United States Department of Labor
Employees' Compensation Appeals Board

E.B., Appellant	)	
and	)	**Docket No. 10-1045**
	)	**Issued: December 3, 2010**
DEPARTMENT OF HEALTH & HUMAN SERVICES, HUMAN RESOURCES OFFICE-MS-BHRC, San Francisco, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 8, 2010 appellant filed a timely appeal from a September 9, 2009 decision of the Office of Workers' Compensation Programs which denied her claim for compensation. Pursuant to 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 a traumatic injury resulting from a June 17, 2009 employment incident.

FACTUAL HISTORY

On July 1, 2009 appellant, then a 56-year-old health facility evaluator, filed a claim for traumatic injury and continuation of pay. On June 17, 2009 she was assaulted by a client at the Sonoma Development Center and sustained an injury to her upper left arm where the client struck her. Appellant stopped work on June 17, 2009 and returned on June 19, 2009.

Appellant submitted a work restriction form dated June 17, 2009 from Sonoma Valley Hospital and signed by Patricia Stillman, a physician's assistant, who advised that appellant could return to work under a modified work program from June 18 to 24, 2009. An invoice from Pacific Medical Supply dated June 17, 2009 bearing an illegible signature indicated that appellant sustained a left arm contusion.

On August 3, 2009 the Office informed appellant that there was insufficient evidence to support her claim. The medical evidence did not provide a medical diagnosis of any injury sustained in the June 17, 2009 work incident or a medical opinion explaining how her alleged medical condition resulted from the June 17, 2009 work incident. Accordingly, the Office requested that appellant submit additional evidence, including a detailed description of how the injury occurred and the immediate effects of the injury, the contact information of her assailant if known, and witness statements or other documentation supporting her claim. Appellant was also requested to submit a detailed, narrative medical report from her attending physician which provided a history of her injury, the treatment provided, the results of any tests or examinations, a firm diagnosis, and a medical opinion explaining why the diagnosed condition was believed to have been caused or aggravated by the claimed incident. She did not respond.

In a September 9, 2009 decision, the Office denied appellant's claim on the grounds of insufficient medical evidence to establish that she sustained an injury due to the June 17, 2009 incident.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,[2] including that she is an "employee" within the meaning of the Act[3] and that she filed her claim within the applicable time limitation.[4] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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

[1] 5 U.S.C. §§ 8101-8193.

[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55 (1968).

[3] *M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see also* 5 U.S.C. § 8101(1).

[4] *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954);

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[7]

Medical evidence may not be considered probative if there is no indication that the person completing the report qualifies as a "physician" under the Act.[8] Section 8102(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. As nurses, physician's assistants, physical and occupational therapists are not "physicians" as defined by the Act, their medical opinions regarding diagnosis and causal relationship are of no probative medical value.[9]

ANALYSIS

The Board finds that appellant failed to meet her burden of proof establishing that she sustained a traumatic injury in the performance of duty. The Office accepted that the June 17, 2009 employment incident occurred at the specified time, place and in the manner alleged. Appellant failed, however, to submit medical evidence providing a diagnosed medical condition and establishing a causal relationship between the incident and her claimed medical condition.

The record establishes that on June 17, 2009 appellant was assaulted and struck in her upper left arm while working at the Sonoma Development Center. On July 1, 2009 appellant submitted a claim for compensation for traumatic injury. She submitted a June 17, 2009 work restriction form and an invoice from Pacific Medical Supply, also of that date. The work restriction form did not provide a medical diagnosis for appellant's claimed injury or a medical opinion explaining how the June 17, 2009 incident caused her alleged injury. The June 17, 2009 work restriction note was signed by a physician's assistant, who is not a physician as defined under the Act. The Board has held that reports are of no probative value if not signed by a physician as defined under the Act.[10] Similarly, the Pacific Medical Supply invoice of June 17, 2009 is of no probative medical value.[11] While this invoice notes a left arm contusion, the Board is unable to ascertain that a physician examined appellant and made this diagnosis upon examination.

The Board notes that Office procedures will allow a minor injury to be accepted without a medical report if the condition can be verified on visual inspection by a lay person, (*e.g.*, burn, laceration, insect sting or animal bite).[12] This provision, however, is only applicable if no time is

[7] *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *E.K.*, 61 ECAB ___ (Docket No. 09-1827, issued April 21, 2010); *R.M.*, 59 ECAB 690 (2008).

[9] 5 U.S.C. § 8101(2); *E.H.*, 60 ECAB ___ (Docket No. 08-1862, issued July 8, 2009); *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009); *Roy L. Humphrey*, 57 ECAB 238 (2005) .

[10] *E.K.*, 61 ECAB ___ (Docket No. 09-1827, issued April 21, 2010); *R.M., supra* note 8; *Bradford L. Sutherland*, 33 ECAB 1568 (1982).

[11] The opinion of the physician must be based on a complete factual and medical background of the employee, 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. *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

lost from work due to disability. In the present case, appellant has indicated that she did stop work on June 17, 2009 due to the injury.

On August 3, 2009 appellant was notified of the deficiencies in her claim and was requested to submit additional evidence, however, she did not submit any additional medical evidence. As she failed to submit medical evidence providing a medical diagnosis of an injury or a medical opinion as to causal relationship, she did not meet her burden of proof to establish that she sustained a traumatic injury due to the June 17, 2009 work incident in the performance of duty.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a traumatic injury causally related to the June 17, 2009 work incident.[13]

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 9, 2009 is affirmed.

Issued: December 3, 2010
Washington, DC

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

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

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

[13] The Board notes that appellant submitted additional evidence to the file following the September 9, 2009 decision. Since the Board's jurisdiction is limited to evidence that was before the Office at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).