

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

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M.J., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
PERRY POINT VETERANS MEDICAL )  
CENTER, Perry Point, MD, Employer )

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**Docket No. 06-1817  
Issued: November 29, 2006**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 18, 2006 appellant filed a timely appeal from a June 23, 2006 merit decision of the Office of Workers' Compensation Programs, which denied appellant's claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant met her burden of proof in establishing that she sustained an injury within the performance of duty on May 8, 2006.

**FACTUAL HISTORY**

On May 12, 2006 appellant, then a 29-year-old nursing assistant, filed a traumatic injury claim alleging that on May 8, 2006 she sustained injury when a patient pushed his wheelchair into her right lower side. Appellant stopped work for five days, from May 10 through May 14, 2006.

In a report dated May 9, 2006, Dr. Thomas A. Biondo, an internal medicine specialist, stated that appellant was “hit on the right pelvic area” by an inpatient on May 8, 2006. He diagnosed “abdominal pain, right lower quadrant.” In a report dated May 10, 2006, Dr. Vijay K. Nellore, a Board-certified internal medicine specialist, noted the history of the May 8, 2006 incident and diagnosed appellant with “abdominal pain, right lower quadrant.” In a second report issued the same day, Dr. Nellore noted that computerized tomography (CT) imaging of the abdominal and pelvic region showed a preexisting left ovarian cyst, but no evidence of an injury in the abdominal or pelvic region. A report issued on May 14, 2006 by Dr. Jiyani Zhang noted similar findings that appellant felt pain as a result of the claimed incident, but made no finding of a specific injury or condition.

In a letter dated May 24, 2006, the Office requested additional information from appellant regarding the claimed May 8, 2006 injury. The Office stated that appellant’s physicians had not diagnosed any condition other than pain resulting from the claimed injury. The Office also noted that appellant had failed to provide a physician’s opinion explaining how the incident resulted in a diagnosed medical condition.

Appellant responded by submitting answers to several questions, a blank attending physician’s report form and a May 17, 2006 medical report from her employer’s health unit prepared by Dr. Elizabeth Hartman, a Board-certified radiologist, who explained the history of the May 8, 2006 incident but found that the results of all tests were normal. Dr. Hartman noted that there was some possibility of an intramural hematoma, but did not conclusively diagnose the condition and offered no opinion as to the cause of any conditions. She also noted that appellant could undergo a CT scan if more information was needed. The record reflects that appellant had previously undergone a CT scan and that the results were normal. Dr. Wen-Shyang Wu<sup>1</sup> filed a report explaining that appellant underwent both a CT scan and magnetic resonance imaging (MRI) and that neither test resulted in a “significant finding.” Dr. Wu’s report noted that appellant had not sustained a bruise or any limitation of movement from the incident.

By decision dated June 23, 2006, the Office denied appellant’s claim on grounds that the medical evidence did not establish that the employment incident caused a diagnosed condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> 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 the Act, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>3</sup> An award of compensation may not be based on surmise, conjecture, speculation or upon appellant’s own belief that there is a causal relationship between his or her claimed injury and his

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<sup>1</sup> Dr. Wu’s specialty could not be ascertained from the record.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

or her employment.<sup>4</sup> To establish a causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and hers medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

### ANALYSIS

The Board finds that the record supports appellant's contention that the claimed event occurred on May 8, 2006. However, the medical evidence is insufficient because it does not identify a particular medical diagnosis of any condition that could be attributed to the event. Appellant's physicians merely diagnosed pain and abdominal discomfort. A physician's mere diagnosis of pain does not constitute a basis for payment of compensation.<sup>8</sup> Appellant has failed to provide any medical evidence or opinion supporting that the May 8, 2006 incident caused a specific diagnosed condition.<sup>9</sup>

The only injury or condition that appellant's physicians conclusively diagnosed was an unrelated and preexisting ovarian cyst on appellant's left side. There is no evidence suggesting that the ovarian cyst was caused or aggravated by the May 8, 2006 event and thus it is not compensable. Although some of the medical reports submitted by appellant give a brief history of the incident, none of appellant's physicians addressed or explained how the incident caused or aggravated a diagnosed medical condition.<sup>10</sup> For example, Dr. Hartman's report noted that appellant was struck by a wheelchair handle and experienced pain as a result, but did not find that the incident caused any specific medical condition. Dr. Biondo's report also noted that appellant was hit by a wheelchair, but did not diagnose any specific condition or explain how the

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<sup>4</sup> *Donald W. Long*, 41 ECAB 142 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Id.*

<sup>8</sup> *Robert Broome*, 55 ECAB 0493 (2004), *citing John L. Clark*, 32 ECAB 1618 (1981).

<sup>9</sup> Although Dr. Wu's report, dated May 17, 2006, suggests the possibility of an intramural hematoma, the report does not conclusively diagnose the condition and offers no opinion regarding the relation of the possible condition to the May 8, 2006 event.

<sup>10</sup> Appellant also submitted several nurse's reports in support of her claim. However, a nurse is not considered a physician under the Act and therefore their reports are of no probative value. *See* 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB \_\_\_\_ (Docket No. 05-1928, issued November 23, 2005).

incident caused or aggravated a specific condition. Dr. Wu and Dr. Nellore also noted the history of appellant's injury in their reports, but did not explain how the incident caused or aggravated a medical condition.

Thus, the Board finds that the medical evidence presented is insufficient to establish that appellant sustained an injury when she was hit by a wheelchair handle on May 8, 2006.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained a compensable injury in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 23, 2006 is affirmed.

Issued: November 29, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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