

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

N.C., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
SEATTLE VA MEDICAL CENTER,)
Seattle, WA, Employer)

**Docket No. 21-0934
Issued: February 7, 2022**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 3, 2021 appellant filed a timely appeal from a January 25, 2021 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 25, 2021 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 his burden of proof to establish that the acceptance of his claim should be expanded to include headaches as consequential to the accepted June 11, 2018 employment injury.

FACTUAL HISTORY

On June 21, 2018 appellant, then a 41-year-old pharmacy technician, filed a traumatic injury claim (Form CA-1) alleging that on June 11, 2018 he sustained neck and upper shoulder strains while lifting a partial case of fluid bags. He stopped work on June 18, 2018 and returned on June 20, 2018. OWCP accepted the claim for cervical spine ligament sprain, and right arm, upper arm, and shoulder strains.

In progress notes dated July 19, 2018 and a duty status report (Form CA-17) of even date, Melinda L. Franklin, advanced registered nurse practitioner (ARNP), diagnosed cervical radiculopathy and referred appellant for physical therapy.

OWCP received a July 21, 2018 emergency department note by Sabine L. Prince, an ARNP, who noted appellant had experienced worsening cervical pain following neck traction performed by a physical therapist.

In a July 23, 2018 letter, William Wainwright, a physical therapist, noted that cervical traction had been performed and that appellant reported no change in symptoms during treatment. Following this treatment, appellant reported severely increased symptoms including decreased range of motion, and had sought further emergency care.

Ms. Franklin, in progress notes dated July 26, 2018, noted appellant's emergency department visit following traction performed during physical therapy on July 21, 2018. She related that appellant's physical therapy was placed on hold due to his poor tolerance to both light manual and cervical therapy treatment.

OWCP received progress notes dated August 13 and 17, 2018 from Ms. Franklin. In the August 17, 2018 notes, Ms. Franklin noted that appellant had related that he began having headaches two weeks prior in the occipital and posterior neck regions, and that his headaches were worsening. She noted that she had explained to appellant that headaches could be multifactorial and were not uncommon with cervical spondylosis.

In August 27, 2018 progress notes, Ms. Franklin related that appellant continued to report headaches, which he believed were injury related, but that she had explained to him that headaches could be multifactorial and not necessarily related to cervical spondylosis. In October 1, 2018 progress notes, Ms. Franklin opined that appellant's headaches were not employment related.

In progress notes dated November 14, 2018, Dr. Matthew C. Keifer, a Board-certified internist, reported that appellant was seen for work-related neck and shoulder pain and headaches following a work injury. He noted that appellant developed headaches two hours after a cervical traction session. Appellant related being seen in the emergency department in late July and again in August for complaints of headaches. Both computerized tomography (CT) scans performed

during his emergency department visits were negative. Dr. Keifer opined that appellant had developed an onset of headaches following treatment for work-related shoulder and neck disorders.

In progress notes dated December 30, 2018 and April 2, 2019, Dr. Lee-Loung Liou, a Board-certified neurologist, reviewed diagnostic tests and reported a normal neurological examination without any sensory or motor deficit. Appellant related new headaches?, and neck and right shoulder pain symptoms, which he attributed to an employment injury and traction during physical therapy. Dr. Liou noted a December 30, 2018 magnetic resonance imaging (MRI) scan of appellant's brain was negative for structural contribution to appellant's intermittent headache complaints.

In a January 11, 2019 addendum, Dr. Keifer reported he had been asked to prescribe medication for appellant's headaches; however, he was unsure of the reasoning for using migraine headache medication for what may not be a vascular headache.

In progress notes dated January 16 and April 9, 2019, Digna H. Walker, an ARNP, related that appellant had persistent headaches of unknown origin and cervical strain.

In progress notes dated January 23, 2019, Dr. Keifer diagnosed cervical strain with persistent recurrent headaches of unclear etiology. He reported that appellant's recurrent headaches began after he underwent neck traction in physical therapy. Dr. Keifer also noted that appellant's neurologist speculated that the headaches could be attributed to stimulation of the neck nerve tissue.

