

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

_____)
D.T., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Pittsburgh, PA, Employer)
_____)

Docket No. 22-0031
Issued: May 24, 2022

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 4, 2021 appellant filed a timely appeal from a June 22, 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.

ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of the claim to include a seizure condition as causally related to the accepted July 20, 2018 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On August 10, 2018 appellant, then a 22-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on July 20, 2018 he sustained injuries to his head and knees, including a broken maxilla on the right side, when he fell to the floor and hit his face while in the performance of duty. He stopped work on July 20, 2018 and returned to work on August 14, 2018.

In an August 6, 2018 medical note, Dr. Marianna Vinokur, a resident physician, advised that appellant could return to work on August 7, 2018.

In an August 10, 2018 statement, appellant explained that on July 20, 2018 he fell and hit his head/face on the workroom floor. He related that he came out of the bathroom and did not remember how he injured his head and face or how the impact caused his tooth avulsion. The only thing appellant recalled was waking up in an ambulance on his way to the hospital after the incident.

C.S., a customer service manager, recounted in an August 22, 2018 statement that on July 20, 2018 appellant was involved in an incident at the employing establishment. He indicated that, according to appellant and witnesses, appellant was walking on the workroom floor when he "went into a seizure" and fell to the floor. The fall resulted in injuries to appellant's face and mouth when his head hit the concrete floor. The paramedics were immediately called, and he was transported to the hospital.

In a letter of even date, the employing establishment controverted appellant's claim, noting that he exited the bathroom and fell to the floor, landing on his face. It contended that he submitted no evidence to establish fact of injury or causal relationship.

In an August 23, 2018 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a September 12, 2018 response, appellant explained that on the date of the alleged employment incident he had just finished putting up the delivery point sequence and using the restroom. The last thing he remembered was leaving the restroom and later waking up in an ambulance outside of the work building. All appellant recalled was falling on his face and the impact of the fall causing him to lose a tooth and break a bone in his face near his right upper lip. He also stated that he had no other similar disabilities or symptoms prior to his injury.

By decision dated October 3, 2018, OWCP denied appellant's claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with his injury. It

² Docket No. 19-1486 (issued January 17, 2020); Docket No. 21-0091 (issued May 21, 2021).

concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

OWCP continued to receive evidence. In a September 26, 2018 attending physician's report (Form CA-20), Dr. James Jones, Board-certified in family medicine, diagnosed a new onset seizure and a tooth avulsion in relation to the July 20, 2018 employment incident. When responding to the question of whether he believed that appellant's conditions were caused or aggravated by an employment activity, Dr. Jones noted that it was not applicable.

On November 1, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on February 26, 2019.

Appellant submitted a July 20, 2018 after visit summary indicating that he was seen by Dr. Brent Rau, Board-certified in emergency medicine. The note diagnosed a seizure and a tooth avulsion and recommended that appellant follow up with his primary care physician, a dentist, and a neurologist for further evaluation.

Appellant submitted an August 13, 2018 after visit summary indicating that Dr. Jones saw appellant for a new onset of seizure and dental trauma.

Appellant subsequently submitted an unsigned July 20, 2018 diagnostic report where he underwent a computerized tomography (CT) scan of his facial bones that found a fracture of the maxilla along the alveolar ridge with loosening on the right canine tooth.

In an August 8, 2018 diagnostic report, Dr. Troy Desai, a Board-certified neurologist, reported that an electroencephalogram (EEG) revealed normal findings.

By decision dated April 8, 2019, OWCP affirmed the October 3, 2018 decision, as modified. It accepted that the July 20, 2018 incident occurred as alleged and that there was a diagnosed seizure and tooth avulsion. However, OWCP found that the evidence of record was insufficient to establish that the alleged injury occurred while in the performance of duty. It explained that his seizure and fall were due to an idiopathic incident (*i.e.*, a personal, nonoccupational pathology without intervention or contribution by a factor of employment) and, therefore, the injury was not considered compensable.

On July 1, 2019 appellant appealed to the Board. By decision dated January 17, 2020, the Board determined that the case was not in posture for decision and remanded the case to OWCP for further development regarding whether he suffered an idiopathic fall or an unexplained fall.³

On June 17, 2020 OWCP referred appellant, with a statement of accepted facts (SOAF) and a copy of the medical record, to Dr. Charles Gennaula, a Board-certified neurologist, for a second opinion evaluation to determine whether appellant suffered a seizure, which caused appellant to fall and strike his face or whether the fall caused him to have the seizure.

