

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

D.K., Appellant)
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and)
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DEPARTMENT OF HOMELAND SECURITY,)
CYBER SECURITY AND INFRASTRUCTURE)
SECURITY AGENCY, Philadelphia, PA,)
Employer)
)
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)

**Docket No. 22-0994
Issued: March 3, 2023**

Appearances: *Case Submitted on the Record*
*Michael D. Overman, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 16, 2022 appellant, through counsel, filed a timely appeal from a December 20, 2021 merit decision of the Office of Workers’ Compensation Programs (OWCP). 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.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative’s collection of a fee without the Board’s approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a left eye condition causally related to the accepted September 17, 2019 employment incident.

FACTUAL HISTORY

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

On September 23, 2019 appellant, then a 52-year-old chief of regulatory compliance, filed a traumatic injury claim (Form CA-1) alleging that on September 17, 2019 he sustained a left eye condition while in the performance of duty. He explained that while enroute to his destination his eye became blurry. Appellant postulated that it was caused by loading suitcases in his car or when he rubbed his eyes. He indicated that he was diagnosed with a hemorrhage of the left eye and that his vision remained cloudy. Appellant stopped work on September 18, 2019.

In a medical report dated September 18, 2019, Dr. Arunan Sivalingam, a Board-certified ophthalmologist, noted that appellant related a history of blurred vision, fogginess, and light sensitivity in his left eye. He performed an examination and noted retinal elevation consistent with sub-retinal fluid, subretinal hemorrhage, and late hyper fluorescence consistent with macular degeneration. Dr. Sivalingam diagnosed myopic choroidal neovascularization, subretinal hemorrhage, and posterior vitreous detachment in the left eye and high myopia and nuclear sclerosis in both eyes.

In an unsigned work slip from a healthcare provider dated October 21, 2019, appellant was released to return to work as of November 20, 2019.

In a development letter dated October 31, 2019, OWCP informed appellant of the deficiencies of his claim and advised him of the type of factual and medical evidence necessary to establish his claim. It attached a questionnaire for his completion and requested that he provide a narrative medical report from his treating physician, which contained a detailed description of findings and diagnoses, explaining how his work activities caused, contributed to, or aggravated his medical condition. OWCP afforded appellant 30 days to respond.

In a November 16, 2019 narrative letter, Dr. Doray Gurkaynak, an optometrist, noted that appellant came under his care on September 17, 2019 due to sudden onset subretinal hemorrhage in his left eye with macular edema, which occurred while appellant was traveling for work. He indicated that acuity in the left eye had been reduced to 20/400, which was being treated with a series of injections. Dr. Gurkaynak further noted that appellant had seen his family physician to rule out systemic causes of subretinal hemorrhage, and that blood tests conducted on October 4, 2019 were inconclusive in finding a cause for the condition.

³ Docket No. 21-0214 (issued September 29, 2021).

In a November 19, 2019 response to OWCP's development questionnaire, appellant indicated that he was driving to attend and deliver closing remarks at an employing establishment workshop when he rubbed his left eye and noticed his vision was blurry. He stopped and changed his contact lens, but a grey cloud blocking his vision persisted. Appellant contacted Dr. Gurkaynak, who instructed him to seek emergency eyecare. On that basis he immediately went to a medical facility specializing in eye care, where he was diagnosed with a subretinal hemorrhage. In a follow-up visit, Dr. Sivalingam recommended a series of injections. Appellant indicated that he had no similar prior issues in the left eye, but did have a history of floaters in both eyes for the past five years.

By decision dated December 3, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed left eye condition and the accepted September 17, 2019 employment incident.

On December 13, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP received additional medical evidence including October 16, November 13, and December 20, 2019 follow-up reports of Dr. Sivalingam, who continued to diagnose myopic choroidal neovascularization, subretinal hemorrhage, and posterior vitreous detachment in the left eye. Dr. Sivalingam recommended ongoing anti-vascular endothelial growth factor injections.

During the telephonic hearing held on April 9, 2020 appellant clarified that, while preparing to drive to speak at a workshop for the employing establishment, he was struggling to load his suitcase into his vehicle and became lightheaded. Then, after driving for a few minutes, he rubbed his left eye and realized that something was wrong with it. Appellant also outlined his treatment thereafter and his ongoing symptoms including cloudy vision, tunnel vision, and light sensitivity. He returned to work in January 2020. The hearing representative advised appellant of the type of medical evidence necessary to establish appellant's traumatic injury claim and held the case record open for 30 days for the submission of additional evidence. OWCP did not receive any further evidence.

