

FACTUAL HISTORY

On August 25, 2020 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 7, 2020 he sustained a contusion and injuries to his head, right hip, right knee, right ankle, and left foot when he slipped and fell down a flight of stairs while in the performance of duty. He stopped work on August 8, 2020.

In support of his claim, appellant submitted reports dated August 7 and 13, 2020 by Roshin Joby, a nurse practitioner; August 10, 2020 reports by Charlotte Saunders, a nurse practitioner; an unsigned August 14, 2020 emergency department visit summary; and August 18, 2020 reports by Jenn Tuteurice, a nurse practitioner.

An August 18, 2020 duty status report (Form CA-17) from Dr. John Reilly, Board-certified in internal medicine, pulmonology, and critical care medicine, noted a history of the August 7, 2020 injury and diagnosed post-concussive symptoms. He held appellant off work.

OWCP also received an August 25, 2020 report by Samantha Elmer, a nurse practitioner, and a September 1, 2020 report by Ms. Tuteurice.

In a September 3, 2020 report, Dr. Asal Sepahi, an optometrist, provided a history of injury. She noted appellant's symptoms of blurred vision. Dr. Sepahi diagnosed concussion without loss of consciousness, headaches, and bilateral astigmatism.

OWCP also received vestibular therapy notes dated from September 8 through October 7, 2020; September 10, 2020 reports by Ms. Elmer; and October 12, 2020 reports by Diana Morris, a nurse practitioner.

In a development letter dated October 23, 2020, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary information.

On November 3, 2020 appellant responded to the development letter. He noted that he was very dizzy and disoriented following the August 7, 2020 fall and sought treatment at an urgent care center. In an accompanying statement, appellant asserted that he had fallen down a full flight of steps and struck his head on a wall and the steps on the way down. He also described hip and lower extremity injuries. Appellant submitted additional evidence.

OWCP received November 2, 2020 reports by Ms. Saunders.

In a November 5, 2020 report, Dr. Sepahi noted that she had examined appellant on September 3, 2020 to evaluate visual changes status post work-related concussion.

In reports dated November 13, 2020, Dr. Bindu Kumar, a Board-certified family practitioner, noted the August 7, 2020 employment incident. She diagnosed concussion without loss of consciousness and pain in the right hip, knee, and ankle. Dr. Kumar opined that the

diagnoses were “related to work activities.” She restricted appellant to sedentary duty and referred him to a neurologist.³

By decision dated November 30, 2020, OWCP accepted that the August 7, 2020 employment incident occurred as alleged. However, it denied the claim, finding that appellant had not submitted rationalized medical opinion evidence supporting a causal relationship between the accepted incident and the claimed injuries.

On December 16, 2020 appellant requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review. In a December 18, 2020 statement, he contended that cognitive sequelae of the concussion and restrictions imposed by the COVID-19 epidemic made it difficult for him to communicate with his physicians and obtain medical care.

OWCP received December 3, 2020 visual field test results demonstrating no visual field defects.⁴

In a December 8, 2020 report, Dr. Kumar diagnosed concussion and vertigo, with symptoms of dizziness, headache, and poor concentration. She noted that appellant had struck his head when he fell at work on August 7, 2020. Dr. Kumar opined that, if not for the August 7, 2020 fall, he would not have sustained the concussion.

In a December 10, 2020 report, Dr. Christopher J. Reid, a Board-certified neurologist, noted the August 7, 2020 employment incident in which appellant fell down steps and sustained contusions to the right side of his body. Appellant developed severe vertigo with nausea and sought treatment at an urgent care center. Dr. Reid opined that appellant exhibited classic symptoms of post-concussion syndrome.

By decision dated March 23, 2021, OWCP’s hearing representative affirmed the November 30, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 FECA,⁶ 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

³ OWCP also received vestibular therapy notes dated from October 9 through November 9, 2020.

⁴ Appellant also submitted November 11 and 27, 2020 vestibular therapy notes.

⁵ *Supra* note 1.

⁶ *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *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).

employment injury.⁷ 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.⁸

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. 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁹

The medical evidence required to establish causal relationship is 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 specific employment incidents identified by the employee.¹¹

ANALYSIS

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

The Board notes that appellant sought treatment for injuries sustained on the date of injury. Medical providers consistently reported that appellant fell down the stairs at work, struck his head, and suffered post-concussive symptoms. Additionally, Dr. Reilly, a Board-certified internist, noted the August 7, 2020 employment incident and diagnosed post-concussive symptoms in an August 18, 2020 report. Dr. Kumar, a Board-certified family practitioner, also diagnosed post-concussive symptoms in November 13 and December 8, 2020 reports. She specified that appellant would not have sustained a concussion, but for the August 7, 2020 employment incident.

In a December 10, 2020 medical report, Dr. Reid, a Board-certified neurologist, noted that appellant fell down the stairs and hit his head at work on August 7, 2020. He opined that, as a result, appellant exhibited classic symptoms of post-concussive syndrome, including severe vertigo with nausea, headaches, tinnitus, and blurred vision. Dr. Reid explained that the mechanism of appellant's injury supported the diagnosis of post-concussive syndrome. Although his opinion is insufficiently rationalized to establish causal relationship, it does raise an uncontroverted inference regarding causal relationship between the diagnosed condition and the

⁷ *C.H.*, Docket No. 20-1212 (issued February 12, 2021); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *V.L.*, *supra* note 6; *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).

⁹ *R.O.*, Docket No. 20-1243 (issued May 28, 2021); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *C.H.*, *supra* note 7; *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).

¹¹ *R.O.*, *supra* note 9; *V.L.*, *supra* note 6; *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).

accepted employment incident sufficient to require that OWCP further develop the medical evidence in the claim.¹²

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation and OWCP shares responsibility in the development of the evidence to see that justice is done.¹³

The case shall, therefore, be remanded for OWCP to refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether appellant's diagnosed conditions are causally related to the accepted employment factors. If the physician opines that the diagnosed conditions are not causally related to the employment incident, he or she must provide a rationalized explanation as to why their opinion differs from that articulated by Dr. Reid. After this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹² A.K., Docket No. 20-1426 (issued March 8, 2021); *see E.G.*, Docket No. 19-1296 (issued December 19, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹³ *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2021 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 27, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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