United States Department of Labor
Employees' Compensation Appeals Board

C.P., Appellant	)	
and	)	**Docket No. 13-795**
	)	**Issued: July 22, 2013**
DEPARTMENT OF THE AIR FORCE,	)	
Joint Base Andrews, MD, Employer	)	

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
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On February 15, 2013 appellant filed a timely appeal of a January 25, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury while in the performance of duty on November 6, 2012.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant also filed a request for a telephonic hearing. The Board and OWCP cannot have simultaneous jurisdiction. Following the docketing of an appeal before the Board, OWCP does not retain jurisdiction to render a further decision regarding the issue on appeal until after the Board relinquishes jurisdiction. *A.J.*, Docket No. 10-619 (issued June 29, 2010).

FACTUAL HISTORY

On December 6, 2012 appellant, then a 53-year-old medical support assistant, filed a traumatic injury claim alleging that she cut her left little finger at work on November 6, 2012. She did not incur any time loss from work. The employing establishment did not controvert the claim.

OWCP advised appellant in a December 13, 2012 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a statement detailing the employment incident that occurred on November 6, 2012 and a report from a qualified physician explaining how this event caused or contributed to a diagnosed injury.

Appellant clarified in a December 12, 2012 statement that she cut her left little finger with a metal medical chart on November 6, 2012. She sought medical treatment on November 9, 2012 because the laceration became infected.

In November 9, 2012 notes, Josephine Moyo, a physician assistant, diagnosed upper extremity laceration, provided an aluminum finger splint, and discharged appellant to regular duty effective November 10, 2012 while Dr. Melissa M. Stoner, a family practitioner, prescribed antibiotics.

By decision dated January 25, 2013, OWCP denied appellant's claim, finding the evidence insufficient to establish that an employment incident occurred on November 6, 2012 as alleged.[3]

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[4] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[5] The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment

[3] In its January 25, 2013 decision, OWCP incorrectly states that the date of injury was November 9, 2012. The evidence in the case record, however, clearly establishes that the injury occurred on November 6, 2012 and appellant sought medical treatment on November 9, 2012.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[5] *R.C.*, 59 ECAB 427 (2008).

[6] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

incident at the time, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[7]

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[8] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[9]

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.[10]

ANALYSIS

The Board finds that appellant sufficiently established that she cut her left little finger with a metal medical chart at work on November 6, 2012. The medical evidence demonstrated that she promptly obtained treatment for a laceration on November 9, 2012. Moreover, the employing establishment did not challenge the fact that this incident occurred while appellant was in the performance of duty. As noted above, an employee's statement alleging that an incident occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. In view of the totality of the evidence, the Board finds that an employment incident occurred on November 6, 2012.

On the other hand, the Board finds that the medical evidence did not sufficiently establish that the accepted November 6, 2012 employment incident caused or contributed to a diagnosed condition. In a November 9, 2012 note, Dr. Stoner prescribed antibiotics, but did not discuss whether appellant sustained a finger laceration as a result of the November 6, 2012 work event. Therefore, her note offers limited probative value on the issue of causal relationship.[11] In a separate November 9, 2012 note, Ms. Moyo diagnosed upper extremity laceration and released appellant to regular duty effective November 10, 2012. A medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a

[7] *T.H.*, 59 ECAB 388 (2008).

[8] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[9] *Betty J. Smith*, 54 ECAB 174 (2002).

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

[11] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

physician.[12] Because a physician's assistant is not a physician as defined under section 8101(2) of FECA, Ms. Moyo's note lacks evidentiary weight.[13] In the absence of rationalized medical opinion evidence, appellant failed to discharge her burden of proof.

Appellant submits new evidence after issuance of OWCP's January 25, 2013 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.[14]

Appellant may submit new evidence or argument as part of a formal 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 did not establish that she sustained a traumatic injury while in the performance of duty on November 6, 2012.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2013 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 22, 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

[12] *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

[13] 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551, 554 (2002).

[14] 20 C.F.R. § 501.2(c).