

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

<p>K.T., Appellant</p> <p>and</p> <p>DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Chicago, IL, Employer</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. 14-218 Issued: June 11, 2015</p>
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<p><i>Appearances:</i></p> <p><i>Appellant, pro se</i></p> <p><i>Office of Solicitor, for the Director</i></p>	<p><i>Case Submitted on the Record</i></p>
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DECISION AND ORDER

Before:
 RICHARD A. DASCHBACH, Chief Judge
 ALEC J. KOROMILAS, Alternate Judge
 JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 12, 2013 appellant filed a timely appeal from an October 31, 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 her dental condition is causally related to a November 13, 2012 employment incident.

On appeal, appellant contends that the Form CA-16 she submitted was sufficient to establish causal relationship and even if the denial is upheld, a directive to pay for the costs incurred under the coverage of the Form CA-16 medical authorization form is in order.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 13, 2012 appellant, then a 58-year-old claims examiner, filed a traumatic injury claim (Form CA-1) alleging that on that date she cracked one of her back teeth in the lower right portion of her jaw while biting down on a cracker. There is no indication that she stopped work as a result of the November 13, 2012 incident.

The employing establishment issued an OWCP Form CA-16, authorization for examination, on November 14, 2012. Appellant was authorized to visit her attending dentist, Dr. David Farinacci, in North Canton, Ohio. In a November 15, 2012 report (Form CA-20), Dr. Farinacci related that he examined appellant and found that she had broken tooth number 31, which resulted in an abscess and required root canal therapy. He checked a box “yes” to indicate his support for a causal relationship between appellant’s condition and her employment, noting that the injury occurred while she was at her desk and on duty. Dr. Farinacci submitted an American Dental Association (ADA) dental claim form stating that he had repaired appellant’s molar with root canal therapy on November 15, 2012 for a fee totaling \$1,000.00.

In an August 21, 2013 letter, OWCP notified appellant of the deficiencies of her claim and afforded 30 days for the submission of additional evidence.

Subsequently, appellant submitted an August 28, 2013 narrative statement and a copy of the Board’s decision in *Margaret F. Tefft*.² She argued that the case was similar to her own and, therefore, her claim should not be denied. Appellant’s narrative did not provide additional factual information but restated and emphasized her belief that on the facts already in the record her claim should be found compensable. She also discussed the Form CA-16 and her dental costs.

By decision dated October 31, 2013, OWCP denied the claim finding that the medical evidence of record was not sufficient to establish a causal relationship between appellant’s broken tooth and the employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 injury⁴ was sustained in the performance of duty as alleged,

² Docket No. 04-745 (issued October 6, 2004).

³ 5 U.S.C. § 8101 *et seq.*

⁴ OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁶

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 employee, 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 employee.⁷

ANALYSIS

OWCP has accepted that the employment incident of November 13, 2012 occurred at the time, place, and in the manner alleged. The issue is whether appellant’s tooth condition resulted from the November 13, 2012 employment incident. The Board finds that appellant did not meet her burden of proof to establish a causal relationship between the condition for which compensation is claimed and the employment incident.

In support of her claim, appellant cited the Board’s decision in *Margaret F. Tefft*⁸ and argued that the case was similar to her own and, therefore, her claim should not be denied. In the *Tefft* case, the employee filed a traumatic injury claim alleging that she sustained a broken tooth while eating a sandwich that had a lobster shell in it. In *Tefft*, the employee had an eyewitness to the occurrence. In the instant case, appellant did not submit testimony from or identify any eyewitnesses. Thus, the Board finds that the *Tefft* case is distinguishable from appellant’s case and fails to support her claim.

In *D.S.*,⁹ the employee working in Iraq claimed that he broke two teeth when a nearby explosion from a rocket or tank caused him to bite down on a flashlight. OWCP accepted that

⁵ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

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

⁸ *Supra* note 2.

⁹ Docket No. 06-1198 (issued October 30, 2006).

the incident occurred as alleged, but denied the claim on the basis that there was no rationalized medical opinion evidence to support that the employment incident caused an injury to his teeth. Appellant's dentist reported only that appellant had fractured tooth number 5 and tooth number 12. The Board affirmed OWCP's decision finding that the dentist did not provide any history of the incident or explain how it caused or contributed to the claimant's broken teeth. The medical evidence proved insufficient to establish the employee's claim because it failed to explain how his dental condition was causally related to the accepted employment incident.¹⁰

In *John T. Hanoumis*,¹¹ the employee filed a traumatic injury claim, alleging that he was on cart duty when he tripped and hit his chin. He alleged this caused his teeth to snap together and broke one tooth in half. The Board found that the employee did not submit any rationalized medical evidence to support his claim that the incident caused an injury. The employee's dentist did not attach any report interpreting the three x-rays of record or diagnosing a condition. In addition, the dentist did not provide an opinion on the cause of the employee's alleged injury or whether the broken tooth was attributable to his employment.

In *Rachel Brunson*,¹² there was no dispute that the employee timely filed her claim for compensation benefits and that the incident occurred as alleged, *i.e.*, she fell and hit her chin on a cement step while delivering mail. She sought dental treatment promptly after the employment incident. Although the claimant promptly reported the incident and sought treatment, the Board found that the medical evidence she submitted was insufficient to establish a causal relationship between the employment incident and the claimed broken right front tooth.