Dr. Keifer, in progress notes dated February 6, 2019, noted that appellant was experiencing headache episodes about four times a day, lasting seven to eight minutes. He attributed appellant's headaches to cervical traction undertaken to relieve an employment-related neck/shoulder injury.

OWCP continued to receive progress notes dated February 20 and March 14, 2019, wherein Dr. Keifer diagnosed employment-related headache and neck strain.

In a development letter dated October 3, 2019, OWCP informed appellant that the evidence was insufficient to warrant expansion of the acceptance of his claim to include headaches. It advised him regarding the medical evidence to submit and afforded him 30 days to provide this information.

In an October 9, 2019 physical therapy report, Royce R. Larson, a physical therapist, noted a diagnosis of chronic tension-type headaches.

By decision dated November 20, 2019, OWCP denied expansion of the acceptance of appellant's claim to include consequential headaches. It found that the evidence of record was insufficient to establish causal relationship between his headaches and the accepted employment injury-related cervical traction therapy.

Subsequently, OWCP received physical therapy reports from Mr. Larson dated September 5 and October 29, 2019 for treatment of chronic tension-type headaches.

In progress notes dated December 3, 2019, Dr. Liou noted that appellant had been referred for treatment to a headache clinic on April 2, 2019. Appellant related that his headaches dramatically worsened after he had neck traction during physical therapy in July 2018. Dr. Liou noted that appellant had no headaches prior to his injury, which developed immediately after the work injury and following traction performed during physical therapy. He opined that appellant's history strongly suggested that appellant's employment injury was the cause of his headaches.

On March 17, 2020 appellant requested reconsideration and submitted additional evidence.

Dr. Liou, in progress notes dated June 3, 2020, reported that appellant was currently receiving treatment for his headaches from an employing establishment physician. He noted that appellant's headache symptoms and neck and shoulder were associated with an employment injury.

On March 20, 2020 OWCP referred appellant for a second opinion evaluation. In a report dated September 28, 2020, Dr. Linda Wray, an OWCP second opinion physician, Board-certified in neurology, reviewed appellant's medical record, and a statement of accepted facts (SOAF). She opined that appellant's headaches were unrelated to the accepted June 11, 2018 employment injury. Based on her examination findings, Dr. Wray found no evidence of cervical radiculopathy or other neurologic impairment. She explained that there was no documentation of any specific injury or physical condition caused by the traction, which would account for appellant's symptoms. Moreover, Dr. Wray related that on physical examination appellant had no evidence of tenderness or spasm over the cervicodorsal spine, skull base, or greater occipital nerve. Appellant had a completely normal examination. In addition, none of his MRI scans, CT scans, and electrodiagnostic testing documented any pathology related or not, which would explain his ongoing symptoms. Dr. Wray found appellant's prognosis for his headache complaints unknown based on the lack of any apparent explanation or etiology relating them to the traction incident or employment injury. The more likely cause of appellant's headaches was his use of high-dose of over-the-counter analgesics on a daily basis, making it likely that he had overuse/rebound headache.

By decision dated November 4, 2020, OWCP denied modification.

OWCP subsequently received progress notes dated November 2, 2020 from Dr. Liou, noting that appellant's MRI scan of the brain was negative for structural contribution to appellant's headaches.

On November 13, 2020 appellant requested reconsideration.

In support of his request for reconsideration, appellant submitted progress notes dated October 29, 2020 from Dr. Donald A. Bright, a Board-certified neurologist. Dr. Bright noted appellant's chronic headache disorder and long-term current use of anticoagulant. He reviewed and disagreed with Dr. Wray's opinion on the cause of appellant's headaches as he opined that appellant's cervicogenic headaches were due to the cervical traction used to treat appellant's employment-related cervical sprain. In support of this conclusion, Dr. Bright explained that, while cervical traction is normally safe, it can strain or sprain cervical ligaments and fascia. He also

related that appellant did not have osteoarthritis, significant disc herniation, or other causes of cervicogenic headaches.

