United States Department of Labor
Employees' Compensation Appeals Board

L.M., Appellant	)	
and	)	**Docket No. 10-2084**
	)	**Issued: May 20, 2011**
U.S. POSTAL SERVICE, OFFICE OF THE INSPECTOR GENERAL, Allen Park, MI, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 11, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 12, 2010 merit decision. Pursuant to the Federal Employees' Compensation Act[1] 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 a traumatic injury on April 9, 2010 as alleged.

FACTUAL HISTORY

On April 13, 2009 appellant, then a 32-year-old special agent, filed a traumatic injury claim alleging that on April 9, 2009 she sustained a mild neck strain and a headache as a result of a motor vehicle accident. She was 24 weeks' pregnant at the time of the alleged incident.

[1] 5 U.S.C. § 8101 *et seq.*

On June 29, 2009 the Office informed appellant that the evidence submitted was insufficient to establish her claim. It advised her to submit medical evidence with a diagnosis and an opinion explaining how the diagnosed condition was causally related to the claimed motor vehicle accident.

In an August 7, 2009 decision, the Office denied appellant's claim, finding that there was no evidence establishing that she sustained an injury in the performance of duty. Specifically, there was no medical evidence with a diagnosis that could be connected to the claimed event.

Appellant submitted April 9, 2009 outpatient records from Beaumont Hospital. An admission report reflected that appellant was "received for monitoring for motor vehicle accident." Triage notes signed by a nurse practitioner indicated that appellant was experiencing soreness in the neck area; and that she had no abdominal discomfort. Notes signed by another nurse practitioner reflected that appellant was being kept for four hours for fetal monitoring and review of results of laboratory tests. Appellant was discharged by Dr. Bozena Hainer, a Board-certified gynecologist, with a diagnosis of "observation following another accident."

On March 2, 2010 appellant requested reconsideration, noting that she was submitting April 9, 2009 hospital records to establish that she was treated on that date following the work-related motor vehicle accident. She submitted a March 2, 2010 statement from her supervisor, Breck Nolin, deputy special agent in charge. Mr. Nolin indicated that appellant had sought medical treatment as a result of the April 9, 2009 accident, which occurred while she was on official business. Appellant was told by the emergency medical technician that, if she failed to receive monitoring following the accident, she or her baby could die. Mr. Nolin noted that appellant's medical monitoring resulted in a hospital fee of $147.44.

In a July 12, 2010 decision, the Office denied modification of the August 7, 2009 decision. Although it acknowledged the necessity of appellant's evaluation, the Office stated that there was no provision under the Act to authorize preventative treatment, citing section 3.400-7 of the Office's procedure manual.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of establishing the essential elements of her claim, including the fact that the individual is an employee of the United States within the meaning of the Act; 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 and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.[2]

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. Second, the

[2] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[3]

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 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.[4]

ANALYSIS

There is no dispute that appellant was involved in a motor vehicle accident on April 9, 2009 while in the performance of duty. However, the medical evidence does not establish that the accepted incident caused or aggravated a diagnosed condition. Therefore appellant failed to meet her burden of proof.

Hospital records from Beaumont Hospital contain notes signed by nurse practitioners. Nurse practitioners do not qualify as "physicians" under the Act. Therefore, the Board finds that these reports do not constitute probative medical evidence.[5] Appellant was discharged by Dr. Hainer with a diagnosis of "observation following another accident." Dr. Hainer did not provide a firm medical diagnosis.[6] He did not specifically address whether any diagnosed medical condition was caused or aggravated by the accepted motor vehicle accident.[7] Dr. Hainer did not provide a medical opinion which explained the reasons why appellant's April 9, 2009 accident caused or contributed to a diagnosed condition. Consequently, his report is insufficient to establish appellant's claim. For these reasons, appellant did not submit sufficient medical evidence to establish that she sustained a traumatic injury on April 9, 2009 in the performance of duty.

The Board notes, however, that the issue of reimbursement of appellant's medical expenses is not in posture for decision.

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[3] *Id.*

[4] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[5] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) of the Act 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." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[6] *See Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that a treatment note without a firm diagnosis was of insufficient probative value); *see also Larry M. Leudtke*, Docket 03-1564 (issued September 2, 2003) (where the Board found that the diagnoses of dizziness, headache, light-headedness and anxiety described symptoms and did not constitute a firm diagnosis of a medical condition).

[7] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (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).

This case is similar to *Val D. Wynn*.[8] The employee experienced weakness and chest pain as a result of his employment and was transported from the employing establishment health unit to a local community hospital. The Board affirmed the denial of the employee's claim for compensation as no firm medical diagnosis had been established. The Board remanded the case to the Office for development on whether he was entitled to reimbursement of medical expenses. The Board stated:

> "Ordinarily, when an employee sustains a job-related injury which may require medical treatment, the designated agency official shall promptly authorize such treatment by giving the employee a properly executed CA-16 within four hours. However, cases of a doubtful nature, so far as compensability is concerned, shall be referred ... using a CA-16 for medical services.... In cases of an emergency or cases involving unusual circumstances the Office may, in the exercise of its discretion, authorize treatment otherwise than by a Form CA-16, or it may approve payment for medical expenses incurred other than by a Form CA-16. "

In this case, appellant, who was 24 weeks' pregnant, was advised by the EMT who responded to the scene of her motor vehicle accident, to report to the hospital for fetal monitoring in order to ascertain whether she or the fetus had sustained injuries. Following the advice of the EMT, appellant reported to the hospital, where she was tested and monitored for four hours, resulting in a bill in the amount of $147.44. The Office has failed to determine whether, under these facts, such emergency or unusual circumstances were present in a case of a doubtful nature.[9]

In its July 12, 2010 decision, the Office acknowledged the necessity of appellant's evaluation, but stated that there was no provision under the Act to authorize preventative treatment. The claims examiner cited section 3.400-7 of the Office's procedure manual, which states that the Act does not authorize provision of preventive measures such as vaccines and inoculations.[10] The monitoring of appellant and her fetus following the April 9, 2009 motor vehicle accident was not a preventative measure such as a vaccine or an inoculation, which would have necessarily occurred prior to an injury. Rather, the treatment was given as a result of the accident, which occurred in the performance of duty. Thus, the Board finds that the Office incorrectly applied the provisions of section 3.400-7 of the Office's procedure manual in denying appellant's request for reimbursement. The issue is more appropriately addressed by applying the principles espoused in *Wynn*. The case will be remanded for further development of this issue.

[8] 40 ECAB 666 (1989).

[9] This policy is found in the Office's Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (October 1990).

[10] Section 3.0400-7(a) reads as follows: "Preventive (Prophylactic) Treatment. The Act does not authorize provision of preventive measures such as vaccines and inoculations, and in general, preventive treatment is a responsibility of the employing agency under the provisions of 5 U.S.C. § 7901."

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury on April 9, 2010 in the performance of duty. The case will be returned, however, for consideration of whether her medical expenses should be reimbursed.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' July 12, 2010 decision is affirmed in finding that appellant did not meet her burden of proof and set aside as to the issue of reimbursement of medical expense. The case is remanded for further action in conformance of this decision.

Issued: May 20, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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