

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

S.A., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION,
New York, NY, Employer)

Docket No. 13-2152
Issued: March 20, 2014

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 23, 2013 appellant filed a timely appeal from an April 4, 2013 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.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on November 16, 2010.

FACTUAL HISTORY

On November 17, 2010 appellant, then a 40-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on November 10, 2010 she injured the third

¹ 5 U.S.C. § 8101 *et seq.*

finger of her left hand when it got squeezed between the two crates in the cook tank while she was raising the crates to remove the meat. Appellant's supervisor noted on the claim form that the injury occurred in the performance of duty. No evidence was submitted with the claim.

By letter dated April 27, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was afforded 30 days to respond. No evidence was submitted.

By decision dated May 31, 2012, OWCP denied appellant's claim finding that a medical condition had not been diagnosed in connection with the accepted injury and/or event. It noted that no medical evidence had been received.

By letter dated December 31, 2012, appellant requested reconsideration of OWCP's decision. In an undated statement, she indicated that she injured her left middle finger herself while hoisting a lift to empty a tank containing a cooked product. Appellant was taken to Jamaica Hospital and received treatment for her injury, which included an x-ray, five stitches, a tetanus shot and a prescription for pain medicine. She returned to her job and reported her injury to the medical department, where she was told that all of the paperwork would be collected and submitted to workers' compensation. Appellant indicated that she submitted all the information, but then started receiving bills from the hospital for payment rendered in connection with the services rendered. She indicated that she turned all the bills over to the medical department. Appellant did not realize that the medical department failed to file her workers' compensation claim until she was contacted by a law firm contracted by the hospital for payment. She indicated that she resubmitted all the paperwork to the medical department again and her workers' compensation claim was finally submitted.

The hospital record and x-ray of appellant's middle left finger dated November 16, 2010 from the Jamaica Hospital Center Emergency Department was submitted. Appellant presented with a finger laceration, third finger, left. The history of injury provided was that, while lifting a pot with meat, her finger was lacerated by the pot. A diagnosis of finger laceration from the physician's assistant, Nilkeshia Stephens, was provided.

By decision dated April 4, 2013, OWCP denied modification of its prior decision. It found that, although a medical condition has been diagnosed in connection with the history of injury provided with the reconsideration request, appellant provided differing histories of injury on her claim form, on her reconsideration request, and to the hospital without an explanation as to why differing histories were provided.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the

employment injury.² 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.³

In order to determine whether an employee actually sustained an 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, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.⁵ Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation, is causally related to the accepted injury.⁶

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁷

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁸ The opinion of the physician must be based on 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.

² *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Elaine Pendleton*, *supra* note 2 at 1143 (1989).

⁵ *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *See Elaine Pendleton*, *supra* note 2.

⁷ *Betty J. Smith*, 54 ECAB 174 (2002).

⁸ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁹

ANALYSIS

In its May 31, 2012 decision, OWCP accepted that on November 16, 2010 appellant injured the third finger of her left hand during the performance of her federal duties but denied the claim on the grounds that she did not submit any medical evidence containing a diagnosis in connection with the November 16, 2010 event. While it subsequently found a medical condition had been diagnosed, it denied modification of the May 31, 2012 decision on the basis that appellant provided differing histories of injuries on her claim form, to the hospital and with her request for reconsideration.

The Board finds that appellant's descriptions of her November 16, 2010 injury on her claim form, to the hospital and with her request for reconsideration are consistent and do not cast serious doubt on the validity of the claim. On her claim form dated November 17, 2010, appellant indicated that on November 16, 2010 she was raising the crates in the cook tank to remove the meat when she injured the third finger of her left hand as her finger was squeezed between two crates. In the hospital emergency room report of November 16, 2010, appellant stated that she was lifting a pot with meat when her finger was injured or, more specifically, lacerated. In her reconsideration request, appellant again states that she injured her left middle finger while "hoisting a lift to empty a tank containing a cooked product." Appellant consistently alleged that her injury to the third finger of her left hand occurred when her finger was squeezed between crates while lifting or raising the container containing cooked food. This is consistent with her duties as a food service worker. Additionally, the employing establishment has not contested that an injury occurred during the performance of duty on November 16, 2010. Thus, the Board finds that appellant's statements regarding her November 16, 2010 injury are consistent.

While OWCP found that a medical condition has been diagnosed in connection with the event (*i.e.*, a laceration), OWCP noted the diagnosis was provided by a physician's assistant, Nilkeshia Stephens in the November 16, 2010 hospital record. Healthcare providers such as a nurse, acupuncturist, physician's assistant and physical therapist are not defined as a physician under FECA. These reports do not constitute competent medical evidence to establish a medical condition, disability or causal relationship.¹⁰

However, the Board notes that OWCP procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual

⁹ *James Mack*, 43 ECAB 321 (1991).

¹⁰ 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

inspection, if the injury was promptly reported, no dispute exists regarding the occurrence and the employee has no lost time from the injury.¹¹

The facts of this case establish that appellant's lacerated finger was a minor condition which could be visualized. Appellant's claim form also establishes that the injury was promptly reported and the employing establishment acknowledged that the injury occurred in the performance of duty. Furthermore, she has clarified that the claim is for medical expenses, not disability. The Board therefore concludes that appellant has established that she sustained a lacerated finger in the performance of duty on November 16, 2010. This case is remanded for payment of medical expenses.

CONCLUSION

The Board finds that appellant met her burden of proof to establish that she sustained an injury in the performance of duty on November 16, 2010.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2013 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 20, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013). *See also J.W.*, Docket No. 13-262 (issued April 23, 2013).