

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

R.B., Appellant)	
)	
and)	Docket No. 22-0713
)	Issued: July 26, 2022
DEPARTMENT OF DEFENSE, DEPARTMENT)	
OF DEFENSE EDUCATIONAL ACTIVITY,)	
Lakenheath, UK, Employer)	
)	

Appearances:
Thomas S. Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 7, 2021 appellant, through counsel, filed a timely appeal from a January 12, 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 her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to, or as a consequence of, her February 16, 2016 employment injury.

FACTUAL HISTORY

On March 3, 2016 appellant, then a 53-year-old kindergarten aide, filed a traumatic injury claim (Form CA-1) alleging that on February 16, 2016 she injured her left and right thumbs, right palm, shoulders, and head when she slipped and fell on ice in the parking lot of the employing establishment while in the performance of duty. She stopped work on February 17, 2016 and returned to work on February 22, 2016. OWCP accepted the claim for post-concussion syndrome and post-traumatic headaches. It paid appellant wage-loss compensation on the supplemental rolls for intermittent time lost from work for the period April 27, 2016 through December 15, 2017.

In a report dated November 1, 2017, Dr. Bruce Smart, an osteopath, advised that appellant had experienced upper back and neck pain after a February 16, 2016 concussion at work. He noted that she could work, but that the “combination of computer posture and the effort of concentration causes her crushing headaches.”

On January 18, 2018 Dr. S.J. Wroe, a neurologist, discussed appellant’s history of a February 16, 2016 employment injury and noted that she had continued complaints of headaches, difficulty concentrating, sensitivity to noise, and disturbed sleep. He indicated that a neurological examination yielded normal findings and opined that she had “suffered a minor head injury.” In an addendum dated February 8, 2018, Dr. Wroe advised that a magnetic resonance imaging (MRI) scan of the brain was normal.

In a report dated April 4, 2018, Dr. Luise Weigel, a clinical psychologist, obtained a history of appellant falling on ice at work two years earlier and noted that she had been diagnosed with post-concussive syndrome. She reviewed appellant’s symptoms of difficulty with memory, concentration, noise, sleep, and stress, continued headaches, loss of confidence, and withdrawal. Dr. Weigel recommended psychological testing.

On August 13, 2018 Dr. Weigel noted that appellant had continued headaches and difficulty with her memory and mood after a fall two years earlier.³ She advised that psychological testing showed that she had “significant difficulty encoding and retrieving auditory information from immediate storage” and decreased ability to manipulate visual-spatial information. Dr. Weigel recommended that appellant be allowed to write down instructions and that she not work in a significantly stressful or noisy environment. She also recommended reduced work hours and found that she could continue working as a teaching assistant with adjustments. In an accompanying letter of even date, Dr. Weigel advised that appellant had memory difficulties

³ In an October 17, 2018 report, Dr. Weigel summarized her prior findings and recommended that appellant work part time two days a week. In a report dated December 13, 2018, Dr. Wroe advised that appellant’s condition had improved. He concurred with Dr. Weigel’s suggestion of a reduced workload to control her symptoms. On January 13, 2019 Dr. Weigel again found that appellant was unable to work full time.

following a fall two years earlier with no lesions found on MRI scans. She opined that she had a significant memory impairment. Dr. Weigel advised that appellant had “lost confidence in her abilities as a consequence of this head injury.”

In an unsigned January 24, 2019 report, Dr. Wroe found that appellant was doing reasonably well. He related that appellant’s head injury on February 16, 2016 was minor and that “on the balance of probabilities, none of her present symptoms [were] attributable to the head injury and accident in February 2016.”

On November 10, 2020 counsel asserted that she had sustained additional conditions causally related to her February 16, 2016 employment injury.

In support of her request, appellant submitted a December 6, 2018 report from Dr. Smart. Dr. Smart found that appellant’s concussion, upper back, and neck pain had improved after her February 16, 2016 fall. He related, “A very tender sub occipital lobe at the nuchal line toward [the] center line of the left side persists. This leads to headache and localized pain when she becomes too loaded with anything that represents as a stress.”

In an April 29, 2019 report from Dr. Weigel indicated that she had begun treating appellant in March 2018 for continued headaches two years after a fall at work. She advised that appellant had difficulty functioning periodically due to her headaches and that “loud noises made her feel anxious and gave her headaches.” Dr. Weigel noted that she had difficulty with memory and sleep and felt worried and overwhelmed. She found that testing showed that appellant had an impaired ability to encode and retrieve auditory information and temporarily hold visual-spatial information while manipulating information. Dr. Weigel further indicated that testing showed moderate depression and mild anxiety. She recommended that appellant receive written instructions at work and not be exposed to stressful or loud environments. Dr. Weigel noted that she found it hard to concentrate around multiple conversations and was “more emotional, irritable, and sensitive.”

