

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

K.W., Appellant)
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and)
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**CORPORATION FOR NATIONAL &
COMMUNITY SERVICE, AMERICORPS
VISTA ENROLLEES, HABITAT FOR
HUMANITY, Spokane, WA, Employer**)
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**Docket No. 13-1762
Issued: January 2, 2014**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 22, 2013 appellant filed a timely appeal from a February 8, 2013 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 established traumatic back and bilateral shoulder injuries in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

² Accompanying her request for appeal, appellant submitted statements of qualifications, her resume, letters of recommendation and medical evidence. The Board may not consider evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

On appeal, appellant contends that OWCP's denial of her claim constituted procedural error. She asserts that OWCP unduly delayed opening her claim file.

FACTUAL HISTORY

On July 24, 2012 appellant, then a 50-year-old resource development specialist,³ filed a claim for traumatic injury (Form CA-1) alleging that on June 25, 2012 she sustained lumbar and bilateral shoulder injuries after moving tables and chairs at work. She did not stop work at the time of her claim.

In support of her claim, appellant submitted a July 30, 2012 physical therapy prescription from Dr. Pavel Conovalciuc, an attending Board-certified family practitioner. In a December 17, 2012 report, Dr. Conovalciuc noted the July 25, 2012 onset of lumbar and right hip pain without spasm after moving furniture at work. He diagnosed lumbago. Appellant also provided reports signed by a nurse practitioner, physician assistants and physical therapists.

In a January 4, 2013 letter, OWCP advised appellant of the additional evidence needed to establish her claim, including a report from her attending physician diagnosing an injury and explaining how and why the identified work factors would cause or contribute to that injury. It noted that physician assistants and nurse practitioners were not considered qualified physicians under FECA, and that pain was a symptom and not a diagnosis. OWCP afforded appellant 30 days to submit additional evidence. In response, appellant submitted physical therapy notes dated from July 20, 2012 to January 3, 2013.

By decision dated February 8, 2013, OWCP denied appellant's claim on the grounds that fact of injury was not established. It accepted that the June 25, 2012 incident occurred at the time, place and in the manner alleged. However, OWCP found that appellant had not submitted sufficient medical evidence in support of her claim to establish an injury. It noted that pain was considered a symptoms and not a diagnosis. Also, as physician assistants and nurse practitioners were not considered physicians under FECA, their reports were of no probative medical value.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 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

³ In a February 8, 2013 teleconference, OWCP verified that appellant was an employee of the employing establishment at the time of the claimed June 25, 2012 incident.

⁴ 5 U.S.C. §§ 8101-8193.

employment injury.⁵ 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.⁶

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁷ 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.⁸

ANALYSIS

Appellant claimed that she sustained low back and bilateral shoulder injuries in the performance of duty. Dr. Conovalciuc, an attending Board-certified family practitioner, prescribed physical therapy on July 30, 2012 and diagnosed lumbago on December 17, 2012. Although he noted the accepted June 25, 2012 incident, Dr. Conovalciuc did not explain how those activities could have caused or contributed to the claimed lumbar and bilateral shoulder injuries. In the absence of such rationale, his reports are of diminished probative value.⁹

Appellant also provided reports signed by physical therapists, a nurse practitioner and a physician assistant. However, as these practitioners are not considered physicians under FECA, their opinions are of no probative value.¹⁰

The Board notes that OWCP advised appellant, by January 4, 2013 letter, of the medical evidence needed to establish her claim. However, appellant did not submit such evidence. Therefore, she has not established that she sustained back and shoulder injuries as alleged, as she submitted insufficient medical evidence to establish the causal relationship asserted.

On appeal, appellant contends that OWCP’s denial of her claim constituted procedural error. As stated above, OWCP properly denied appellant’s claim due to deficiencies in the medical evidence. Her complaint about alleged delays by OWCP is not relevant to the reasons for denial.

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.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁹ *Id.*

¹⁰ 5 U.S.C. § 8101(2); *Richard E. Simpson*, 57 ECAB 668 (2006); *Vickey C. Randall*, 51 ECAB 357 (2000).

CONCLUSION

The Board finds that appellant has not established that she sustained traumatic back and shoulder injuries in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 8, 2013 is affirmed.

Issued: January 2, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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