By decision dated June 23, 2020, OWCP's hearing representative affirmed the December 3, 2019 decision.

On December 8, 2020 appellant, through counsel, appealed the June 23, 2020 decision to the Board.

By decision dated September 29, 2021,⁴ the Board affirmed OWCP's June 23, 2020 decision.

On October 21, 2021 appellant, through counsel, requested reconsideration. In support of the request, appellant submitted a March 18, 2020 narrative report by Dr. Gurkaynak, who noted that, on the morning of September 17, 2019, appellant was preparing to travel to a work event. He placed his 48-pound suitcase into his work vehicle and immediately felt lightheaded and then,

⁴ *Id.*

while driving, he noticed that his vision was substantially reduced. Dr. Gurkaynak explained that lifting the heavy suitcase into the vehicle and the stress of attending the event elevated appellant's blood pressure and aggravated his retinal vasculature, which caused the retinal vasculature to burst and leak in the left eye. He opined that the September 17, 2019 "job[-]related stress together with the suitcase elevated [appellant's] retinal vasculature pressure and contributed to the subretinal hemorrhage [of the left eye] with macular edema," which reduced the acuity in the left eye from 20/30 to 20/400.

By decision dated December 20, 2021, OWCP denied modification of its prior 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 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. 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, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁹

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident 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

⁵ *Supra* note 2.

⁶ *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).

⁷ *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).

⁸ *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 *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).

¹⁰ *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).

nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.¹¹

In any case where 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.¹²

ANALYSIS

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

Preliminarily, the Board notes that it is unnecessary for it to consider the evidence appellant submitted prior to the issuance of OWCP's June 23, 2020 decision because the Board considered that evidence in its September 29, 2021 decision. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.¹³

In his March 18, 2020 report, Dr. Gurkaynak discussed appellant's medical history and provided findings on acuity testing of the left eye. He discussed the mechanism of injury for this traumatic injury claim, noting that appellant was preparing to attend a work event and placed his 48-pound suitcase into his work vehicle and immediately felt lightheaded and noticed his vision was substantially reduced. Dr. Gurkaynak explained that lifting the heavy suitcase into the vehicle and the stress of attending the event elevated appellant's blood pressure and aggravated his retinal vasculature, which caused the retinal vasculature to burst and leak in the left eye. He opined that the September 17, 2019 "job[-]related stress together with the suitcase elevated [appellant's] retinal vasculature pressure and contributed to the subretinal hemorrhage [of the left eye] with macular edema," which reduced the acuity in the left eye from 20/30 to 20/400.

The Board finds that, while the March 18, 2020 report from Dr. Gurkaynak is not fully rationalized, it is sufficient to require further development of the medical evidence in this claim. Dr. Gurkaynak exhibited a comprehensive understanding of appellant's history of injury and provided a rationalized explanation as to how the accepted employment incident resulted in his diagnosed left eye conditions. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest a causal connection beyond all possible doubt. Rather, the evidence required is only that which is necessary to convince the adjudicator that the

¹¹ *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).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *M.B.*, Docket No. 20-1275 (issued January 29, 2021).

¹³ *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

conclusion drawn is rational, sound, and logical.¹⁴ Dr. Gurkaynak's medical opinions as set forth in his March 18, 2020 report require further development of appellant's claim.¹⁵

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility for the development of the evidence.¹⁶ OWCP has an obligation to see that justice is done.¹⁷

On remand, OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts, for an examination and a rationalized medical opinion as to whether the accepted employment incident either caused or aggravated his diagnosed conditions.¹⁸ If the second opinion physician disagrees with the explanations provided by Dr. Gurkaynak, he or she must provide a fully-rationalized explanation as to why the accepted employment factors were insufficient to have caused or aggravated appellant's diagnosed conditions. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹⁴ *T.F.*, Docket No. 19-1900 (issued October 27, 2020); *W.M.*, Docket No. 17-144 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011).

¹⁵ *See T.F., id.; J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁶ *See id.; see also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy Hammons*, 51 ECAB 219, 223 (1999).

¹⁷ *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁸ *Supra* note 12 at Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

ORDER

IT IS HEREBY ORDERED THAT the December 20, 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: March 3, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board