United States Department of Labor
Employees' Compensation Appeals Board

K.U., Appellant	)	
and	)	
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, LaGUARDIA AIRPORT, Flushing, NY, Employer	)	**Docket No. 17-0798** **Issued: October 10, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 28, 2017 appellant filed a timely appeal from a January 24, 2017 merit 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 to consider the merits of the case.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish a traumatic injury causally related to the accepted January 2, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant timely requested an oral argument before the Board pursuant to section 501.5(b) of the Board's *Rules of Procedure*, 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated August 25, 2017 the Board denied the request for oral argument as the issue on appeal could be fully addressed on the record. *Order Denying Request for Oral Argument*, Docket No. 17-0798 (issued August 25, 2017).

FACTUAL HISTORY

On January 19, 2016 appellant, then a 34-year-old lead transportation screener, filed a traumatic injury claim (Form CA-1) alleging that on January 2, 2016 she finished screening oversized checked luggage and she sat down to write up an alarm when her chest began to tighten, which restricted her breathing. She listed the nature of her injury as pulled muscle in chest. Appellant stopped work on January 2, 2016, and returned to work on January 5, 2016.

By letter dated January 22, 2016, the employing establishment controverted appellant's claim. A human resources specialist for the employing establishment contended that there was no clear mechanism for injury and that appellant failed to submit any medical documentation.

In a January 25, 2016 letter, OWCP informed appellant that further factual and medical evidence was necessary to support her claim, and afforded her 30 days to submit the required evidence.

In response, appellant submitted notes from her visit on January 2, 2016 to New York Presbyterian Hospital for chest pain. During her visit, appellant was seen by Dr. Julie Zhao, an emergency room physician; Dr. Michael S. Chuang, an orthopedic surgeon; and Dr. Michael Stavros Radeos, a Board-certified emergency physician. The patient history related that appellant complained of chronic back pain with sudden onset of spams over the midsternal chest wall, onset five minutes after lifting luggage from the ground onto an x-ray machine while on duty at the employing establishment. The discharge diagnosis was "other chest pain."

By decision dated March 2, 2016, OWCP denied appellant's claim. It determined that appellant had not established that the January 2, 2016 incident occurred as alleged. OWCP further noted that appellant had not submitted medical evidence containing a medical diagnosis in connection with the alleged injury or events. Therefore, fact of injury has not been established.

On August 1, 2016 appellant requested reconsideration and provided more detail regarding the alleged employment incident. She noted that, at that time, she had just finished clearing large pieces of luggage that contained musical and sports equipment. Appellant noted that after putting the pieces of oversized luggage back on the floor, she began to write that the next bag alarm that needed to be checked, when her chest began to tighten which restricted her breathing. She noted that a fellow coworker stayed with her and notified a supervisor, who notified the manager, who called the Port Authority Police Department. Appellant noted that the police arrived and stayed until emergency medical services arrived. She was taken to New York Presbyterian Hospital, where she was treated and released. Appellant also submitted a bill for the ambulance transport from her place of employment to New York Presbyterian Hospital on January 2, 2016.

By decision dated January 24, 2017, OWCP found that the evidence submitted with reconsideration was sufficient to modify the decision of March 2, 2016 from a denial based on the factual component of fact of injury to a denial based on failure to establish the medical component of fact of injury. It found that appellant had not established that a diagnosed medical condition was causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof 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 was caused in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] 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.[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. 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.[6] 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.[7]

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.[8] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS

The Board finds that appellant failed to establish an injury causally related to the accepted employment-related incident of January 2, 2016.

Appellant has established that the employment incident occurred on January 2, 2016 as alleged. However, she has failed to provide medical evidence sufficient to establish her claim. The only medical report in the record is the hospital report from appellant's January 2, 2016 visit to New York Presbyterian Hospital. However, no physician provided a medical diagnosis in

[3] *Supra* note 1.

[4] *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[7] *Id.*

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 5.

[9] *James Mack*, 43 ECAB 321 (1991).

these reports. The medical discharge report, signed by Drs. Chuang and Zhao, lists a diagnosis of "other chest pain." However, pain is a description of a symptom, it is not a diagnosis of a medical condition.[10] Furthermore, although appellant's employment history is mentioned in the hospital notes, no physician provided an opinion, complete with sufficient medical rationale, explaining how appellant's condition was caused or aggravated by the accepted employment incident of January 2, 2016.[11] For these reasons, the Board finds that the evidence submitted by appellant is insufficient to meet her burden of proof.[12]

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.[13] Appellant has failed to submit rationalized medical evidence to meet her burden of proof on causal relationship.

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 a traumatic injury causally related to the accepted January 2, 2016 employment incident.

[10] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[11] *See L.A.*, Docket No. 16-1352 (issued August 28, 2017).

[12] Appellant submitted a bill to OWCP for ambulance transport to the hospital. OWCP may approve payment for medical expenses incurred even if a Form CA-16 authorizing medical treatment and expenses has not been issued and the claim is subsequently denied; payment in such situations must be determined on a case-by-case basis. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a) (February 2012).

[13] *John D. Jackson*, 55 ECAB 465 (2004); *William Nimitz*¸ 30 ECAB 57 (1979).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 24, 2017 is affirmed.

Issued: October 10, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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