

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

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G.K., Appellant)	
)	
and)	Docket No. 23-1060
)	Issued: January 9, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
ATLANTA VA MEDICAL CENTER,)	
Decatur, GA, Employer)	
)	

Appearances:
Paul Felser, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
 JANICE B. ASKIN, Judge
 VALERIE D. EVANS-HARRELL, Alternate Judge
 JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 7, 2023 appellant, through counsel, filed a timely appeal from a February 10, 2023 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 to consider 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 an 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 medical condition causally related to the accepted October 15, 2021 employment incident.

FACTUAL HISTORY

On October 28, 2021 appellant, then a 72-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on October 15, 2021 when he attempted to pick up a box, he slipped and fell backwards hitting his head resulting in headaches, dizziness, blurry vision, double vision, lack of coordination, poor balance, memory loss, and pain in the right ear, right neck, and right shoulder while in the performance of duty. He stopped work on October 25, 2021.

In a November 10, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated December 20, 2021, OWCP accepted that the October 15, 2021 employment incident occurred, as alleged, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted employment incident.

OWCP thereafter received medical evidence. On October 26, 2021 Dr. Ogonna Iwuora, a Board-certified neurologist, examined appellant due to headaches, tingling, and a gait problem. She recounted his history of falling at work on October 15, 2021 and hitting his head posteriorly without loss of consciousness. Dr. Iwuora listed appellant's previous medical history of brain cyst, diabetes mellitus, hypertension, and post-traumatic stress disorder. She completed an examination and diagnosed cerebral cyst, dizziness, visual changes, and post-traumatic headache.

In a June 17, 2022 report, Dr. Joshua Wewel, a Board-certified neurosurgeon, examined appellant due to lumbar stenosis and recounted his work-related fall in October 2021. He examined appellant and diagnosed lumbar stenosis and neurogenic claudication.

On September 26, 2022 Dr. Brice B. Choi, a Board-certified neurologist, examined appellant due to headaches, low back pain and memory loss. He recounted that appellant attributed his symptoms to his work-related fall onto hard ground on October 15, 2021. Dr. Choi listed the diagnoses as other headache syndrome, abnormalities of gait and mobility, amnesia, low back pain, cervicgia, idiopathic progressive neuropathy, paresthesia of skin, and disorientation. In an October 3, 2022 report, he diagnosed idiopathic progressive neuropathy. On October 14, 2022 Dr. Choi conducted an electroencephalogram (EEG) test which was abnormal and demonstrated disorientation. He examined appellant on October 17, 2022 and repeated his previous diagnoses.

Dr. Choi completed an October 31, 2022 magnetic resonance imaging (MRI) scan of appellant's head which demonstrated mild-to-moderate white matter disease most likely

representing small vessel ischemic changes. On November 1, 2022 he listed the primary diagnosis as other headache syndrome and also diagnosed amnesia, Alzheimer's disease, dementia, idiopathic progressive neuropathy, paresthesia of skin, primary insomnia, low back pain, and cervicalgia.

On December 19, 2022 appellant, through counsel, requested reconsideration and provided additional evidence. On March 7, 2022 Dr. Edwin W. Hoepfer, a Board-certified psychiatrist, examined appellant and diagnosed PTSD, chronic major depression, brain cyst, concussion on October 16, 2021, diabetes with neuropathy, and hypertension. He completed a report on September 19, 2022 diagnosing combat-related PTSD. Dr. Hoepfer recounted that appellant fell at work on October 15, 2021 and was knocked unconscious. He reported that appellant was paralyzed from the waist down and required an aide to stay at home.

By decision dated February 10, 2023, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact 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 period of FECA,³ 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.⁴ 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.⁵

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred at the time and place, and in the manner alleged.⁶ The second component is whether the employment incident caused an injury.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship

³ See *L.B.*, Docket No. 23-0099 (issued July 26, 2023); *O.R.*, Docket No. 20-1518 (issued November 17, 2022); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.⁹ 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 specific employment factor(s).¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted October 15, 2021 employment incident.

OWCP received an October 26, 2021 report from Dr. Iwuora, who diagnosed cerebral cyst, dizziness, visual changes, and post-traumatic headache and recounted appellant's history of falling at work on October 15, 2021. It also received a June 17, 2022 report from Dr. Wewel, which noted diagnoses of lumbar stenosis and neurogenic claudication and described the work-related fall in October 2021. In a September 26, 2022 report, Dr. Choi diagnosed other headache syndrome, abnormalities of gait and mobility, amnesia, low back pain, cervicgia, idiopathic progressive neuropathy, paresthesia of skin, and disorientation and noted that appellant attributed his symptoms to his work-related fall onto hard ground on October 15, 2021. These reports, however, offered no opinion regarding causal relationship. 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.¹¹ For this reason, the Board finds that the reports from Drs. Iwuora, Wewel, and Choi are of no probative value and, therefore, are insufficient to establish appellant's claim.

In reports dated October 3 and 17, and November 1, 2022, Dr. Choi repeated his prior diagnoses and added additional conditions including Alzheimer's disease and primary insomnia but offered no opinion regarding causal relationship. As previously noted, a medical report lacking an opinion regarding causal relationship is of no probative value and, thus, is insufficient to establish appellant's claim.¹²

In March 7 and September 19, 2022 reports, Dr. Hoepfer diagnosed concussion and reported that appellant fell at work on October 15, 2021 and was knocked unconscious. His opinion is conclusory in nature as he did not explain with rationale how the accepted employment incident physiologically caused appellant's diagnosed conditions.¹³ Therefore, this evidence is insufficient to meet appellant's burden of proof.

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁰ *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *J.H.*, Docket No. 20-1414 (issued April 5, 2022); *S.W.*, Docket No. 19-1579 (issued October 9, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *Id.*

¹³ *B.P.*, Docket No. 21-0872 (issued December 8, 2021); *L.S.*, Docket No. 20-0570 (issued December 15, 2020); *E.H.*, Docket No. 19-1352 (issued December 18, 2019); *E.C.*, Docket No. 17-1645 (issued June 11, 2018).

The Board notes that appellant submitted diagnostic reports, including an EEG test and an MRI scan of the head. The Board has held, however, that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on causal relationship between an employment incident, and a diagnosed condition.¹⁴ Thus, this evidence is also insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence establishing a medical condition causally related to the accepted November 20, 2022 employment incident, the Board finds that she has not met her burden of proof.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted October 15, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

¹⁴ *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).