

File Number:
HR10-D-H

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U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

Date of Injury:
Employee:

Dear

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on _____ As a result of such hearing, it has been determined that the decision issued by the District Office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER
7393 HODGSON MEMORIAL DRIVE
SUITE 102
SAVANNAH, GA 31406

If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.

Washington DC, September 18, 2018

U.S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

*In the matter of the claim for compensation under Title 5, U.S. Code 8101 et seq. of
Claimant; Employed by the _____ ; Case No. _____
Telephonic Hearing was held on _____.*

The issue for consideration is whether the claimant sustained an injury on _____ in the performance of duty as claimed.

The claimant, _____, born _____, has been employed with the _____ as a _____ . On _____ he filed a timely Notice of Traumatic Injury and Claim for Compensation, claiming that he sustained an injury on _____ when his vehicle struck a mailbox and he hit his head. The claimant's employer indicated that the claimant was in the performance of duty, but averred that the claimant had a history of seizures.

The record reflects that on _____ the claimant was treated at Floyd Medical Center Emergency Care. The claimant was treated for bruising and swelling above the left eye and abrasions to the scalp. It was noted that he had a grand mal seizure on arrival to the ER. The reports state that per EMS there was no severe head injury. The claimant was found in the driver's seat and the airbag did not deploy. Dr. _____ MD, reported on _____ that the claimant's accident was caused by a seizure.

A _____ CT scan showed no evidence of acute intracranial injury. There was focus of pneumocephalus in the right frontal cortex.

The EMS report showed left forehead contusion.

Dr. _____ MD, indicated on _____ that he was treating the claimant for chronic sinusitis. He averred that the claimant's motor vehicle accident caused a fracture, allowing bacteria into the brain. Dr. _____ MD, examined the claimant on _____. He diagnosed brain lesion and sinus fracture. Dr. _____ reported on _____ that the motor vehicle accident resulted in a fracture of the sinus bone, and the claimant developed persistent pneumocephalus in the right frontal lobe. He stated that the claimant had a probable brain abscess. On _____ Dr. _____ MD, diagnosed right frontal brain abscess. He indicated that it was related to the motor vehicle accident. On _____ Dr. _____ performed right frontal stereotactic brain abscess aspiration.

The District Office of Workers' Compensation Programs initially denied the claim on _____. The Office did not address performance of duty.

On appeal, the claimant's attorney, Paul Felser, asserted that the claimant's car accident was work related, and the sinus fracture resulting from the car accident was also compensable.

A Hearing Representative issued a decision on [redacted]. She directed the Office to undertake further case development. The Representative discussed the medical evidence submitted to the record and noted that the claimant's physicians suggested that the claimant's motor vehicle accident was related to the treatment and surgeries he underwent. The Representative directed the Office to refer the record to the District Medical Advisor (DMA).

The DMA reviewed the record on [redacted]. He commented that the trauma of the motor vehicle accident was to the left eyebrow. With regard to any other condition, the DMA opined that the brain abscess and surgery were not related to the motor vehicle accident. He noted that a [redacted] CT scan did not show evidence of maxillary fracture "but it did show air inside the cranium (pneumocephalus) that is likely due to a pre-existing infection." He suggested that the abscess was likely the reason the claimant had the seizure causing his accident. He added that the presence of the air, without evidence of traumatic fracture that would cause the air to be present, leads to a conclusion that the air was due to infection, not the trauma to the eyebrow.

On [redacted] the Office again denied the claim.

Mr. Felser requested a hearing on behalf of the claimant. Accordingly a Telephonic Hearing was held on [redacted]. Attorney Felser represented the claimant who did not appear for the Hearing. Mr. Felser discussed the medical evidence. He noted that the claimant had a pre-existing seizure condition, but there was no evidence of abscess. It was agreed that the record would remain open for 30 days for the submission of additional evidence.

