

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

M.K., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Biloxi, MI, Employer**

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**Docket No. 18-0150
Issued: January 21, 2020**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 26, 2017 appellant filed a timely appeal from a September 15, 2017 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

ISSUE

The issue is whether appellant has met her burden of proof to establish a thoracic injury causally related to the accepted July 14, 2017 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the September 15, 2017 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 evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On July 28, 2017 appellant, then a 54-year-old advanced medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 14, 2017 she suffered a seizure causing her to fall out of her chair onto the floor injuring her back while in the performance of duty. The employing establishment controverted her claim and indicated that her disability was not caused by a traumatic injury and was not work related. Rather, it asserted that appellant had a nonwork-related seizure. Appellant stopped work on July 15, 2017.

In a development letter dated August 2, 2017, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a physician's reasoned opinion addressing causal relationship. It requested that she respond to an attached questionnaire to substantiate the factual allegations of her claim. OWCP afforded appellant 30 days to respond.

In a report dated July 15, 2018, Dr. Fares Hujier, a Board-certified internist, noted his examination of appellant following a seizure with subsequent back pain. Appellant reported that while sitting at work she had a seizure which lasted for 30 seconds and then fell from her chair. She did not remember the details of the seizure episode, but was informed of what occurred by her colleagues. Appellant noted that after the seizure she experienced confusion, severe back pain between the shoulders, a headache, and fatigue. Dr. Hujier noted that her history was significant for hypertension, hypothyroidism, depression, osteoarthritis, hypoglycemia, and post-traumatic stress disorder (PTSD). He noted a computerized tomography (CT) scan of the head revealed no intracranial hemorrhage, no mass effect, or herniation. A CT scan of the chest with contrast revealed moderate-to-severe compression fracture of an upper thoracic vertebral body at T4 of indeterminate age resulting in mild-to-moderate spinal canal narrowing. Dr. Hujier diagnosed new onset seizure, generalized seizure with loss of consciousness with postical confusion, arrhythmia with a history of palpitation, compression fracture of T4 with spinal canal narrowing, hypertension, hypothyroidism, and depression.

Appellant also submitted a discharge summary for the hospital admission relating to her treatment from July 15 to 18, 2017. In these notes Dr. Hujier noted a principal diagnosis of new onset of seizure and secondary diagnoses of arterial hypertension, depression, gastroesophageal reflux disease, PTSD, hypoglycemia, compression fracture of T4, and hypothyroidism. He noted that appellant was referred from the employing establishment medical center after a witnessed seizure on the afternoon of July 14, 2017. Appellant reported back pain between the shoulders. On presentation she was alert, was oriented without neurological signs, and had back pain. Appellant's history was significant for multip psychiatric medications and a high dose of pain medication. Dr. Hujier discharged her in stable condition and permitted physical activity as tolerated.

On July 18, 2017 appellant was seen in consultation by Dr. Tina L. Jackson, a Board-certified psychiatrist, and Dr. Mark A. Haygood, an osteopath specializing in psychiatry, after a witnessed seizure at work. Drs. Jackson and Haygood noted that appellant had no prior seizure history. They diagnosed an associated compression fracture of appellant's upper thoracic spine and noted that she had a history of PTSD, depression, and borderline personality disorder and that she was on multiple psychiatric medications. Appellant reported being psychiatrically stable

for the past two years, but had experienced baseline auditory hallucinations. Drs. Jackson and Haygood noted findings on mental status examination and ruled out substance-induced psychotic disorder, but again noted PTSD by history, unspecified depressive disorder by history, and borderline personality disorder by history.

A July 17, 2017 electroencephalogram (EEG) report revealed generalized background slowing consistent with nonspecific global brain dysfunction. A July 18, 2017 magnetic resonance imaging (MRI) scan of the brain revealed mild nonspecific white matter disease.

In a statement dated August 13, 2017, appellant indicated that on July 14, 2017 she was sitting at her computer desk and had a seizure which caused her to fall out of her chair to the floor where she sustained a compressed fracture of the thoracic spine at T4. She did not remember having a seizure. Immediately, after the fall she experienced pain in the middle of her back and shoulder blades and confusion as to what occurred. Appellant advised that she has not experienced any other injury and had no history of fainting or seizures. She noted the diagnostic studies including an EEG, laboratory findings, and MRI scans which were normal. Appellant was discharged with a back brace. She reported experiencing excruciating pain, numbness in her left arm, hand, and leg, and indicated that she could no longer perform activities of daily living.

