

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

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| R.W., Appellant                     | ) |                                |
|                                     | ) |                                |
| and                                 | ) | <b>Docket No. 13-1011</b>      |
|                                     | ) | <b>Issued: August 13, 2013</b> |
| DEPARTMENT OF HOMELAND SECURITY,    | ) |                                |
| CITIZENSHIP & IMMIGRATION SERVICES, | ) |                                |
| San Francisco, CA, Employer         | ) |                                |
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| <i>Appearances:</i>                          | <i>Case Submitted on the Record</i> |
| <i>Appellant, pro se</i>                     |                                     |
| <i>Office of Solicitor, for the Director</i> |                                     |

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

**JURISDICTION**

On March 26, 2013 appellant filed a timely appeal from a March 6, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on December 13, 2012.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its March 6, 2013 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

## **FACTUAL HISTORY**

On December 17, 2012 appellant, then a 64-year-old application clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 13, 2012 she sustained a bump on the back of her head, bruising and soreness in her lower back and left buttocks. She stated that she was walking towards the entrance of the building at work and someone had just entered through the door. Appellant tried to grab the door before it closed but the door was too heavy and knocked her off her balance, causing her to fall backwards. She stated that she fell on her left buttocks and hit the back of her head on a concrete garbage container near the door. Appellant stopped work and first received medical care on December 13, 2012. The employing establishment controverted the claim.

In an undated witness statement, appellant's coworker stated that he was walking to the entrance of the office building when he saw appellant on the ground, holding her head. She informed him that she had tried to run and grab the door but was knocked over.

In a December 14, 2012 witness statement, Zohreh Mohammadi, stated that on December 13, 2012 she was approaching the entrance of the building when she noticed appellant on the ground. Appellant stated that she had hurt her head and back.

By letter dated January 23, 2013, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was asked to respond to the questions provided in the letter within 30 days.

In a January 7, 2013 emergency room (ER) report, Dr. Wilson Lem, Board-certified in emergency medicine, reported that appellant presented to the ER for a follow up. Appellant reported numbness in the left leg, right shoulder pain and a right finger injury. Dr. Lem noted that these were old findings which started months to years ago and were still present with chronic symptoms. He also noted that appellant presented to the ER one month ago for a fall and possible syncope but that her workup was negative. Dr. Lem noted possible diagnoses of ischemic stroke, subdural hematoma, subarachnoid hemorrhage, brain abscess, cord compression and epidural abscess as a possible cause of weakness. He recommended that appellant follow up with her primary care physician.

In a December 7, 2012 nursing note, Summer O'Hearn, a registered nurse (RN), reported that appellant complained of left foot toe numbness as well as complaints of the back and right shoulder. Appellant also complained of light-headedness, dizziness, blurred vision and left foot numbness.

In a December 19, 2012 narrative statement, appellant restated the events surrounding her December 13, 2012 injury.

By decision dated March 6, 2013, OWCP denied appellant's claim finding that the evidence of record failed to establish that her injury was causally related to the accepted December 13, 2012 employment incident.

## LEGAL PRECEDENT

An employee seeking benefits under FECA 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>5</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.<sup>6</sup>

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>7</sup> The opinion of the physician must be based on 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. This medical opinion must include an accurate history of the employee’s employment injury and must explain how the condition is related to the injury. The weight of 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.<sup>8</sup>

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<sup>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>4</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

<sup>6</sup> *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant’s burden of proof in an occupational disease claim.

<sup>7</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>8</sup> *James Mack*, 43 ECAB 321 (1991).

## ANALYSIS

OWCP accepted that the December 13, 2012 employment incident occurred as alleged. The issue is whether appellant established that the incident caused her injuries. The Board finds that she did not submit sufficient medical evidence to support that her head, back, leg and buttocks condition are causally related to the December 13, 2012 employment incident.<sup>9</sup> The medical evidence is deficient on two grounds: (1) it fails to provide a firm diagnosis; and (2) there is no narrative opinion on causal relationship between a diagnosed condition and the employment incident.<sup>10</sup>

In a January 7, 2013 ER report, Dr. Lem reported that appellant presented to the ER with numbness in the left leg, right shoulder pain and a right finger injury. He noted that these were old findings which started months to years ago which were still present. Dr. Lem also stated that appellant presented to the ER one month ago for a fall and possible syncope but that her workup was negative. He provided possible diagnoses of ischemic stroke, subdural hematoma, subarachnoid hemorrhage, brain abscess, cord compression and epidural abscess as a possible cause of weakness. Dr. Lem recommended appellant follow up with her primary care physician.

The Board finds that the opinion of Dr. Lem is not well rationalized. Dr. Lem did not provide a firm diagnosis or sufficient detail regarding appellant's medical condition. He has not identified a medical condition. Dr. Lem merely speculated possible diagnoses and recommended appellant follow up with her primary care physician. Furthermore, while he noted that appellant was in the ER for a fall a month ago, he provided no details regarding the circumstances of her injury and stated that her workup was negative. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>11</sup> The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>12</sup> Thus, Dr. Lem's report does not constitute probative medical evidence because he failed to provide a clear diagnosis and did not adequately explain the cause of appellant's injury.<sup>13</sup>

Nurse O'Hearn's report is also insufficient to establish appellant's claim as nurses are not considered physicians under FECA.<sup>14</sup>

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<sup>9</sup> See *Robert Broome*, 55 ECAB 339 (2004).

<sup>10</sup> *D.I.*, Docket No. 11-317 (issued December 12, 2011).

<sup>11</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>12</sup> See *Lee R. Haywood*, 48 ECAB 145 (1996).

<sup>13</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>14</sup> 5 U.S.C. § 8101(2) provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary. See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

Appellant's honest belief that work caused her medical problem is not in question; but that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship. In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the December 13, 2012 employment incident and appellant's injuries. Thus, appellant has failed to meet her burden of proof.

Evidence submitted by appellant after the final decision cannot be considered by the Board. As previously noted, the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its decision.<sup>15</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that her head, back, butt and leg injuries are causally related to the December 13, 2012 employment incident, as alleged.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 6, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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<sup>15</sup> 20 C.F.R. § 501.2(c)(1); *supra* note 2.