United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant	)	
and	)	**Docket No. 18-1712**
	)	**Issued: April 17, 2019**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Sea Side, CA, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 10, 2018 appellant filed a timely appeal from an April 25, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] Appellant also filed a timely request for oral argument in this case. By order dated March 12, 2019, the Board exercised its discretion and denied appellant's request as the arguments could be addressed in a decision based on the case record and oral argument would further delay issuance of a Board decision and not serve a useful purpose. *Order Denying Request for Oral Argument*, Docket No. 18-1712 (issued March 12, 2019).

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted November 8, 2017 employment incident.

FACTUAL HISTORY

On December 21, 2017 appellant, then a 33-year-old medical supervisor assistant, filed a traumatic injury claim (Form CA-1) alleging that, on November 8, 2017, she received a flu shot vaccination from the employing establishment which caused nerve damage while in the performance of duty. She first sought medical treatment on November 9, 2017 and stopped work on November 16, 2017. On the reverse side of the form, appellant's supervisor agreed with her statements as to fact of injury and checked the box marked "yes" when asked if appellant was injured in the performance of duty.

In a November 16, 2017 work status note, Tracy Hydorn, a physician assistant, reported that appellant was evaluated at the Veterans' Affairs (VA) General Medical Clinic and could return to full duty on November 20, 2017.

Work status notes dated December 20, 2017 were also submitted from Dr. Dale A. Helman, a Board-certified neurologist, who noted treatment for cervical radiculopathy and cervicobrachialgia.

In a development letter dated January 8, 2018, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the factual and medical evidence necessary to establish her claim. In separate development letter of even date, OWCP requested that the employing establishment provide comments pertaining to her alleged traumatic injury claim. It afforded appellant and the employing establishment 30 days for submission of the necessary evidence.

On January 11, 2018 appellant responded to OWCP's development letter. She reported that, on November 8, 2017, she received a flu shot which was required by the employing establishment. Appellant explained that she felt pain in her right arm immediately after the flu shot. She sent pictures to the nurse who administered the vaccination and was told to seek treatment at urgent care, which she did. Appellant reported to work the following Monday, but had continued pain and was instructed by her supervisor to seek treatment with the employing establishment's health clinic. She believed that her condition was connected to the flu shot because she only experienced pain in her right arm with no pain on the left. Appellant sought treatment with her primary care physician due to continued pain and was referred to a neurologist. She reported that she had received flu shots in prior years without issue. Appellant further stated that she had no prior work-related injuries.

In a January 30, 2018 report, Dr. Helman reported that he first evaluated appellant approximately one month prior due to complaints of tingling in her right arm and, at times, on the right side of her body. He reported that this dated back to the possibility of getting a flu vaccine about a month and a half earlier. Dr. Helman explained that appellant's evaluation thus far had included a magnetic resonance imaging (MRI) scan of the head and an electrodiagnostic study.

He reported that the electrodiagnostic testing was unremarkable and the MRI scan revealed what appeared to be possible microangiopathic issues. Dr. Helman reported that this was somewhat enigmatic, but that her history was somewhat compelling that it was work related because of the vaccine. He explained that he was an expert on immunology and may send appellant to a specialist for a follow up. In a January 30, 2018 work status note, Dr. Helman diagnosed paresthesia of the skin.

By decision dated February 7, 2018, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the November 8, 2017 employment incident occurred as alleged.

On March 30, 2018 appellant requested reconsideration of OWCP's decision.

Correspondence was submitted from the employing establishment discussing its mandatory seasonal influenza program participation for all employees, which was to be implemented by November 30, 2017.

In a letter received on February 13, 2018, R.H., appellant's supervisor, reported that the employing establishment concurred with her allegations regarding the November 8, 2017 employment incident. She further stated that the employing establishment mandated that all employees receive the flu shot as a preventative health service program.

In progress notes dated November 13, 2017 from the VA General Medical Clinic, Dr. Mary L. Roberts, Board-certified in internal medicine, reported that appellant received a flu vaccine on November 9, 2017 and felt burning in her right arm and hand the moment the injection was complete. The pain worsened the following day and she was evaluated in an emergency room in New Jersey where she had traveled to attend her grandmother's funeral. Dr. Roberts provided findings on physical examination and diagnosed local reaction to influenza vaccine. She noted that the neuropathic diagnosis of the right arm etiology was unclear.