³ Docket No. 19-1486 (issued January 17, 2020).

In his August 3, 2020 medical report, Dr. Gennaula reviewed the SOAF, history of injury and medical evidence of record, including that appellant's fall resulted in damage to his tooth in the form of a tooth avulsion. He noted that appellant had no history of seizure or prior losses of consciousness and that the record seemed to indicate that appellant "simply fell and had a seizure."⁴ Dr. Gennaula provided that, based on review of the record provided, appellant's description of the events, and the witnesses available, there was no clear evidence to suggest that there was any trip and fall event. He opined that appellant appeared to have lost consciousness and fallen to the ground, noting the convulsive activity witnessed with the fall. Dr. Gennaula reasoned that, based on the information available to him, the incident appeared to be a primary event not directly related to appellant's work, explaining that appellant suffered a "fall/loss of consciousness with likely etiology being a seizure event that was unprovoked by any circumstances at [appellant's] work." He concluded that appellant suffered a seizure and fell to the floor and, based on FECA's definition of causation, the event did not appear to be causally related to appellant's federal employment.

By decision dated September 1, 2020, OWCP accepted that appellant fell on July 20, 2018 while in the performance of duty as alleged. It found that "[t]here did not appear to be any clear underlying event that precipitated this event based on the records in regard to the trip and fall stressor or event that occurred in the workplace." However, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that his diagnosed medical conditions were causally related to the July 20, 2018 employment incident.

On October 19, 2020 appellant appealed to the Board. By decision dated May 21, 2021, the Board found that he had met his burden of proof to establish a tooth avulsion and facial fracture causally related to the accepted July 20, 2018 employment incident. The Board reversed the decision in part and remanded for payment of medical expenses and any attendant disability. The Board further found, however, that the case was not in posture for decision as to whether appellant's seizure was causally related to the accepted injury because OWCP failed to properly explain its findings. The Board remanded the case to OWCP for findings of fact and a statement of reasons, to be followed by a *de novo* decision.⁵

By *de novo* decision dated June 22, 2021, OWCP again denied appellant's claim, finding that the evidence of record was insufficient to establish that his medical condition was causally related to the accepted July 20, 2018 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.⁶

⁴ Appellant also informed Dr. Gennaula that he may have tripped on something, although appellant did not know what he tripped on.

⁵ Docket No. 21-0091 (issued May 21, 2021).

⁶ *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁸ 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).⁹

ANALYSIS

The Board finds that appellant has met not met his burden of proof to expand the acceptance of his claim to include a seizure condition causally related to the accepted July 20, 2018 employment injury.

In his August 3, 2020 second opinion evaluation, Dr. Gennaula concluded that appellant suffered a seizure and fell to the floor and that the event did not appear to be causally related to appellant's federal employment. The Board has held that evidence that negates causal relationship is of no probative value.¹⁰ Thus, this evidence is insufficient to establish causal relationship.

In a July 20, 2018 after visit summary, Dr. Rau diagnosed a seizure. In an August 13, 2018 after visit summary, Dr. Jones indicated that he saw appellant for a new onset of seizure and in a September 26, 2018 Form CA-20, he diagnosed a new onset seizure and, when responding to the question of whether he believed that appellant's conditions were caused or aggravated by an employment activity, noted that it was not applicable. However, neither Dr. Rau nor Dr. Jones provided an 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 on the issue of causal relationship.¹¹ Therefore, these reports are insufficient to establish appellant's traumatic injury claim.

The remaining medical evidence consisted of a July 20, 2018 CT scan of appellant's facial bones and an August 8, 2018 EEG report. The Board has held, however, that diagnostic testing reports, 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, this evidence is also insufficient to meet appellant's burden of proof.

⁷ *T.H.*, 59 ECAB 388,393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁹ *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *T.W.*, Docket No. 19-0677 (issued August 16, 2019).

¹¹ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

As appellant has not submitted rationalized medical evidence establishing that his seizure is causally related to the accepted July 20, 2018 employment injury, the Board finds that he has not met his burden of proof to establish his claim.

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 expand the acceptance of his claim to include a seizure condition causally related to the accepted July 20, 2018 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.¹³

Issued: May 24, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

¹³ As explained above, by decision dated May 21, 2021, the Board found that appellant had established that he sustained a tooth avulsion and facial fracture causally related to the July 20, 2018 employment incident. The Board remanded the case for payment of medical expenses and any attendant disability. However, the Board notes that to date OWCP has not formally accepted these conditions pursuant to the Board's May 21, 2021 decision.