

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

V.E., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Chicago, IL, Employer)

**Docket No. 13-434
Issued: May 2, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 19, 2012 appellant filed a timely appeal from a November 30, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty causally related to factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the November 30, 2012 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On October 13, 2012 appellant, then a 33-year-old transportation security officer, filed an occupational disease claim (Form CA-2) alleging that she developed lower back pain/sciatica due to factors of her federal employment. She first became aware of her condition on January 12, 2011 and attributed it to her employment on October 8, 2012.

By letter dated October 23, 2012, OWCP notified appellant of the deficiencies of her claim and requested additional evidence, including a rationalized opinion from a physician explaining how employment activities caused or aggravated the claimed condition. It afforded her 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted an October 16, 2012 report from Dr. Douglas Tran, a Board-certified internist, who diagnosed lumbar strain. Dr. Tran checked a box “yes” indicating that her condition was caused or aggravated by an employment activity. In an October 16, 2012 duty status report, he indicated that appellant was standing at her workstation when pains started shooting in her back.

In an October 9, 2012 report, Cassandra Crackel, a physician’s assistant, indicated that appellant was seen for treatment of a medical condition and should be excused for attending work from October 9 to 11, 2012. She released appellant to work on October 12, 2012 with the following restrictions: bending, lifting and standing as tolerated.

By decision dated November 30, 2012, OWCP denied the claim on the basis that the evidence submitted was insufficient to establish fact of injury. It found that appellant did not implicate any specific employment factor, merely stating that the injury occurred at work.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 timely filed within the applicable time limitation period of FECA, and that an injury⁴ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical

³ 5 U.S.C. §§ 8101-8193.

⁴ OWCP’s regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁵ See *J.C.*, Docket No. 09-1630 (issued April 14, 2010). See also *Ellen L. Noble*, 55 ECAB 530 (2004).

evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

ANALYSIS

OWCP found that appellant did not implicate any specific employment factor and merely stated that the injury occurred at work. In support of her claim, appellant submitted an October 16, 2012 report from Dr. Tran who indicated that she was standing at her workstation when pains started shooting in her back. There are no unresolved discrepancies regarding this factor of her federal employment. Thus, the Board finds that the evidence of record is sufficient to establish standing as an implicated factor of employment in this case. The issue is whether appellant sustained an injury as a result of standing in the performance of duty.

In his reports, Dr. Tran diagnosed lumbar strain and checked a box “yes” indicating that appellant’s condition was caused or aggravated by an employment activity. Although the “yes” check mark indicates support for causal relationship, his report is insufficient to establish a causal relationship. The Board has held that when a physician’s opinion on causal relationship consists only of a check mark on a form, without more by way of medical rationale, the opinion is of diminished probative value.⁷ Although Dr. Tran indicated with a check mark “yes” that appellant’s condition was caused or aggravated by her employment, he failed to provide a sufficient medical rationale explaining the relationship between her lumbar condition and the implicated employment factor.⁸ Lacking thorough medical rationale on the issue of causal relationship, his reports are of limited probative value and insufficient to establish that she sustained an employment-related injury causally related to factors of her federal employment. Further, the Board has held that the mere fact that appellant’s symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between her condition and her employment factors.⁹

The report from Ms. Crackel, a physician’s assistant, is of no probative value as she is not a physician under FECA.¹⁰ As such, the Board finds that appellant did not meet her burden of proof with this submission.

⁶ *Id.* See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁷ See *Lucrecia Nielsen*, 42 ECAB 583 (1991); *Lillian Jones*, 34 ECAB 379 (1982) (an opinion on causal relationship which consists only of a physician checking yes to a medical form report question on whether the claimant’s disability was related to the history given is of little probative value). See *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ See *Thomas L. Hogan*, 47 ECAB 323, 328-29 (1996).

⁹ See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁰ 5 U.S.C. § 8101(2). Section 8101(2) of FECA 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 also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

Appellant may submit new evidence or argument with a 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 has not met her burden of proof to establish that she sustained an injury in the performance of duty causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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