By decision dated January 25, 2021, OWCP denied modification.

LEGAL PRECEDENT

Where 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.³

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁴ 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.⁵ 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.⁶

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct.⁷ Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural consequence of a compensable primary injury.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include headaches as consequential to the accepted June 11, 2018 employment injury

OWCP received a number of reports from Dr. Keifer and Dr. Liou. They attributed appellant's headaches to the traction used to treat appellant's employment-related cervical strain. While both physicians provided affirmative opinions that supported causal relationship, they did

³ *J.R.*, Docket No. 20-0878 (issued July 26, 2021); *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁴ *J.R., id.*; *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁵ *J.R., id.*; *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *Id.*

⁷ *See J.R., id.*; *S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004); Arthur Larson & Lex K. Larson, *The Law of Workers Compensation* 10-1 (2006).

⁸ *J.R., id.*; *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

not offer a rationalized medical explanation to support their opinions. Medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition, is of limited probative value on the issue of causal relationship.⁹ Thus, the opinions of Dr. Keifer and Dr. Liou are insufficient to meet appellant's burden of proof.

In an October 29, 2020 report, Dr. Bright diagnosed chronic headache disorder. He opined that appellant's cervicogenic headache had been caused by the cervical traction used to treat his employment-related cervical sprain. Dr. Bright explained that, while cervical traction was normally safe, it can result in the cervical ligaments and fascia strain or sprain and there was no other explanation for the cervicogenic headaches. The Board has held that a medical opinion should offer a medically-sound explanation of how the specific incident physiologically caused the diagnosed condition.¹⁰ Although Dr. Bright opined that the traction appellant underwent to treat his cervical sprain was the cause of his headaches, he did not support his opinion with medical rationale. This report, therefore, is insufficient to establish a consequential headache condition.

Appellant also submitted reports from ARNPs and physical therapists. As nurse practitioners and physical therapists are not considered physicians as defined under FECA, their medical findings and opinions are insufficient to establish entitlement to compensation benefits.¹¹

OWCP also received diagnostic testing reports. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors, and a diagnosed condition.¹² For this reason, these reports were insufficient to meet appellant's burden of proof.

OWCP referred appellant to Dr. Wray, a Board-certified neurologist, for second opinion evaluation. Dr. Wray reviewed appellant's objective physical examination and diagnostic testing findings and found no evidence supporting a causal relationship between appellant's headaches and the June 11, 2018 employment injury or the traction used to treat his cervical spine. She opined that the cause of appellant's cervicogenic headache was instead his high-dose of over-the-counter analgesics on a daily basis. Dr. Wray provided a thorough review of the factual and medical background and accurately summarized the relevant medical evidence. Moreover, she provided detailed findings on examination and reached conclusions regarding appellant's

⁹ *T.T.*, Docket No. 19-0319 (issued October 26, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020).

¹⁰ *M.G.*, Docket No. 21-0727 (issued October 15, 2021).

¹¹ Section 8101(2) of FECA provides that a 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 Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *P.H.*, Docket No. 19-0119 (issued July 5, 2019); *T.K.*, Docket No. 19-0055 (issued May 2, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). See also *W.Z.*, Docket No. 20-0191 (issued July 31, 2020) (a nurse practitioner is not considered a physician under FECA).

¹² See *S.O.*, Docket No. 21-0332 (issued September 24, 2021); *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

condition which comported with her findings. Consequently, Dr. Wray's opinion is entitled to the weight of the evidence.

As appellant has not submitted rationalized medical evidence sufficient to establish that the acceptance of his claim should be expanded to include headaches as consequential to the accepted employment injury, the Board finds that he has not met his burden of proof.

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 his burden of proof to establish that the acceptance of his claim should be expanded to include headaches as consequential to the accepted June 11, 2018 employment injury

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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