In a development letter dated November 19, 2020, OWCP advised appellant that the evidence submitted was insufficient to support a possible consequential injury of anxiety due to the accepted employment injury. It requested that she submit a description of the development of the newly-diagnosed condition and a report from her physician addressing how the diagnosed condition was related to the February 16, 2016 employment injury. OWCP afforded appellant 30 days to submit the requested information.

On December 14, 2020 counsel asserted that the previously submitted medical evidence demonstrated that appellant had sustained additional conditions causally related to the accepted employment injury. In an attached statement, appellant related that, since her February 16, 2016 fall, she had experienced loss of memory, migraine headaches, high blood pressure, and sensitivity to light and noise. She advised that she also had a lightning-bolt sensation in her head and swelling and pressure. Appellant asserted that, after her fall on February 16, 2016, she felt anxious and had a headache and nausea. She missed work due to her injury and had to wear sunglasses and earplugs. Appellant also had memory loss. She resigned in June 2019 due to her condition. Appellant questioned why her case was closed and why she had to use sick leave instead of claiming wage-loss compensation.

By decision dated January 12, 2021, OWCP denied appellant's request to expand the acceptance of her claim to include an additional condition due to, or as a consequence of, her accepted employment injury.

LEGAL PRECEDENT

When 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.⁴

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁵ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.⁶ 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.⁷

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 the claimant's own intentional misconduct.⁸ 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 result of a compensable primary injury.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to or as a consequence of her February 16, 2016 employment injury.

In a report dated April 4, 2018, Dr. Weigel discussed appellant's complaints of problems with memory, concentration, stress, sleep, headaches, and withdrawal. She noted that she had been diagnosed with post-concussive syndrome after a fall two years earlier. On August 13, 2018 Dr. Weigel indicated that appellant suffered with headaches, memory loss, and mood swings after

⁴ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

⁸ *See M.M.*, Docket No. 20-1557 (issued November 3, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *Charles W. Downey*, 54 ECAB 421 (2003).

⁹ *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

a fall two years prior. She advised that psychological testing showed a memory impairment. Dr. Weigel opined that appellant had lost confidence in her capability due to her head injury. She did not, however, explain physiologically or psychologically how the accepted employment injury resulted in memory loss or any other condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition is causally related to employment factors.¹⁰ Thus, Dr. Weigel's opinion is insufficient to meet appellant's burden of proof to establish expansion of the acceptance of appellant's claim.

On April 29, 2019 Dr. Weigel related that she had treated appellant since March 2018 for continued headaches two years after a fall at work. She advised that appellant experienced headaches, memory and sleep difficulties, and anxiety with exposure to loud noise. Dr. Weigel noted that testing showed that she had an impaired ability to encode and retrieve auditory information or to hold visual-spatial information while manipulation information. She diagnosed moderate depression and mild anxiety. Dr. Weigel recommended that appellant receive written instructions and avoid stressful or noisy environments. She did not, however, address the cause of the diagnosed conditions of moderate depression and mild anxiety. Consequently, Dr. Weigel's report is of no probative value on the issue of causal relationship.¹¹

On November 1, 2017 Dr. Smart discussed appellant's complaints of neck and upper back pain after a February 16, 2016 employment-related concussion. He found that she could work but noted that concentrating and her posture at the computer caused significant headaches. In a report dated December 6, 2018, Dr. Smart advised that appellant's concussion and pain in her neck and upper back had improved, but that she continued to have headaches and pain when exposed to stress. He did not provide an opinion on the relevant issue of whether appellant's claim should be expanded to include additional conditions; consequently, these reports are of no probative value.¹²

In a report dated January 18, 2018, Dr. Wroe obtained a history of the February 16, 2016 employment injury and noted that appellant complained of noise sensitivity, headaches, loss of concentration, and sleep difficulty. He indicated that her neurological examination was normal and opined that she had experienced a minor head injury. On January 24, 2019 Dr. Wroe advised that appellant's current symptoms were not due to her February 2016 injury. As he did not find that she had sustained additional conditions causally related to or as a consequence of her accepted employment injury, his opinion is of no probative value and insufficient to meet her burden of proof.¹³

¹⁰ See *A.P.*, Docket No. 20-1668 (issued March 2, 2022); *D.S.*, Docket No. 21-0673 (issued October 10, 2021).

¹¹ See *R.P.*, Docket No. 20-0891 (issued September 20, 2021); *V.R.*, Docket No. 19-0758 (issued March 16, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *Id.*; see also *O.M.*, Docket No. 18-1055 (issued April 15, 2020).

¹³ *Id.*

Appellant has not submitted rationalized medical evidence establishing that she sustained additional conditions causally related to or as a consequence of her accepted February 16, 2016 employment injury and, therefore, has not met her burden of proof.¹⁴

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 expand the acceptance of her claim to include additional conditions causally related to or as a consequence of her February 16, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy 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

¹⁴ *A.P.*, *supra* note 10; *G.M.*, Docket No. 19-0933 (issued October 1, 2019).