In a November 15, 2017 progress note, Ms. Hydorn reported that appellant continued to have soreness and tingling in the right arm and fingers following the flu vaccine.

By decision dated April 25, 2018, OWCP affirmed the February 7, 2018 decision, as modified, finding that the evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted November 8, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 or specific condition for which compensation is claimed is causally related to the

[4] *Supra* note 2.

employment injury.[5] 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.[6]

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. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[8] 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.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted November 8, 2017 employment incident.

In progress notes dated November 13, 2017, Dr. Roberts reported that appellant received a flu vaccine and experienced immediate burning and pain down her right arm and hand. The Board finds that the report of Dr. Roberts is insufficient to establish appellant's claim for a work-related traumatic injury.[10] In her report, Dr. Roberts failed to provide a firm medical diagnosis, only noting reaction to influenza vaccine.[11] The Board has consistently held that pain is a description of a symptom and are not a firm medical diagnoses.[12] Furthermore, Dr. Roberts' opinion on causal relationship is speculative as she failed to provide a definitive opinion on the cause of appellant's

[5] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Gary J. Watling*, 52 ECAB 278 (2001).

[6] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *See* 20 C.F.R. § 10.110(a); *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *John M. Tornello*, 35 ECAB 234 (1983).

[9] *See M.H., supra* note 7; *James Mack*, 43 ECAB 321 (1991).

[10] *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

[11] *D.R.*, Docket No. 18-1408 (issued March 1, 2019).

[12] *See B.P.*, Docket No. 12-1345 (issued November 13, 2012) (regarding pain); *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *J.S.*, Docket No. 07-881 (issued August 1, 2007).

condition, noting only that the neuropathic diagnosis of the right arm etiology was unclear.[13] Thus, her report is insufficient to meet appellant's burden of proof.[14]

Dr. Helman's January 30, 2018 report is also insufficient to establish a work-related condition as a result of the November 8, 2017 vaccination.[15] He noted that appellant's condition was somewhat enigmatic, but that her history was somewhat compelling that it was work related because of the vaccine. Dr. Helman's opinion on causation is speculative and couched in equivocal terms as he admitted that he did not know the cause of appellant's condition. To be of probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty.[16] Furthermore, it is unclear what diagnosed condition the physician was referring to in his report. Dr. Helman's speculative statement regarding causation failed to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how a flu vaccination administered in the right arm would cause appellant injury.[17] As the report lacks the specificity and detail needed to establish a November 8, 2017 work-related traumatic injury, the opinion of Dr. Helman is insufficient to establish appellant's claim.[18]

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Helman's November 20, 2017 and January 30, 2018 work notes provided the diagnoses of paresthesia of the skin, cervical radiculopathy, and cervicobrachialgia. While these notes reported that appellant had been seen for treatment, recommended work restrictions, or requested that she be excused from work, they did not provide findings and opinions regarding the cause of her condition.[19] The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.[20]

[13] *J.L.*, Docket No. 17-0572 (issued August 6, 2018).

[14] *L.H.*, Docket No. 17-0982 (issued July 9, 2018).

[15] *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

[16] *See Beverly R. Jones*, 55 ECAB 411 (2004).

[17] *See C.Z.*, Docket No. 16-0775 (issued October 20, 2016); *S.W.*, Docket 08-2538 (issued May 21, 2009).

[18] *P.G.*, Docket No. 18-1547 (issued January 28, 2019).

[19] *L.D.*, Docket No. 18-1468 (issued February 11, 2019).

[20] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

Ms. Hydorn's notes from the VA clinic are of no probative value as physician assistants are not considered physicians as defined under FECA.[21] Consequently, their medical findings and/or opinions lack probative value and are insufficient to establish appellant's claim.[22]

The Board finds that because there is no rationalized medical evidence explaining how appellant's flu shot vaccination caused a diagnosed medical condition, appellant has not met her burden of proof to establish her claim.

Appellant may submit additional evidence, together 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 a diagnosed medical condition causally related to the accepted November 8, 2017 employment incident.

[21] 5 U.S.C. § 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *M.M.*, Docket No. 18-1096 (issued December 14, 2018); *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

[22] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2019
Washington, DC

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

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

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