In *R.C.*,¹³ the employee filed a traumatic injury claim alleging that he broke tooth number 13 when he bit a popcorn kernel at work. There was no eyewitness testimony. OWCP accepted that the incident occurred as alleged, but denied the claim on the grounds that the medical evidence submitted was insufficiently rationalized to establish that the accepted incident caused the broken tooth. The claimant submitted a Form CA-20 report from his dentist, who merely checked a box "yes" indicating causal relationship, and noted that the injury had occurred while the employee was on duty. The Board affirmed OWCP's decision on the basis that the medical evidence was not sufficient to establish a claim.¹⁴

¹⁰ Cf. *Patrick M. Mooney*, Docket No. 97-428 (issued December 22, 1998) (where the Board found that the employee's fractured tooth occurred in the performance of duty as he was on temporary travel duty as a customs pilot and was under the 24-hour coverage of FECA at the time of injury).

¹¹ Docket No. 00-1377 (issued January 2, 2001).

¹² Docket No. 94-2586 (issued August 26, 1996).

¹³ Docket No. 08-520 (issued June 13, 2008).

¹⁴ Cf. *Diana M. St. Julian*, Docket No. 97-168 (issued October 7, 1998) (where OWCP accepted the claim for a broken tooth and the employee filed a notice of recurrence alleging that she lost her dental filling while eating dinner, the Board found that appellant submitted sufficient evidence to make a *prima facie* showing that the dental procedures performed by her dentist were causally related to the accepted condition and remanded the case for further development).

In the instant case, there is no eyewitness testimony corroborating appellant's biting down on a cracker on November 13, 2012. There is no indication that she stopped work as a result of the November 13, 2012 incident. Dr. Farinacci, appellant's attending dentist, submitted a Form CA-20 report dated November 15, 2012 indicating that he examined appellant and found that she had broken tooth number 31, which resulted in an abscess and required root canal therapy. He checked a box "yes" indicating causal relationship. The Board has held that a physician's opinion which is expressed only by checking a box on a form report is of diminished probative value in establishing causal relationship.¹⁵ No rationale or explanation was provided by Dr. Farinacci on the issue of causal relationship.¹⁶

The Board finds that Dr. Farinacci failed to provide a rationalized opinion explaining how factors of appellant's federal employment, such as biting down on a cracker at work, caused or aggravated her tooth condition. Dr. Farinacci noted that appellant's condition occurred while she was at work. Such generalized statements do not establish causal relationship because they merely repeat appellant's allegations. Further, he failed to provide a narrative setting forth a full and accurate history of appellant's condition, including a comparison of any diagnostic testing obtained after November 13, 2012 with prior tests.¹⁷ The Board finds that the reports from Dr. Farinacci are insufficient to establish that appellant sustained an employment-related injury.

While appellant contends that her work contributed to her tooth condition, the record contains insufficient medical opinion explaining how the claimed work factors caused or aggravated her claimed condition. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁸ Neither the fact that the condition became apparent during a period of employment, nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.¹⁹ Causal relationship must be substantiated by reasoned medical opinion evidence which is appellant's responsibility to submit. There is insufficient probative, rationalized medical evidence explaining why appellant's claimed tooth condition was caused or aggravated by her employment activities.

On appeal, appellant contends that the Form CA-16 she submitted was sufficient to establish causal relationship and that even if the denial is upheld, a directive to pay for the costs incurred under the coverage of the Form CA-16 medical authorization form is in order. The Board notes that the employing establishment issued appellant a Form CA-16 on November 14, 2012 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an

¹⁵ See *Calvin E. King*, 51 ECAB 394 (2000).

¹⁶ See *Sedi L. Graham*, 57 ECAB 494 (2006).

¹⁷ Cf. *V.M.*, Docket No. 08-2304 (issued May 21, 2009) (where the Board found that appellant, who alleged a broken molar after the left arm of his office chair dropped about six to eight inches, submitted contemporaneous medical evidence containing a generally consistent history of injury and remanded the case for further development).

¹⁸ See *supra* note 9.

¹⁹ *Id.*

employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.²⁰ Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16.²¹ Upon return of the case record, OWCP should further address this issue.

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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her tooth condition is causally related to a November 13, 2012 employment incident as alleged. On return of the record, OWCP should consider the Form CA-16 issued in this case.

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2013 decision of the Office of Workers' Compensation Programs is affirmed.²²

Issued: June 11, 2015
Washington, DC

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

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

²⁰ See *D.M.*, Docket No. 13-535 (issued June 6, 2013). See also 20 C.F.R. §§ 10.300, 10.304.

²¹ Cf. *Beverly J. Stokes*, Docket No. 96-2110 (issued June 25, 1998) (where the claimant alleged a broken tooth after being kicked in the face by a patient, the Board found that the medical evidence was insufficient to establish fact of injury and the employee would not return the Form CA-16 issued by the employing establishment and would not continue treatment with her dentist, who advised that x-rays showed preexisting dental conditions).

²² Richard J. Daschbach, Chief Judge, participated in the preparation of this decision but is no longer a member of the Board effective May 16, 2014.