United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 15-0676**
	)	**Issued: November 19, 2015**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Leavenworth, KS, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 9, 2015 appellant, through counsel, filed a timely appeal from an October 3, 2014 merit decision and a December 11, 2014 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish an injury causally related to a May 12, 2014 employment incident; and (2) whether OWCP properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 18, 2014 appellant then a 57-year-old medical administration officer, filed a traumatic injury claim alleging that on May 12, 2014 she was checking in at the airport when she either passed out or her legs locked causing her to fall backwards hitting her head on the floor. She indicated that she could not walk for over 24 hours and was very confused and disoriented after hitting her head. Appellant indicated that physicians were still running tests to determine the cause of the incident and she was in a wheelchair until the next day.[2] The employing establishment indicated that she was in the performance of duty but controverted the claim, noting that there were "different stories about what happened." Appellant did not advise the employing establishment of the incident until two days later and explained that she did not know the circumstances and she must have passed out. The employing establishment related that she also did not remember how she got from the airport to her hotel. It questioned how appellant would have been placed on a plane and taken off a plane while she was unconscious. Appellant contended that her physician had suggested a diagnosis of "transient amnesia." She had some previous diagnoses or medical conditions.

By letter dated August 7, 2014, OWCP informed appellant and the employing establishment of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days.

In a letter dated August 7, 2014, Aida Hawkins-Vindiola, an employing establishment human resources specialist, explained that appellant had been on travel status and attending classes when she notified her supervisor of not remembering getting on the plane to go to Dallas. She advised that when the supervisor asked how appellant had traveled to Dallas if she could not remember it, appellant noted that the "airport attendants got her in a wheelchair and wheeled her to the plane, sat her on the plane and wheeled her off." Ms. Hawkins-Vindiola also noted that appellant had claimed that on June 15, 2014 she "could not walk for 24 hours after incident" but she nonetheless went to her training classes unhindered. She advised that there was no medical documentation from a physician or a clear story of the events in question.

OWCP received several documents from a May 14, 2014 hospital visit to include: a report from Dr. Matthew D. Bush, Board-certified in emergency medicine, who diagnosed syncope and amnesia, from a diagnostic chest x-ray; a normal diagnostic brain computerized tomography (CT) scan read by Dr. Akilan Arumugham, a Board-certified diagnostic radiologist; a diagnostic brain magnetic resonance imaging (MRI) scan and discharge papers.

In an August 20, 2014 response, appellant indicated that she was at the Kansas City, Missouri, airport checking in at the counter to go to Dallas, Texas, for training when she suddenly fainted or fell backwards and landed on the floor and hit her head. She indicated that she must have landed on her right arm as her right arm, hands and fingers also hurt. Appellant explained that airline personnel assisted her with boarding and deplaning and she did not recall her entire trip. She also noted that she received assistance with a wheel chair and was wheeled to the hotel. Appellant indicated that she was very confused following the incident and has

[2] The record reflects that appellant has filed numerous claims from August 8, 2000 to the present.

subsequently struggled with thinking straight and feeling confused with trying to accomplish tasks.

By decision dated October 3, 2014, OWCP denied appellant's claim as fact of injury had not been established. It found that the claim was denied because she had not submitted any evidence containing a medical diagnosis in connection with the incident. OWCP specifically noted that the medical evidence only contained a diagnosis of "syncope." It explained that syncope was a symptom and was not a diagnosis of a medical condition and, in any event, the medical evidence did not show that this condition was causally related to a work event.

On November 17, 2014 appellant requested reconsideration. She explained that she was on travel status when the incident occurred. Appellant noted that her physician indicated that she was diagnosed with syncope, which was a diagnosis, and transient global amnesia. She claimed that the physician was willing to speak to someone on the telephone. Appellant also submitted December 2, 2014 hospital forms pertaining to a planned January 27, 2015 knee surgery.[3]

By decision dated December 11, 2014, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant review of its prior decision. It noted that appellant did not provide a copy of a letter from her physician which contained a diagnoses of transient global amnesia and syncope.

LEGAL PRECEDENT -- ISSUE 1

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 timely filed within the applicable time limitation period of FECA[4] and that an injury was sustained in the performance of duty.[5] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

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. 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.[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]

[3] The forms are signed by a healthcare provider whose signature is illegible.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *Id*.

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.[9]

ANALYSIS -- ISSUE 1

In this case, appellant alleged that on May 12, 2014 she fell backwards while in travel status at an airport. OWCP accepted that the claimed event occurred as alleged, but denied the claim because the medical evidence did not demonstrate that a claimed condition was related to this established work event.

The Board finds that appellant has not established a medical condition causally related to the accepted employment incident. Thus, fact of injury has not been established. In a May 14, 2014 hospital report, Dr. Bush diagnosed syncope and amnesia. However, he did not indicate that the work incident caused or aggravated a diagnosed condition. 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.[10]

OWCP also received diagnostic reports to include a chest x-ray, a normal diagnostic brain CT scan read by Dr. Arumugham and a diagnostic brain MRI scan, and discharge papers. However, these reports are also of limited probative value as they do not address whether the May 12, 2014 work incident caused or aggravated a diagnosed condition.

As appellant did not submit a rationalized medical opinion supporting that she sustained an illness or an injury causally related to the accepted May 12, 2014 employment incident, she did not meet her burden of proof to establish an employment-related traumatic injury.

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.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of FECA,[11] OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provide that a claimant may obtain review of the merits if the written

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

[10] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[11] 5 U.S.C. § 8128(a).

application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

> "(i) Shows that OWCP erroneously applied or interpreted a specific point of law; or
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> "(ii) Advances a relevant legal argument not previously considered by OWCP; or
>
> "(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP."[12]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.[13]

ANALYSIS -- ISSUE 2

Appellant disagreed with the October 3, 2014 decision and timely requested reconsideration on November 17, 2014. The underlying issue on reconsideration is medical in nature, whether appellant met her burden of proof to establish a traumatic injury causally related to a May 12, 2014 employment incident.

Appellant explained that she was on travel status when the incident occurred. She noted that her physician indicated that she was diagnosed with syncope, which was a diagnosis, and transient global amnesia. Appellant indicated that the physician was willing to speak to someone on the telephone. The Board notes that as the issue is medical in nature, appellant's explanation of what her physician diagnosed or explained is not relevant, as medical evidence must come from the physician. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[14]

The only medical evidence that appellant submitted on reconsideration are hospital form reports from an unidentified provider. These reports are not probative or competent medical evidence because they do not contain a legible signature of a physician.[15]

Appellant therefore did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or constitute pertinent new and relevant evidence not previously considered. As she did not meet any of the necessary regulatory requirements, she is not entitled to further merit review.

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[12] 20 C.F.R. § 10.606(b).

[13] *Id.* at § 10.608(b).

[14] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Alan G. Williams*, 52 ECAB 180 (2000).

[15] *See K.W.*, 59 ECAB 271 (2007) (form reports that had illegible signatures did not constitute competent medical evidence); 5 U.S.C. § 8101(2) (defines the term physician). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the December 11, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board