

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

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| D.H., Appellant |) | |
| |) | |
| and |) | Docket No. 14-294 |
| |) | Issued: May 23, 2014 |
| DEPARTMENT OF THE NAVY, |) | |
| COMMANDER FLEET FORCES COMMAND -- |) | |
| SHIPYARDS, Portsmouth, VA, Employer |) | |

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 24, 2013 appellant filed a timely appeal from the August 14, 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.²

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on May 8, 2013.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted new evidence with her appeal contending that it supported causal relationship. The Board cannot consider such evidence, however, for the first time on appeal. The Board's review of the case is limited to the evidence of record which was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c); *see Steven S. Saleh*, 55 ECAB 169 (2003).

FACTUAL HISTORY

On May 9, 2013 appellant, then a 63-year-old engineering technician, filed a traumatic injury claim alleging that on May 8, 2013 she reached in to the bottom of a safe to get some compact discs (CDs) when she fell striking her right shoulder. In a May 9, 2013 statement, she noted that she had a prior back injury in 1984, which was occupational.³ Appellant was off work from May 9 to 29, 2013.

By letter dated May 15, 2013, OWCP advised appellant that the claim initially appeared to be a minor injury. It administratively approved payment of limited medical expenses. As appellant's medical bills exceeded \$1,500.00, it would adjudicate the claim. OWCP informed her of the evidence needed to establish her claim.

In a May 24, 2013 statement, appellant's supervisor concurred with appellant's description of injury. The injury was reported on May 9, 2013, the day of the incident and appellant continued to work for two hours.

OWCP received reports from Dr. Arthur W. Wardell, a Board-certified orthopedic surgeon and treating physician. On May 10, 2013 Dr. Wardell noted that appellant was injured at work on May 8, 2013 when she was reaching into a safe at work. Appellant twisted her body awkwardly and fell against boxes trying to pick up the CDs. Dr. Wardell advised that, since the incident, she had neck pain which radiated to her right shoulder with pain in the upper and lower back, which radiated to the right buttock and down to the right posterior thigh. On examination, appellant had right paracentral tenderness and spasm and right trapezius tenderness and spasm. Shoulder motion was normal. Appellant had right deltoid tenderness, bilateral parathoracic tenderness, right parathoracic spasm, bilateral paralumbar tenderness, right piriformis tenderness and moderate restriction of low back flexion with pain radiating to the right buttock and right posterior thigh. Dr. Wardell noted that cervical spine x-rays showed C6-7 narrowing while the right shoulder, dorsal spine, pelvis and lumbosacral spine x-rays were essentially normal. He diagnosed cervical spine sprain, dorsolumbar spine sprain, right shoulder sprain and right sciatica due to the history of injury. Dr. Wardell checked a box "yes" in response to a form question as to whether appellant's condition was caused or aggravated by an employment activity. He noted that she was unable to return to work.

In reports dated May 29, 2013, Dr. Wardell noted that appellant had eight sessions of physical therapy. On examination, appellant's neck pain was worse together with her lower back pain. Dr. Wardell stated that she had 25 percent restricted motion of her neck and tenderness over the right trapezius, with moderate restriction of the low back. He repeated advised that appellant was unable to return to work.

On July 1, 2013 Dr. Wardell noted that appellant continued to have some stiffness in her neck and lower back, but therapy had helped. Appellant wanted to return to work with restrictions. Dr. Wardell determined that she had 10 percent restriction of neck extension and flexion, mild right paracervical pain and tenderness, moderate restriction of low back flexion and

³ Appellant also indicated that she had a prior injury to her head. The record reflects that she filed several traumatic injury claims. The other claims are not presently before the Board.

negative straight leg raising. He recommended that appellant continue with therapy and resume work with restrictions. Dr. Wardell provided a 15-pound lifting restriction and a six-hour limitation on bending, stooping, pulling and pushing.

OWCP also received May 8, 2013 emergency room records noting that appellant was treated by a physician's assistant for cervical muscle spasm. A May 9, 2013 chest x-ray and computerized tomography scan of the head were reported as normal. OWCP also received reports from attending nurses, physician's assistants and physical therapists.

By decision dated August 14, 2013, OWCP denied appellant's claim. It found that the medical evidence did not establish that the claimed medical condition was causally related to the accepted incident.

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 timely filed within the applicable time limitation period of FECA⁵ and that an injury was sustained in the performance of duty.⁶ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

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.⁸ 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.⁹

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical

⁴ 5 U.S.C. §§ 8101-8193.

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

⁶ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁹ *See John J. Carlone*, 41 ECAB 345, 358 (1989). For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

ANALYSIS

Appellant alleged that on May 8, 2013 she reached into a safe to get some CDs and fell on a box striking her right shoulder. Her head started hurting along with her back, right shoulder and neck. The evidence supports that the May 8, 2013 incident occurred, as alleged. Appellant fell against her right shoulder as she reached into a safe.

The Board finds that the medical evidence is insufficient to establish that the May 8, 2013 incident caused her injury. The medical evidence contains insufficient rationale on how the May 8, 2013 incident caused or contributed to her diagnosed medical condition.¹¹

Dr. Wardell noted that appellant was injured at work on May 8, 2013 when she fell while reaching into a safe at work. Appellant twisted her body awkwardly and fell. After the incident, she had pain in the neck which radiated to her right shoulder and pain in the upper and lower back, which radiated to the right buttock and to the right posterior thigh. Dr. Wardell diagnosed cervical spine sprain, dorsolumbar spine sprain, right shoulder sprain and right sciatica and noted they were due to the injury. He checked a box “yes” in response to whether he believed the condition was caused or aggravated by an employment activity. Dr. Wardell indicated that appellant was unable to return to work. The Board has held that the checking of a box “yes” on a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.¹² Dr. Wardell did not otherwise address why the work incident caused or contributed to any of the diagnosed conditions.

The subsequent reports from Dr. Wardell addressed appellant’s status but did not offer any opinion on causal relationship. 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.¹³ Similarly, reports of diagnostic testing are insufficient because these reports do not specifically address whether the May 8, 2013 work incident caused or contributed to a diagnosed medical condition.

OWCP also received reports from nurses, physician’s assistants and physical therapists. However, the Board has held that lay individuals such as a physician’s assistant, nurse and physical therapist are not competent to render a medical opinion under FECA.¹⁴ Only medical

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹² *Linda Thompson*, 51 ECAB 694 (2000); *Calvin E. King*, 51 ECAB 394 (2000).

¹³ *K.W.*, 59 ECAB 271 (2007).

¹⁴ *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See 5 U.S.C. § 8101(2) (provides that the term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law).

evidence from a physician as defined under FECA will be accorded probative value. This evidence has no probative medical value.¹⁵

Appellant may submit evidence or argument with a written request for reconsideration 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 did not meet her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on May 8, 2013.

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 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

¹⁵ See *Jane A. White*, 34 ECAB 515, 518 (1983).