaluation.

In an undated statement, appellant asserted that on December 20, 2018 at 12:35 p.m. she was loading an APC with boxes and, as she was closing the bottom rack, the top rack of the APC popped open and slammed down onto her head. She alleged that she sustained a knot on her head and had experienced headaches as a result.

In undated witness statements, S.P. and V.M., appellant's coworkers, indicated that on December 20, 2018 appellant was hit on the head by the top rack of the APC while she was trying to close the bottom rack.

In a March 26, 2019 development letter, OWCP advised appellant of the deficiencies of her claim and instructed her as to the factual and medical evidence necessary to establish her claim. It provided her with a questionnaire and also requested that she submit a narrative medical report from her physician, which contained a detailed description of findings and diagnoses, explaining how the reported incident caused or aggravated her medical condition. OWCP afforded appellant 30 days to respond.

In a February 23, 2019 medical report, Dr. Chmell indicated that appellant sustained an injury to her cervical spine on December 20, 2018 when she was struck on the head by an APC door. He diagnosed a multilevel cervical disc protrusion and explained that when she was struck on the head by the heavy APC door, she sustained a severe axial load to her cervical spine. Dr. Chmell noted that this was a common cause of serious cervical spine injuries.

In a March 11, 2019 diagnostic report, Dr. Ada Kumar, a Board-certified radiologist, performed an MRI scan of appellant's cervical spine, revealing spondylosis of the cervical spine.

In a March 21, 2019 medical report, Dr. Chmell noted that appellant continued to experience severe neck pain. On examination and review of her MRI scan, he diagnosed multiple cervical disc herniations with upper extremity radiculopathy due to the December 20, 2018 employment incident.

By decision dated April 30, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that her diagnosed condition was causally related to the accepted December 20, 2018 employment incident.

OWCP continued to receive evidence. Appellant submitted a December 20, 2018 emergency medical services report, which indicated that, while she was at work, a rack of some sort hit her on top of her head. The report noted no trauma or lasting visual disturbance.

In a December 26, 2018 medical report, Dr. Paul Ruestow, a Board-certified endocrinologist, observed that appellant was struck in the head by a steel plate while she was at work on December 20, 2018. He noted that her cervical spine showed disc disease and diagnosed cervical neuritis.

In an April 18, 2019 medical report, Dr. Chmell noted that appellant continued to experience severe neck pain and stiffness due to the claimed December 20, 2018 employment injury. He recommended that she participate in physical therapy in order to treat her condition.

Dr. Chmell explained in a May 16, 2019 medical report that, while appellant suffered from degenerative changes of the cervical spine prior to her December 20, 2018 injury, those changes were not causing her to experience the symptoms she had been experiencing since the accepted December 20, 2018 employment incident. He opined that her injury was a traumatic aggravation of degenerative disc disease of the cervical spine. Dr. Chmell opined that it was more likely than not that the December 20, 2018 employment incident caused additional disc protrusion at multiple levels.

On June 4, 2019 appellant appealed to the April 30, 2019 decision to the Board. By order dated March 30, 2020,⁵ the Board set aside the April 30, 2019 OWCP decision. The Board remanded the case for OWCP to administratively combine OWCP File No. xxxxxx767 with the present claim under OWCP File No. xxxxxx535 and to further evaluate the evidence to determine whether appellant sustained either an injury on December 20, 2018 due to the accepted employment incident or experienced progression of a previously accepted employment injury. The Board directed OWCP to issue a *de novo* decision following any necessary further development.

OWCP subsequently administratively combined OWCP File Nos. xxxxxx767 and xxxxxx535, with OWCP File No. xxxxxx767 serving as the master file.

By decision dated August 10, 2020, OWCP denied appellant's traumatic injury claim, under OWCP File No. xxxxxx535, finding that she had not submitted medical evidence containing a medical diagnosis in connection with the accepted December 20, 2018 employment incident. Thus, it found that the requirements had not been met to establish an injury defined by FECA. OWCP explained that the medical evidence did not reflect or indicate any new injury or aggravation of her preexisting cervical condition and provided that the alleged pain was identified as a symptom of her preexisting cervical condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including 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

⁵ *Supra* note 3.

⁶ *Supra* note 2.

FECA,⁷ 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.⁸ 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.⁹

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.¹⁰

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹¹ 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 specific employment incident identified by the employee.¹²

ANALYSIS

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

In his January 17, 2019 medical report, Dr. Chmell recounted the events of the December 20, 2018 employment incident in which appellant was struck in the head by an APC door while at work and noted the subsequent symptoms of pain in her head and neck as a result. On review of CT scans of her head and cervical spine, he diagnosed multilevel cervical disc protrusion with radiculopathy in the left upper extremity. Dr. Chmell's subsequent medical reports distinguished the diagnoses of bilateral CTS, cervical disc displacement, a left shoulder rotator cuff tear and right lateral elbow epicondylitis as related to appellant's previously accepted claim under OWCP File No. xxxxxx767 and differentiated her diagnosis of multilevel cervical disc protrusion with radiculopathy in the left upper extremity as being related to the accepted December 20, 2018 employment incident in the

⁷ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹⁰ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

present claim under OWCP File No. xxxxxx535. Specifically, in his May 16, 2019 medical report, he acknowledged that appellant had preexisting degenerative changes of the cervical spine prior to the accepted December 20, 2018 employment incident. Dr. Chmell explained, however, that the December 20, 2018 employment incident was a traumatic aggravation of degenerative disc disease of her cervical spine that caused additional disc protrusion at multiple levels. Therefore, the Board finds that the evidence of record establishes a diagnosed medical condition.

However, OWCP has not reviewed the medical evidence of record. As the medical evidence of record establishes a diagnosed medical condition, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a diagnosed medical condition. The Board further finds, however, that this case is not in posture for decision as to whether her diagnosed medical condition is causally related to the accepted December 20, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2020 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: October 6, 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