

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

P.W., Appellant)	
)	
and)	Docket No. 15-1814
)	Issued: January 15, 2016
DEPARTMENT OF DEFENSE, EDUCATION)	
ACTIVITIES, Alexandria, VA, Employer)	
)	

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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 1, 2015 appellant filed a timely appeal from an August 14, 2015 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 an employment-related injury on February 2, 2015.

On appeal appellant generally asserts that the medical evidence submitted is sufficient to establish her claim.

FACTUAL HISTORY

On February 4, 2015 appellant, then a 59-year-old procurement analyst, filed a traumatic injury claim (Form CA-1) alleging that she sustained a panic attack, headache, elevated blood

¹ 5 U.S.C. § 8101 *et seq.*

pressure and pulse rate, and an asthma attack when she was stuck in an elevator for approximately 45 minutes on February 2, 2015. She stopped work that day and returned on February 4, 2015.

In a letter dated February 18, 2015, OWCP informed appellant of the evidence needed to support her claim. The requested evidence was to include a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition. In an attached questionnaire, appellant was asked to describe any similar disability or symptoms that occurred prior to the injury and to provide records of prior treatment. Appellant was afforded 30 days to respond. OWCP also asked the employing establishment to furnish information about the claimed incident. Appellant did not respond to the request.

On March 10, 2015 the employing establishment concurred that the claimed injury occurred at appellant's duty station.

By decision dated March 19, 2015, OWCP denied the claim, finding that the evidence of record did not support that the injury occurred as described and that she had submitted no medical evidence containing a medical diagnosis in connection to the claimed event.

On April 6, 2015 appellant requested reconsideration. In a February 25, 2015 questionnaire, she described the claimed employment incident, relating that as she was reporting to work, she was stuck in an elevator for nearly an hour and this caused panic, disorientation, confusion, and caused an asthma attack. Appellant indicated that she had a managed history of anxiety and asthma, which was aggravated by the February 2, 2015 incident she alleged to have first sought treatment on February 18, 2015.

In a March 4, 2015 attending physician's report, Terrez Hawkins, a nurse practitioner, described the employment incident. She diagnosed panic disorder and checked a box marked "yes," noting that appellant had been trapped in a malfunctioning elevator on February 2, 2015. Ms. Hawkins advised that appellant could return to regular duty on February 4, 2015.

In a March 16, 2015 attending physician's report, Dr. Jyothi Racha, a Board-certified psychiatrist, noted that appellant had a history of anxiety and depression and had increased anxiety and panic attacks when she attempted to use the elevator. She diagnosed specific phobia, fear of using elevators, and checked a box marked "yes," indicating that appellant reported that she had bad dreams and thoughts of being trapped in the past which led to crying spells and anxiety attacks. Dr. Racha advised that appellant could return to regular duty on February 4, 2015.

In a merit decision dated August 14, 2015, OWCP denied modification of the March 19, 2015 decision. It found that the February 2, 2015 incident had occurred as alleged, but denied the claim because appellant had not submitted sufficient medical evidence.

LEGAL PRECEDENT

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 filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any

disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

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.³

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 support by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

ANALYSIS

OWCP accepted that on February 2, 2015 appellant was stuck in a malfunctioning elevator at work for 45 minutes to 1 hour.

The Board finds, however, that appellant has failed to submit sufficient medical evidence to establish her traumatic injury claim. To be of probative value, a physician's opinion must relate the condition to the accepted incident, must be based on a complete and accurate factual history, and must contain adequate medical rationale in support of the conclusions.⁵ The factors that comprise the evaluation of medical evidence include the physician's relative area of expertise, the opportunity for and thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested in reaching his or her stated conclusions and the medical rationale expressed in support of the physician's opinion.⁶

The March 4, 2015 report from Ms. Hawkins does not constitute probative medical evidence as a nurse practitioner is not considered a physician under FECA.⁷ Section 8101(2) of FECA provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.⁸

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *T.H.*, 59 ECAB 388 (2008).

⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Mary J. Ruddy*, 49 ECAB 545 (1998).

⁶ *Cecelia M. Corley*, 56 ECAB 662 (2005).

⁷ *L.D.*, 59 ECAB 648 (2008).

⁸ 5 U.S.C. § 8101(2).

In the March 16, 2015 attending physician's report, Dr. Racha noted that appellant had a history of anxiety and depression and had increased anxiety and panic attacks when she attempted to use the elevator. She diagnosed a specific phobia, fear of using elevators, and checked a form box marked "yes," indicating that appellant reported that she had bad dreams and thoughts of being trapped in the past which led to crying spells and anxiety attacks. Dr. Racha advised that appellant could return to regular duty on February 4, 2015. She, however, did not describe the February 2, 2015 incident and did not relate a diagnosed condition to the accepted employment incident. Moreover, appellant indicated that she first sought medical attention on February 18, 2015. However, the record does not contain medical evidence dated February 18, 2015.

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 did not meet her burden of proof to establish an injury on February 2, 2015 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 15, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board