Following the Hearing a medical report dated [redacted] from Dr. [redacted], MD, was submitted to the record. Dr. [redacted] discussed the DMA report. He noted that a CT scan of the brain showed no acute intracranial injury or pneumocephalus. He stated that the claimant's first seizure was in [redacted]. He also stated that the testing post injury showed potential source of infection; and that an MRI was not performed for one month delaying diagnosis of the abscess. He stated that it was not likely that the accident was caused by the abscess as the DMA asserted.

I have carefully evaluated all evidence of record. I find that the Office must further develop the claim.

I will also address the question of performance of duty which has yet to be given proper consideration.

It is well-settled that an injury resulting from an idiopathic fall -- where a personal, non-occupational pathology causes an employee to collapse and to suffer injury upon striking the immediate supporting surface without intervention or contribution by any hazard or special

condition of employment -- is not within coverage of the FECA. Such an injury does not arise out of a risk connected with the employment and is therefore not compensable.¹

In the instant case it is has been asserted that while the claimant had a pre-existing condition that is not related to employment, the resulting motor vehicle accident is related to employment. This is not correct. The medical evidence unequivocally establishes that the accident was due to a pre-existing seizure condition. It did not occur in the performance of duty.

The Office's Procedure Manual adds, however, that if the incident was due to an idiopathic condition, the record must also clearly show whether the fall was to the immediate supporting surface (floor) or whether some special condition, hazard, or instrumentality of the work contributed to or intervened as a cause of the injury. If some factor of the employment intervened or contributed to the injury resulting from the fall, the employee has coverage under the FECA for the results of the injury but not for the idiopathic condition which caused the fall. If the incident was due to an idiopathic condition, the record must also clearly show whether the fall was to the immediate supporting surface (floor) or whether some special condition, hazard, or instrumentality of the work contributed to or intervened as a cause of the injury.²

I find that the evidence is sufficient to establish that the claimant hit his head on an instrumentality of the work, i.e., the steering wheel or dashboard, and thus there is coverage under the FECA for the results of the injury but not for the idiopathic condition which caused the accident. The evidence indicates that the claimant sustained a contusion to the left eyebrow, and the claim can be approved for this condition.

The question of whether the sinus fracture, brain abscess and surgery are causally related to the employment remains to be resolved.

Causal relationship is a medical issue,³ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.⁴ Moreover, the mere fact that a disease or condition manifests itself during a period of employment or the belief

¹ *John R. Black*, 49 ECAB ____ (Docket No. 96-1362, issued August 10, 1998).

² See Federal (FECA) Procedure Manual, Part 2 – Claims, 2-0804-9 Idiopathic Falls.

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *Charles E. Burke*, 47 ECAB 185(1995).

that the disease or condition was caused or aggravated by employment factors or incidents is insufficient to establish causal relationship.⁵

I find that to determine the full extent of the injury associated with striking the head on the Office must further develop the claim. The evidence submitted to the record presents a *prima facie* claim.⁶ Absent of medical evidence to the contrary, the report is sufficient to require further development of the record.⁷

It is well-established that proceedings under the Act are not adversarial in nature.⁸ While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁹

On REMAND, the Office should ensure that all relevant medical records –to include the CT scan- are submitted to the record. The Office should then prepare a Statement of Accepted Facts which will include the information that the accident itself is not considered to be in the performance of duty. Only the claimant's striking his head on is accepted. At this time the eyebrow contusion is accepted. The Office should then refer the claimant, together with the Statement and all medical records, to an appropriate Board-certified specialist for a detailed opinion on the relationship of the sinus fracture, the brain abscess and surgery to striking the head on I

When the specialist's response is received, and after any other case development that should become necessary, the Office may issue a *de novo* decision.

DATED:
WASHINGTON, DC

Hearing Representative
Branch of Hearings and Review
for
Director, Office of Workers'
Compensation Programs

⁵ *Minnie Bryson*, 44 ECAB 713 (1995).

⁶ *See Doyce Austin*, ECAB Docket No. 00-1037, Issued February 14, 2011.

⁷ *John J. Corlone*, 41 ECAB 354 (1989).

⁸ *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

⁹ *See Dorothy L. Sidwell*, 36 ECAB 699 (1985).