In an August 17, 2017 note Dr. Anthony M. Martino, a Board-certified neurosurgeon, noted that appellant could return to work on August 31, 2017 with a back brace.

On August 29, 2017 the employing establishment controverted appellant's claim noting that she had not established that her seizure was causally related to her employment nor had she submitted medical documentation supporting total disability.

Appellant submitted a statement from B.N., a coworker, who noted that on July 14, 2017 appellant was at her computer working and, at 5:25 p.m., she heard appellant holler and push her chair back against the wall. B.N. indicated that the nurses and one of the physicians came to assist appellant and she slid from her chair. Appellant received support from the attending nurses.

By decision dated September 15, 2017, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish that she sustained an injury or medical condition causally related to the accepted July 14, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 filed within the applicable time limitation period of FECA,⁴ that an injury was sustained while in the performance of duty, as

³ *Id.*

⁴ See *R.B.*, Docket No. 18-1327 (issued December 31, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

To determine whether an employee 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, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁷ The second component is whether the employment incident caused a personal injury.⁸

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.⁹ Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the specific employment factors identified by the employee.¹¹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a thoracic injury causally related to the accepted July 14, 2017 employment incident.

Appellant was treated by Dr. Hujier from July 15 to 18, 2017 for a seizure with subsequent back pain. Dr. Hujier noted physical examination findings the history of injury following a seizure and fall at work. He diagnosed new onset seizure, generalized seizure with

⁵ *Y.K.*, Docket No. 18-0806 (issued December 19, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *D.C.*, Docket No. 18-1664 (issued April 1, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹⁰ *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *L.D.*, *id.*; see also *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

loss of consciousness with postical confusion, arrhythmia with a history of palpitation with hypertension, compression fracture of T4 with spinal canal narrowing, hypertension, hypothyroidism, and depression. Similarly, in a discharge summary, Dr. Hujier noted a principal diagnosis of new onset of seizure and secondary diagnoses of arterial hypertension, depression, gastroesophageal reflux disease, PTSD, hypoglycemia, compression fracture of T4, and hypothyroidism. In his reports he did not provide an opinion as to whether there was causal relationship between these diagnosed conditions and the accepted employment incident. 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 on the issue of causal relationship.¹³ These reports, therefore, are insufficient to establish appellant's claim.

On July 18, 2017 appellant was seen in consultation by Drs. Jackson and Haygood after a witnessed seizure at work. They diagnosed an associated compression fracture of her upper thoracic spine. Appellant was noted to have essentially normal findings on mental status examination and diagnosed PTSD by history, unspecified depressive disorder by history, and borderline personality disorder by history. The July 18, 2017 report by Drs. Jackson and Haygood report is insufficient to establish the claim as the physicians did not specifically address whether appellant's employment activities had caused or aggravated the diagnosed fracture of the thoracic spine. As such, their report is of no probative value on the issue of whether appellant sustained a thoracic injury causally related to the accepted July 14, 2017 employment incident.¹⁴

Appellant submitted an August 17, 2017 note from Dr. Martino, who noted that appellant could return to work on August 31, 2017 with a back brace. Dr. Martino's note is insufficient to establish the claim as he also failed to provide an opinion on the issue of causal relationship.¹⁵

The record also contains a July 17, 2017 EEG report and a July 18, 2017 brain MRI scan report, as well as CT scan reports. These diagnostic testing reports lack probative value, on the issue of causal relationship, as they do not address whether the employment incident caused a diagnosed condition.¹⁶ Thus, this evidence is insufficient to meet appellant's burden of proof.

As appellant has not provided a rationalized medical opinion which supports that her diagnosed thoracic spine injury is causally related to her accepted July 14, 2017 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

On appeal appellant asserts that her traumatic injury claim was improperly denied and that she submitted sufficient evidence to establish a work-related fracture of her thoracic spine causally related to having a seizure at work. As found above, the medical evidence submitted does not establish that she has a diagnosed medical condition that is causally related to her

¹³ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See *C.S.*, Docket No. 18-1633 (issued December 30, 2019); *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

accepted employment incident. Appellant has not submitted a physician's report which sufficiently describes how the incident at work on July 14, 2017 caused or aggravated her diagnosed thoracic fracture of her spine at T4.

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 her burden of proof to establish a thoracic injury causally related to the accepted July 14, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 21, 2020
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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