United States Department of Labor
Employees' Compensation Appeals Board

E.R., Appellant	)	
and	)	**Docket No. 18-0391**
	)	**Issued: August 24, 2018**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, North Aurora, IL, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 18, 2017 appellant filed a timely appeal from a September 29, 2017 merit decision of the Office of Workers' Compensation Program (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]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record on appeal includes evidence received after OWCP issued its September 29, 2017 decision. The Board's jurisdiction is limited to the evidence in the case record that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained an injury to her head, shoulders, and left upper arm causally related to the accepted May 24, 2017 employment incident.

FACTUAL HISTORY

On May 25, 2017 appellant, then a 63-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on May 24, 2017 she was injured at work when she entered a supply closet and struck her head, shoulders, and left upper arm on a chin-up bar on the top of the closet door.

In a May 25, 2017 emergency room report, Dr. Peter Hrabski, a Board-certified diagnostic radiologist, noted that a piece of physical therapy equipment hit appellant's head and arms the previous day at work. Appellant reported having pain and headaches and that a coworker noted that her posture was unusual. She underwent a computerized tomography (CT) scan of her brain, which revealed no evidence for acute intracranial hemorrhage and age-appropriate cortical atrophy. A CT scan of her cervical spine showed degenerative findings, but no evidence of acute fracture or subluxation. Dr. Hrabski diagnosed an acute neck sprain and mild concussion.

Evidence received with the claim included physical therapy reports from May 31 to July 7, 2017.

In a May 27, 2017 report, Dr. Jesse K. Parks, an internist, noted the history of the work injury and appellant's current symptoms. He diagnosed headache, pain in unspecified shoulder, neck pain, and axillary pain. Dr. Parks referred appellant to physical therapy for neck, shoulder, and arm pain.

In a June 5, 2017 report, Dr. Parks advised that appellant's axillary pain had resolved, but there was residual neck achiness, shoulder pain, and facial/forehead pain related to a work injury. A diagnosis of neck pain and atypical chest pain was provided. Dr. Parks released appellant to work without restrictions. In June 5, and 7, 2017 notes, he indicated that her ongoing neck and shoulder pain had improved and she could return to work without restriction.

In a July 9, 2017 emergency room report, Dr. Richard E. Vasquez, a Board-certified emergency physician, reported that appellant started having dizzy spells two days prior and that she fell the day before at home secondary to the dizziness. He diagnosed neck pain and vertigo.

In a July 11, 2017 report, Dr. Parks indicated that appellant's neck pain/spasm were worse with no new trauma or injury and that her arm and shoulder pain was intermittent. He referred her to an ophthalmologist for her intermittent blurred vision and to a neurologist for her intermittent facial pain associated with injury to her head at work. Dr. Parks indicated that appellant could return to work July 18, 2017, if she was feeling better.

Shortly, thereafter in a July 17, 2017 report, Dr. Parks reported that appellant would be able to return to work on July 18, 2017, as tolerated. He noted that she saw Dr. Audrey Wayne, an ophthalmologist, and that there was no injury to the eye from the work accident. Dr. Parks assessed improved facial, neck, and arm/shoulder pain.

On August 3, 2017 appellant filed a claim for compensation (Form CA-7) for the period July 9 to 22, 2017. The employing establishment indicated that she had stopped work July 11, 2017.

In an August 22, 2017 development letter, OWCP advised appellant that the evidence of record was insufficient to establish her claim. It requested additional factual and medical evidence, noting that the medical evidence only contained a diagnosis of "pain." OWCP afforded appellant 30 days to submit the requested evidence.[3]

In response to OWCP's development letter, OWCP received appellant's signed questionnaire dated September 11, 2017, a picture of the exercise equipment that she had hit, and a May 25, 2017 accident report from the employing establishment.

A July 9, 2017 CT scan and CT angiography of her head and neck were essentially normal with no evidence of acute intracranial process and mild ectasia/fusiform dilation of the basilar tip.

In an August 26, 2017 report, Dr. Parks reported that appellant saw a neurologist on August 2, 2017 and was started on medication. He indicated that the facial pain had resolved and the neck, arm, and shoulder pain were intermittent/mild and manageable without medication.

