United States Department of Labor
Employees' Compensation Appeals Board

K.H., Appellant	)	
and	)	**Docket No. 09-2292**
	)	**Issued: May 14, 2010**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Canandaigua, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 14, 2009 appellant filed a timely appeal from a July 16, 2009 merit decision of the Office of Workers' Compensation Programs denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that she sustained an injury on April 24, 2009 in the performance of duty.

FACTUAL HISTORY

On May 29, 2009 appellant filed a claim for an April 24, 2009 recurrence of disability (Form CA-2a). She indicated that she was initially injured on March 19, 2009 and was placed on light duty. Appellant stated that on April 24, 2009 she was injured while running away from a veteran that was attempting to hit her. She claimed that she was in constant pain from muscle

spasms and experienced pain from standing and walking. Appellant was out of work from April 26 to June 1, 2009.

In an April 24, 2009 note, Paul Mitchell, a nurse practitioner, recommended no work for appellant until further notice.

By letter dated June 5, 2009, the Office advised appellant that her claim did not meet the definition of a recurrence as she identified additional employment activities that aggravated her condition. It stated that, rather than appellant requesting an additional form, it would create a new injury case. On June 9, 2009 the Office notified appellant that it was treating her recurrence claim as a claim for a traumatic injury. It advised her of the deficiencies in her claim and requested that she provide additional medical evidence. Appellant did not submit any additional evidence.

By decision dated July 16, 2009, the Office denied appellant's traumatic injury claim. It found that the evidence supported that she experienced the April 24, 2009 incident as alleged; however, she did not submit sufficient medical evidence to establish that she sustained a causally-related injury.

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]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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

[1] 5 U.S.C. §§ 8101-8193.

[2] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[3] *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 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 ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954). *See* 5 U.S.C. § 8122.

[5] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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.[6]

ANALYSIS

Appellant initially submitted a claim for a recurrence of her March 19, 2009 injury, from which she was working light duty when the April 24, 2009 employment incident occurred. Recurrence means a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening injury or new exposure to employment factors.[7] As appellant claimed that her injury arose from exposure to a new employment event, running from a veteran who was trying to hit her, her claim does not meet the definition of a recurrence and is better characterized as a traumatic injury.[8] Thus, the Office properly developed appellant's claim as one for a new injury instead of as a recurrence of her prior accepted claim.[9]

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.[10] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[11] The Office accepted that the April 24, 2009 employment incident occurred as alleged. Therefore, the issue is whether appellant submitted sufficient medical evidence to establish that she sustained an injury in the performance of duty.

The only evidence of record consists of an April 24, 2009 note from Mr. Mitchell, a nurse practitioner, who placed appellant out of work until further notice. As a nurse practitioner is not included in the definition of a physician under the Act, this note is of no probative medical value and insufficient to establish appellant's claim.[12]

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[6] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[7] *See* 20 C.F.R. § 10.5(x); *Donald T. Pippin*, 54 ECAB 631 (2003).

[8] A traumatic injury is defined as a condition of the body caused by a specific event or incident, or a series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee).

[9] *See Philip L. Barnes*, 55 ECAB 426 (2004).

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

[11] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[12] The definition of a physician under the Act includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practices as defined by State laws. 5 U.S.C. § 8101(2). *See also Jerre R. Rinehart*, 45 ECAB 518 (1994).

Appellant did not submit a rationalized medical opinion from a physician finding that she sustained an injury causally related to the April 24, 2009 employment incident. Therefore, the Board finds that she has not established her claim.[13]

CONCLUSION

The Board finds that appellant did not establish that she sustained an injury on April 24, 2009 in the performance of duty as alleged.

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[13] *See Victor J. Woodhams*, *supra* note 6.