

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

A.A., Appellant)

and)

DEPARTMENT OF THE ARMY,)
FORT BLISS, TX, Employer)

Docket No. 15-128
Issued: February 27, 2015

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 22, 2014 appellant filed a timely appeal from a July 31, 2014 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.

FACTUAL HISTORY

On June 16, 2014 appellant, then a 61-year-old histopathology technician, filed a traumatic injury claim alleging that on April 4, 2014 she sustained an injury in the performance of duty. She alleged that, as she was preparing to park her car and report for work, a car cut

¹ 5 U.S.C. § 8101 *et seq.*

² Although appellant submitted new medical reports after the issuance of OWCP's decision, the Board lacks jurisdiction to review new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

across lanes and cut her off causing her to hit the front passenger side of the other vehicle. Appellant alleged that she experienced body aches, stomach pain, and headaches. Her supervisor indicated that she was in the performance of duty when the incident occurred.

By letter dated June 27, 2014, OWCP notified appellant that the evidence was insufficient to establish her claim. It advised her of the type of evidence needed to establish her claim, particularly asking that she provide a physician's opinion as to how the work incident caused a diagnosed medical condition.

By decision dated July 31, 2014, OWCP denied appellant's claim because the medical evidence was insufficient to establish that a condition had been diagnosed in connection with the work incident.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,³ including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.⁴ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁶

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 rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

ANALYSIS

On April 4, 2014 appellant was involved in a motor vehicle accident as she was about to park her car and report for work. OWCP accepted that she was in the performance of duty and the evidence of record supports that the claimed work incident occurred as alleged. Therefore, the Board finds that the first component of fact of injury is established. However, there is no

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *R.C.*, 59 ECAB 427 (2008).

⁵ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *T.H.*, 59 ECAB 388 (2008).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

medical evidence to establish that the work-related incident on April 4, 2014 caused a diagnosed condition.

There was no medical evidence submitted to OWCP before the issuance of the July 31, 2014 decision. As noted, part of a claimant's burden of proof includes the submission of medical evidence establishing that the employment incident caused an injury.

Appellant may submit new evidence or argument as part of a formal 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 did not meet her burden of proof to establish a traumatic injury in the performance of duty on April 4, 2014.

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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