

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

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**H.S., Appellant**

**and**

**DEPARTMENT OF JUSTICE, BUREAU OF  
PRISONS, Big Spring, TX, Employer**

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**Docket No. 16-0181  
Issued: February 17, 2016**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On November 10, 2015 appellant filed a timely appeal from an October 26, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish an injury in the performance of duty on June 17, 2014.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the issuance of the October 26, 2015 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On June 17, 2014 appellant, a 51-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries to her left wrist, left middle finger, and upper back on that date while in the performance of duty. She stated that she was injured as a result of slipping and falling on a waxed floor as she was walking out of an office.

Appellant submitted a medical bill dated June 17, 2014 and a June 19, 2014 e-mail message from Kristie Barnes, a registered nurse, who updated appellant on the details of her claim and requested additional information in support of it.

In an August 20, 2015 letter, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries. Appellant did not respond.

By decision dated October 26, 2015, OWCP denied appellant's claim because the medical evidence submitted failed to establish a medical diagnosis causally related to the employment incident.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden to establish 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 injury<sup>4</sup> was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup>

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 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 her condition relates to the employment incident.<sup>6</sup>

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> 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).

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

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

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.<sup>7</sup>

### ANALYSIS

OWCP has accepted that the employment incident of June 17, 2014 occurred at the time, place, and in the manner alleged. The issue is whether appellant sustained an injury as a result of the accepted incident. The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury causally related to the June 17, 2014 employment incident. Appellant has not submitted any medical evidence supporting that the June 17, 2014 work incident caused or contributed to a diagnosed medical condition.

Appellant submitted a medical bill dated June 17, 2014 in support of her claim. However, the medical bill is from a healthcare provider whose identity cannot be discerned. Appellant also submitted a June 19, 2014 e-mail message from Ms. Barnes, a registered nurse, who updated appellant on the details of her claim and requested additional information in support of it. This also does not constitute competent medical evidence as registered nurses are not considered physicians as defined under FECA.<sup>8</sup> As noted, causal relationship is a medical issue that must be addressed by medical evidence.<sup>9</sup>

Consequently, the Board finds that appellant has not met her burden of proof as she has not submitted competent medical evidence addressing how the accepted June 17, 2014 work incident caused or contributed to a diagnosed medical condition.

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 an injury in the performance of duty on June 17, 2014.

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<sup>7</sup> *Id.* See Gary J. Watling, 52 ECAB 278 (2001).

<sup>8</sup> 5 U.S.C. § 8101(2). See Sean O'Connell, 56 ECAB 195 (2004) (reports by registered nurses, nurse practitioners, and physician assistants are not considered medical evidence as these persons are not considered physicians under FECA).

<sup>9</sup> See *supra* note 7.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 26, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 17, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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