

work on February 12, 2013 at 1:30 p.m. Regarding the cause of injury, she stated, “Hit on left side of head by a bag full [of] medication while I was on the phone.” On the same form, Karen Corr, a supervisor, stated that the alleged incident was not corroborated by witness statements or a police video.²

Appellant submitted February 14 and 22, 2013 statements made on agency “report of contact” forms. On February 12, 2013 Sandra Gray, a supervisor, subjected appellant to verbal abuse, bullying and harassment during the half hour before Ms. Gray threw a medication bag that hit the left side of her face while she was on the telephone talking to an agency nurse. Appellant alleged that it was an “intentional attack” rather than an accident. She asserted that just prior to the incident, Ms. Gray became angry and shouted at her because she was answering a telephone call rather than checking orders at the counter. Appellant stated that, when she walked away to separate herself from this abuse, Ms. Gray continued shouting at her and stated, “Go home, leave, I do n[o]t need you.” She called the agency police because she feared further violence by Ms. Gray. Appellant stated that, although the object thrown at her on February 12, 2013 was small, she jerked her neck and shoulder and aggravated her preexisting carpal tunnel syndrome. The incident made her feel embarrassed in front of her coworkers.

Appellant submitted a copy of an e-mail she sent on February 12, 2013 to Officer Timothy Kennedy, the agency police officer who responded to her call that day. In the e-mail, she stated that Ms. Gray threw a bag at her head while she was on the telephone. Appellant noted that Ms. Gray was upset because she was on the telephone when there were a few medications to check at the counter. She related that she was answering an important work-related call. Appellant stated that Ms. Gray started shouting at her and telling her that she was not doing her job.

In a February 12, 2013 report, Officer Kennedy noted that he responded to a call from the agency’s outpatient pharmacy when an employee reported that her supervisor threw a bag of medicine at her which struck her in the head. He made a visit to appellant, who told him that Ms. Gray threw a bag of medicine as hard as she could that struck appellant in the side of her head. Officer Kennedy questioned Ms. Gray, who acknowledged that she threw the bag but that it hit appellant by accident. Ms. Gray indicated that appellant was lying and that bags of medicine were thrown all the time.³ Officer Kennedy noted that Ms. Gray explained the process that when prescriptions were filled they were thrown into a window to be picked up by another person and issued to appellant. Ms. Gray stated that the bag may sometimes hit the person working at the station next to the window. She noted that on February 12, 2013 she put one small container of medication in a bag and tossed it towards the window. The bag was not very heavy so it did not go in the direction it was tossed and it hit appellant in the left shoulder area. Ms. Gray stated that she immediately apologized to appellant. Officer Kennedy stated that there

² Ms. Corr stated, “A very minor event was blown out of proportion. This employee also picked up the lightweight bag that grazed her and forcibly and intentionally threw it at an innocent [third] party in an overreaction to the situation.”

³ Officer Kennedy stated that at this point in the interview he advised Ms. Gray to go to the other side of the room but she refused and he had to physically guide her to the wall. After a meeting in Chief Maggard’s office, the interview process was restarted.

were seven witness statements from pharmacy staff members who advise that tossing the medication bags to the dispensing window by the pharmacist was a common practice and that Ms. Gray apologized to appellant at the time of the February 12, 2103 incident. He observed footage from a pharmacy camera which did not show Ms. Gray throwing the bag, but which did show footage of the bag striking appellant in the left shoulder area. Officer Kennedy stated that the camera showed the bag staying topside up as it flew through the air, which indicated that it was not thrown at the velocity appellant had described. The fact that the bag struck appellant in the left shoulder area “did not appear to faze” her as she continued to work and hold the telephone to her ear for several seconds and did not jerk her head as alleged.

In February 13 and March 2, 2013 notes, Dr. Martha Gray, an attending Board-certified internist, stated that appellant’s absence from February 13 to 20, 2013 and February 19 to March 2, 2013 was “due to illness or injury.” The document “certifies that he or she has been under our care for this problem.” It was noted that appellant could return to work on March 4, 2013. Dr. Gray noted under diagnosis, “Follow-up work injury sustained February 12, 2013.” In a February 20, 2013 note, a person with an illegible signature stated, “Workers’ comp[ensation] injury, date February 12, 2013. [Appointment] with [Dr.] Gray February 19, 2013, diagnosis cervalgia, neck and shoulder pain. Off work February 19 [through] March 3, 2013. [Return to work] March 4, 2013.”

In a March 8, 2013 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

In an attending physician’s report dated March 11, 2013, Dr. Gray noted that appellant reported being hit on the left side of the head with a bag of medicine on February 12, 2013. She stated that examination revealed that appellant had full range of motion of the neck, some discomfort and tenderness over the posterior neck and upper back. Dr. Gray diagnosed “cervicalgia” and opined that the condition was work related as appellant stated a coworker threw a bag at her. She indicated that appellant was totally disabled from February 19 to March 3, 2013 and could return to her regular work on March 4, 2013.

