

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

_____)
G.K., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Nashville, TN, Employer)

_____)

Docket No. 12-388
Issued: June 7, 2012

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 14, 2011 appellant filed a timely appeal from a November 10, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for compensation. 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 on May 23, 2011 in the performance of duty.

_____)
¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 21, 2011 appellant, then a 57-year-old nurse, filed a claim for traumatic injury, alleging that she fainted from overheating at work on May 23, 2011 and developed a lower back injury one week later.

By letter dated October 4, 2011, OWCP advised appellant of the requisite evidence to establish her claim. Appellant was asked to provide further information regarding the time and place of the incident. She was also asked to submit a medical report that included dates of examination and treatment, history and date of injury, detailed description of findings, results of tests, diagnosis and a physician's opinion as to how the reported incident caused or aggravated her medical condition.

Appellant submitted a medical note dated September 27, 2011 from Dr. Clark Ray, a Board-certified internist, who evaluated appellant on May 31, 2011 for syncope and back pain.

Appellant also submitted several statements which described the circumstances of her claim. A Veterans Health Administration incident report dated September 21, 2011 related that on May 23, 2011 appellant felt faint and was transported to triage after her legs failed due to heat in the operating room. This report characterized the injury as "heat-related stroke/stress" and noted that appellant visited her personal physician approximately one week later due to debilitating back pain. In a statement dated October 17, 2011, Sandra Valentino, a coworker, reported that appellant passed out on May 23, 2011. She assisted appellant before she was taken to the emergency room. In a supplemental statement dated October 17, 2011, appellant described the May 23, 2011 incident. She noted that she was a circulating nurse on a cardiac case in an operating room. The stress level in the room was high because the patient was having some difficulties and the room temperature needed to be hot, per the request of the surgeon. Appellant felt extremely hot as if she was going to pass out. She laid down on the floor with staff standing over her. Appellant also noted that glucose testing performed that day was normal, and she had no prior history of fainting. On May 29, 2011 when she tried to get out of bed, she felt back pain for which she was treated on May 31, 2011.

By decision dated November 10, 2011, OWCP denied appellant's claim finding that the medical evidence was insufficient to establish that appellant had sustained an injury causally related to the May 23, 2011 incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden to establish the essential elements of 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, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.³

² 5 U.S.C. §§ 8101-8193.

³ *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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. 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.⁴ The employee must also submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on 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, 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 compensable employment factors identified by the claimant.⁶

ANALYSIS

OWCP accepted that appellant fainted on May 23, 2011 due to heat in the hospital operating room. The Board finds that appellant has not met her burden of proof to establish that she had sustained a back condition as a result of this incident.

The only medical evidence appellant submitted in support of her claim was the September 27, 2011 note from Dr. Ray. While Dr. Ray indicated that he had evaluated appellant on May 31, 2011 for syncope and back pain, he did not state any history of the May 23, 2011 incident, provide a firm diagnosis of appellant's condition or offer any medical rationale explaining the cause of her medical condition.⁷

To establish that an injury was sustained as a result of a work-related incident, appellant must submit medical evidence which provides a firm diagnosis based upon a complete factual and medical background and which explains the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸ OWCP notified appellant in its October 4, 2011 letter to submit a medical report from an attending physician that provided medical rationale explaining the nature of the relationship between any diagnosed condition and the accepted incident at work. Appellant failed to submit sufficient medical evidence that meets this requirement. She has failed to establish the medical component of her claim.

Appellant submitted evidence regarding the circumstances of the May 23, 2011 incident. This evidence is not medical evidence sufficient to establish that she sustained an injury on

⁴ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁵ *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁶ *D.G.*, 59 ECAB 734 (2008); *G.T.*, 59 ECAB 447 (2008); *I.J.*, 59 ECAB 408 (2008).

⁷ The Board has held that pain is generally considered a symptom, not a firm medical diagnosis. *Robert Broome*, 55 ECAB 339, 342, (2004).

⁸ *I.J.*, *supra* note 6; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

May 23, 2011. Appellant's lay opinion is not relevant to the medical issue in this case, which can only be resolved through the submission of a probative medical opinion from a physician.⁹

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 failed to establish that she sustained an injury at work on May 23, 2011.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 10, 2011 is affirmed.

Issued: June 7, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁹ *Gloria J. McPherson*, 51 ECAB 441 (2000).