United States Department of Labor
Employees' Compensation Appeals Board

M.F., Appellant	)	
and	)	**Docket No. 18-1162**
	)	**Issued: April 9, 2019**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Brockton, MA, 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 May 22, 2018 appellant filed a timely appeal from an April 16, 2018 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 over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on February 1, 2018, as alleged.

FACTUAL HISTORY

On February 1, 2018 appellant, then a 36-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on that day she injured her back when helping a patient place his feet on the floor while in the performance of duty. She stopped work on February 6, 2018 and

[1] 5 U.S.C. § 8101 *et seq.*

returned to work on February 21, 2018. The employing establishment controverted the claim and noted that appellant had provided "different stories." R.C., a supervisor, explained that on the Form CA-1 appellant related an employment incident, but on a medical report dated February 21, 2018 she indicated that she did not think the injury was work related.

OWCP received a February 6, 2018 report from Dr. Douglass Bibuld, a Board-certified internist. Dr. Bibuld advised that appellant had strained her back at work and was unable to work until February 14, 2018. He also saw her on February 21, 2018 and advised that she could return to light work on that date. Dr. Bibuld noted that appellant appeared to have a fractured rib with continued pain and strains of the hip flexors and thighs.

OWCP also received a February 21, 2018 report from a family nurse practitioner. The nurse related that appellant experienced back pain on February 1, 2018 while at work. However, she noted that appellant related that she did not believe her back pain was work related and she could not recall a specific incident or exacerbating event prior to the start of her back pain.

In a March 15, 2018 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. It explained that the evidence submitted was insufficient to establish that the alleged employment incident occurred as alleged. OWCP also noted that no firm diagnosis of a work-related condition had been provided by a physician. It asked her to complete a questionnaire and provide further details regarding the circumstances of the claimed February 1, 2018 employment injury. OWCP afforded appellant 30 days to submit the necessary evidence. Appellant did not respond.

OWCP received nurses' reports dated February 28, March 2, 23, and 28, 2018, a March 27, 2018 physical therapy report, and a March 23, 2018 work restriction form from Dr. Bibuld.

By decision dated April 16, 2018, OWCP denied appellant's claim. It found that the factual component of the third basic element, fact of injury, had not been established.

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 timely filed within the applicable time limitation period of FECA,[2] that an injury 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.[3] 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.[4]

[2] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[5] Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[8]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.[9] The employee has not met her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on February 1, 2018, as alleged.

Appellant has not established the factual component of her claim as she failed to explain how her claimed injury occurred. By development letter dated March 15, 2018, OWCP requested that she submit clarifying information describing how her claimed injury occurred. However, appellant did not complete and return the questionnaire and there is no statement in the record

[5] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[6] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143(1989).

[7] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[8] *D.D.*, Docket No. 18-0648 (issued October 15, 2018); *Shirley A. Temple*, 48 ECAB 404, 407(1997).

[9] *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

[10] *See M.C.*, Docket No. 18-1278 (*issued* March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

describing the specific alleged employment-related incident.[11] As she did not respond to the request for factual information, the record lacks sufficient factual evidence to establish specific details of how the claimed injury occurred.

The Board notes that the only explanation pertaining to the alleged February 1, 2018 traumatic incident was appellant's generalized and vague statement on her Form CA-1 that she was helping a patient place his feet on the floor when she sustained a back injury. While appellant sought treatment from Dr. Bibuld on February 6, 2018, he did not provide a history of injury, but rather only noted that appellant strained her back at work. The Board further notes that appellant's Form CA-1 statement is contradicted by her own statement to the nurse practitioner on February 21, 2018 that she did not believe her back pain was work related and could not recall a specific incident. By failing to respond to the questionnaire and describe the specific employment incident and circumstances surrounding her alleged injury, and by failing to provide a history of injury when seeking medical treatment, appellant has not established that the traumatic injury occurred in the performance of duty, as alleged.[12] Thus, the Board finds that she has not met her burden of proof.

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 in the performance of duty on February 1, 2018, as alleged.

[11] *See D.C.*, Docket No. 18-0082 (issued July 12, 2018).

[12] *See H.B.*, Docket No. 18-0278 (*issued* June 20, 2018); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2019
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