In a September 1, 2017 letter, Dr. Parks reported that he had been following appellant for headache, neck pain, shoulder pain, and right axillary chest pain exacerbated by a May 24, 2017 work injury, when an exercise device on top of the door hit her head, shoulder, and arm. A list of the dates when she was seen was provided. Dr. Parks noted that appellant's neck, arm, and shoulder pain were consistent with a strain and that her facial pain had resolved.

By decision dated September 29, 2017, OWCP denied appellant's claim. It found that the incident occurred as alleged, but that she had not submitted medical evidence establishing that the accepted employment incident of May 24, 2017 caused or aggravated her diagnosed conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 filed within the applicable time limitation, that an injury was sustained while 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.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

[3] OWCP noted that it could not take any action on appellant's claim for compensation, Form CA-7, prior to the adjudication of her case.

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

[5] *See Irene St. John,* 50 ECAB 521 (1999); *Michael E. Smith,* 50 ECAB 313 (1999).

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[6] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7]

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[8]

ANALYSIS

The Board finds that appellant has not submitted sufficient medical evidence to establish that the accepted May 24, 2017 employment incident caused or aggravated her diagnosed conditions.

In the initial May 25, 2017 emergency room report following the employment incident, Dr. Hrabski noted the history of the May 24, 2017 employment incident, reported diagnostic and examination findings, and diagnosed an acute neck sprain and mild concussion. However, he did not address the cause of appellant's diagnosed medical conditions. The Board has previously held that 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.[9] Temporal relationship alone will not suffice.[10] Accordingly, Dr. Hrabski's report is insufficient to satisfy appellant's burden of proof.

Dr. Parks provided several reports dated May 27 through August 27, 2017. While he noted the history of the May 24, 2017 employment incident and reported on appellant's symptoms, he initially provided assessment of facial, neck, arm, and shoulder pain. However, pain and/or discomfort is only considered a symptom, not a medical diagnosis.[11] In his September 1, 2017

[6] *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[7] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

[8] *Solomon Polen*, 51 ECAB 341 (2000).

[9] *K.W.*, 59 ECAB 271, 279 (2007).

[10] *See D.I.*, 59 ECAB 158 (2007).

[11] Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

letter, Dr. Parks indicated that appellant's neck and arm/shoulder pain were consistent with a strain. While he indicated that her condition was exacerbated by the May 24, 2017 employment injury, he failed to provide a rationalized medical opinion which explained how the employment injury caused or contributed to this condition. A physician's opinion on causal relationship must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.[12] As such, Dr. Parks' treatment reports and his September 1, 2017 letter are insufficient to meet her burden of proof.

In a July 9, 2017 emergency room report, Dr. Vasquez diagnosed neck pain and vertigo. However, pain and vertigo are considered symptoms, not a medical diagnosis.[13] Moreover, Dr. Vasquez fails to mention the May 24, 2017 employment incident or offer an explanation for the cause of appellant's dizziness. Accordingly, his report is insufficient to satisfy her burden of proof.

Appellant submitted diagnostic testing reports in support of her claim. Diagnostic studies are of limited probative value, however, as they do not address whether the employment incident caused any of the diagnosed conditions.[14]

Appellant also submitted copies of physical therapy notes. However, reports from physical therapist do not rise to the level of competent medical opinion evidence under FECA as physical therapists are not considered physicians under FECA.[15]

The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.[16] Temporal relationship alone will not suffice.[17] Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.[18]

Without explaining how physiologically the employment incident caused or contributed to the diagnosed conditions, the medical evidence of record is of limited probative value.[19]

[12] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[13] *See supra* note 11.

[14] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[15] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law); 20 C.F.R. § 10.5(t).

[16] *Id.* at § 10.115(e).

[17] *See D.I.*, 59 ECAB 158, 162 (2007).

[18] *See M.H.*, Docket No. 16-0228 (issued June 8, 2016).

[19] *See K.K.*, Docket No. 17-1061 (issued July 25, 2018).

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 the accepted May 24, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2018
Washington, DC

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

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

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