

A.F., Appellant

**DEPARTMENT OF HOMELAND SECURITY,
CUSTOMS & BORDER PROTECTION,
Newark, NJ, Employer**

Appearances:

Richard Jacobowitz, for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 3, 2013 appellant, through her representative, filed a timely appeal from the August 9, 2012 decision of the Office of Workers' Compensation Programs (OWCP) which denied her claim for an injury in the performance of duty. 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 met her burden of proof to establish that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On June 21, 2012 appellant, then a 57-year-old port director, filed a traumatic injury claim alleging that on June 20, 2012 she was involved in a multiple vehicle accident in the

¹ 5 U.S.C. § 8101 *et seq.*

performance of duty. She alleged injuries to the head, face, chest, arms and lower extremities following the accident and air bag deployment. Appellant's supervisor stated that appellant was in the performance of duty when the accident occurred. Appellant stopped work on June 20, 2012.

By letter dated June 28, 2012, OWCP advised appellant that additional factual and medical evidence was needed to establish her claim. Appellant was requested to provide dates of examination and treatment, a history of injury given by her to a physician, a detailed description of any findings, the results of any x-rays or laboratory tests, a diagnosis and course of treatment followed and a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury. OWCP explained that the physician's opinion was crucial to her claim and allotted her 30 days within which to submit the requested information.

In attending physician's reports dated June 27, 2012, Dr. Gary R. Weine, a Board-certified internist, noted a history of appellant being involved in a motor vehicle accident on June 20, 2012. He diagnosed chest wall trauma and checked the box "yes" in response to whether the condition was caused or aggravated by an employment activity, noting "auto accident." Dr. Weine placed appellant off work. He also submitted partially legible June 27, 2012 treatment notes.

OWCP received hospital progress notes dated June 20 and 21, 2012 from Dr. Anthony Kopatsis, a general surgeon, who treated appellant on the date of her injury for level-two trauma after a motor vehicle accident and advised that she would stay overnight for observation. Dr. Kopatsis advised that appellant was rear-ended, her air bag deployed and that she was ambulatory at the accident scene and did not lose consciousness.

By decision dated August 9, 2012, OWCP denied appellant's claim on the grounds that she did not establish an injury as alleged. It found that the medical evidence was insufficient to establish that her condition was caused by the motor vehicle accident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing 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 FECA³ and that an injury was sustained in the performance of duty.⁴ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.⁸

ANALYSIS

Appellant was involved in a multiple vehicle accident in the performance of duty on June 20, 2012; however, that is not disputed. OWCP found that the first component of fact of injury, the claimed incident, occurred as alleged. However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical reports of record do not sufficiently establish that the multiple vehicle accident on June 20, 2012 caused a personal injury. The medical evidence contains no firm diagnosis, no rationale and no explanation of the mechanism of injury.

Appellant provided June 27, 2012 reports and treatment records from Dr. Weine who noted that appellant was involved in a motor vehicle accident on June 20, 2012. Dr. Weine diagnosed chest wall trauma and checked the box “yes” in response to whether he believed the condition was caused or aggravated by an employment activity. However, checking of the box “yes” that the disability was causally related to employment is insufficient without further explanation or rationale, to establish causal relationship.⁹ Dr. Weine did not offer a rationalized medical opinion explaining how appellant’s automobile accident caused or aggravated specific diagnosed medical conditions.¹⁰

OWCP also received hospital progress notes dated June 20 and 21, 2012 from Dr. Kopatsis. However, Dr. Kopatsis did not provide a clear opinion on causal relationship

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.*

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *Barbara J. Williams*, 40 ECAB 649 (1989).

¹⁰ The opinion of the physician must be based upon 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 claimant. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion. See *James Mack*, 43 ECAB 321 (1991).

between the motor vehicle collision and a specific diagnosed medical condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ Consequently, the Board finds that this evidence is insufficient to establish appellant's claim.

Other reports submitted by appellant did not diagnose a specific condition or specifically address causal relationship. For these reasons, she has not established that the June 20, 2012 employment incident caused or aggravated a specific injury.

On appeal, appellant argued that her medical evidence established her claim. However, as noted above, the evidence does not sufficiently explain how the motor vehicle accident caused or aggravated specific medical conditions. The Board also notes that, subsequent to the August 9, 2012 decision, OWCP received additional medical evidence. The Board has no jurisdiction to review this evidence for the first time on appeal.¹²

OWCP, however, did not adjudicate the issue of appellant's incurred medical expenses. It has broad discretionary authority in the administration of FECA to achieve the objective of section 8103 of FECA. OWCP has discretionary authority to approve unauthorized medical care which it finds necessary and reasonable and is required to exercise that discretion.¹³ Ordinarily, when an employee sustains a job-related injury which may require medical treatment, the designated agency official shall promptly authorize such treatment by giving the employee a properly executed Form CA-16 authorizing medical treatment and expenses within four hours.¹⁴ The regulations provide that in unusual or emergency circumstances OWCP may approve payment for medical expenses incurred otherwise than as authorized. It may approve payment for medical expenses incurred even if a CA-16 form authorizing medical treatment and expenses has not been issued and the claim is subsequently denied; payment in such situations must be determined on a case-by-case basis.¹⁵ On return of the record, OWCP should issue a *de novo* decision on the issue of reimbursement of medical expenses.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of the 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 in establishing that she sustained an injury in the performance of duty.

¹¹ *Michael E. Smith*, 50 ECAB 313 (1999).

¹² 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

¹³ See *L.B.*, Docket No. 10-469 (issued June 2, 2010).

¹⁴ See 20 C.F.R. § 10.300(b).

¹⁵ *Id.* at 10.304.

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2013
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board