In an April 9, 2013 decision, OWCP denied appellant’s claim that she sustained an injury in the performance of duty on February 12, 2013. It found:

“The evidence submitted was insufficient to establish your claim because no diagnosis of any condition (physical or emotional) resulting from the events on [February] 12, 2013 has been provided and a physician’s opinion as to how the work injury caused, contributed to or aggravated your medical conditions has not been provided.”

OWCP accepted that on February 12, 2013 Ms. Gray threw a medicine bag which accidentally struck appellant. The evidence of record, including the statement of Officer Kennedy, did not show that Ms. Gray intentionally tried to hit appellant with the bag or that Ms. Gray verbally abused appellant on February 12, 2013. OWCP found that appellant did not submit sufficient medical evidence to establish a firm diagnosed condition. Its notes of Dr. Gray diagnosed cervicalgia which was merely a pain diagnosis and a subjective complaint without physical findings to injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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, that an injury was sustained 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.⁴ 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 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.⁶ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁸

ANALYSIS

On February 22, 2013 appellant filed a claim alleging that she sustained head, neck and shoulder injury due to an incident at work on February 12, 2013. Regarding the cause of injury, she stated, “Hit on left side of head by a bag full of medication while I was on the phone.” In an April 9, 2013 decision, OWCP denied appellant’s claim of injury in the performance of duty

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

⁶ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995). With respect to emotional condition claims, the Board has recognized the compensability of physical assaults or verbal abuse in certain circumstances. *See Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991); *Julie B. Hawkins*, 38 ECAB 393, 396 (1987).

⁷ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, *id.*

⁸ *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

on February 12, 2013.⁹ It accepted that Ms. Gray, a supervisor, threw a medicine bag which accidentally struck appellant on the left shoulder region. OWCP denied the claim finding that appellant did not submit rationalized medical evidence to establish that she sustained a diagnosed condition due to the accepted incident.

The Board finds that appellant did not meet her burden of proof to establish that she sustained injury in the performance of duty on February 12, 2013. The Board notes that OWCP properly accepted the February 12, 2013 incident when Ms. Gray threw a medicine bag which accidentally struck appellant. The evidence of record does not establish that Ms. Gray intentionally tried to hit appellant with the bag. The Board further notes that the bag hit appellant in her left shoulder region, rather than her head as alleged. Appellant did not submit evidence to establish that Ms. Gray intentionally hit her with the medicine bag or that Ms. Gray verbally abused her on February 12, 2013.¹⁰

The Board further finds that appellant did not establish her claim for a February 12, 2013 injury because she did not submit sufficient medical evidence to establish a firm medical diagnosis due to the accepted incident. Appellant submitted brief treatment notes from Dr. Gray, an attending Board-certified internist. In a March 11, 2013 attending physician's report, Dr. Gray noted only that appellant reported being hit on the left side of the head with a bag of medicine on February 12, 2013.¹¹ She diagnosed "cervicalgia" and opined that the condition was work related because appellant related a coworker threw a bag at her. Dr. Gray listed that appellant was totally disabled from February 19 to March 3, 2013 and could return to her regular work on March 4, 2013. The submission of this report does not establish appellant's claim. Dr. Gray did not provide a clear statement explaining how the diagnosed condition occurred as a result of the accepted February 12, 2013 work incident. Her identification of cervicalgia or neck pain, without detailed objective findings, merely reported a symptom rather than a firm diagnosed condition.¹² Dr. Gray did not provide a rationalized medical opinion addressing how the February 12, 2013 work incident caused appellant to suffer a medical condition.

Appellant did not submit probative evidence showing that she sustained an injury in the performance of duty on February 12, 2013 and OWCP properly denied her claim. She may submit new evidence or argument with a written request for reconsideration to OWCP within one

⁹ Appellant did not mention an emotional condition in her Form CA-1, but her later statements suggested that she was claiming such an injury in addition to a physical injury.

¹⁰ Officer Kennedy, the agency police officer who came to the scene of the February 12, 2013 incident, indicated that he reviewed video of the incident. He stated that the footage from a pharmacy camera he watched did not show Ms. Gray throwing the bag, but did show the bag striking appellant in the left shoulder area. Officer Kennedy stated that the camera showed the bag staying topside up as it flew through the air which indicated that it was not thrown at the velocity appellant had described. He stated that the fact that the bag hit appellant in her left shoulder area "did not appear to faze" appellant as she continued to work and hold the telephone to her ear for several seconds and did not jerk her head as alleged.

¹¹ Dr. Gray indicated that examination revealed that appellant had full range of motion of the neck, some discomfort and tenderness over the posterior neck and upper back.

¹² Dr. Gray provided disability slips but they did not contain any diagnosis of injury.

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 meet her burden of proof to establish that she sustained an injury in the performance of duty on February 12, 2013.

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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