

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

I.H., Appellant

and

**DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Richmond, VA, Employer**

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**Docket No. 16-0019
Issued: January 14, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 7, 2015 appellant filed a timely appeal from a September 1, 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.²

ISSUE

The issue is whether appellant met her burden of proof to establish an injury causally related to a July 15, 2015 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the September 1, 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).

On appeal, appellant contends that OWCP's decision was erroneous as the incident occurred on July 15, 2015 while she was on the job as an employee during her regular duty hours between 6:00 a.m. and 2:30 p.m.

FACTUAL HISTORY

On July 16, 2015 appellant, a 55-year-old customer service representative, filed a traumatic injury claim (Form CA-1) alleging that she injured her left shoulder on July 15, 2015 in the performance of duty. She stated that she was sitting at her desk working when she felt a bite or sting on her arm at approximately 8:30 a.m. Appellant stated that she initially thought that it was a mosquito bite. Later, she noted having a burning sensation and the area turned red. Appellant advised that she shared this with team members, but her manager was off. The employing establishment controverted the claim and indicated that appellant did not lose any time from work except for medical appointments and remained on regular duty.

In a July 23, 2015 letter, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

In a July 21, 2015 attending physician's report (Form CA-20) Elizabeth Jackson, a nurse practitioner, diagnosed spider bite on the right upper arm. She checked a box marked "no" indicating that she did not believe the condition was caused or aggravated by an employment activity and noted that the injury did not require hospitalization. Ms. Jackson advised appellant that she was able to return to regular duty that same day.

In a July 21, 2015 duty status report (Form CA-17), Ms. Jackson reiterated her diagnosis and noted that appellant was sitting at her desk working on July 15, 2015 when she felt a bite to her arm. She reiterated that appellant was released to full-time, regular duty.

By decision dated September 1, 2015, OWCP denied appellant's claim as the medical evidence was insufficient to establish causal relationship.

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,

³ *Supra* note 1.

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 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.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

The Board finds that appellant has not met her burden of proof to establish an injury causally related to a July 15, 2015 employment incident.

OWCP has accepted that the employment incident of July 15, 2015 occurred at the time, place, and in the manner alleged. In its September 1, 2015 decision, it denied appellant’s claim as the medical evidence was insufficient to establish causal relationship. The issue on appeal is whether appellant sustained an injury as a result of the July 15, 2015 employment incident.

In two reports dated July 21, 2015, Ms. Jackson, a nurse practitioner, diagnosed spider bite on the right upper arm and noted that appellant was sitting at her desk working on July 15, 2015 when she felt a bite to her arm. These documents do not constitute competent medical evidence because a nurse practitioner is not a “physician” as defined under FECA.⁸ As such, this evidence is also insufficient to meet appellant’s burden of proof. Therefore, the Board finds that the medical evidence is insufficient to establish that the claimed bite was a medical diagnosis caused by the employment incident.

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 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004) (a nurse practitioner is not a physician under FECA). 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).

The Board notes that, pursuant to OWCP procedures, where the condition reported is a minor one, such as a burn, laceration, insect sting, or animal bite, which can be identified on visual inspection by a lay person, a case may be accepted without a medical report and no development of the case need be undertaken, if the injury was witnessed or reported promptly, no dispute exists as to the occurrence of the injury, and no time was lost from work due to disability.⁹

In the instant case, the record does not contain a sufficient description of the claimed bite to warrant application of the minor injury exception to the requirement for medical evidence. Although appellant stated that she reported this to coworkers, there are no statements indicating contemporaneous knowledge of this incident. Furthermore, the employing establishment controverted the claim. The most contemporaneous description of this incident is on appellant's traumatic injury claim form where she noted feeling a sting or bite on her arm. However, at that time she did not identify which arm and she did not clearly identify where on her arm the bite or sting occurred. This description is imprecise and, since there are no witness statements and the employing establishment controverted the claim, the injury is not sufficiently described in the evidence of record to support acceptance of an insect or spider bite without a medical report.¹⁰

On appeal, appellant contends that OWCP's decision was erroneous because the incident occurred on July 15, 2015 while she was on the job as an employee during her regular duty hours between 6:00 a.m. and 2:30 p.m. As she has not submitted any probative medical evidence to support her allegation that she sustained an injury related to the July 15, 2015 employment incident, the Board finds that appellant did not meet her burden of proof to establish a claim for compensation.

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 causally related to a July 15, 2015 employment incident.

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011). *M.A.*, Docket No. 13-1630 (issued June 18, 2014).

¹⁰ See *E.T.*, Docket No. 14-1087 (issued September 5, 2014).

ORDER

IT IS HEREBY ORDERED THAT the September 1, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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