United States Department of Labor
Employees' Compensation Appeals Board

V.B., Appellant	)	
	)	
and	)	**Docket No. 19-0500**
	)	**Issued: August 8, 2019**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Baltimore, MD, 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 January 8, 2019 appellant filed a timely appeal from a December 12, 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the December 12, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the 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 October 29, 2018 employment incident.

FACTUAL HISTORY

On November 1, 2018 appellant, then a 37-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that, on October 29, 2018, she injured her right knee and back when she fell after her foot got stuck to a kitchen mat while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on the date of injury and returned to work the next day on October 30, 2018.

In a report and accompanying letter dated October 29, 2018, Kevan Davenport, a physician assistant, noted that appellant sustained a muscle spasm and that she could return to work on October 30, 2018.

In a development letter dated November 7, 2018, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It provided a questionnaire for her completion and requested additional factual and medical evidence to substantiate her claim. OWCP afforded appellant 30 days to submit the requested evidence.

In a letter dated November 8, 2018, the employing establishment controverted appellant's claim. It noted that a safety investigator examined the area she claimed to have fallen and did not find grease, or other sticky substance on the ground. The employing establishment also indicated that appellant had neither established a diagnosis, nor causal relationship, in relation to the alleged employment incident.

In a supplemental statement dated October 29, 2018, appellant explained that as she walked passed the fryer on her way back to her station, the floor mat stuck to her shoe and she fell forward on the floor. She noted that she injured her right knee and back, and a coworker helped her off of the floor.

In a letter dated November 14, 2018, Dr. Joyce Evans, Board-certified in family practice, indicated that she examined appellant on November 6, 2018, and indicated that she had a back injury. She related work restrictions to be in effect through November 16, 2018, including avoiding bending, no lifting over five pounds, and limited prolonged standing.

In a subsequent letter dated November 20, 2018, Dr. Evans indicated that appellant had suffered a back injury, and recommended work restrictions including no bending or lifting.

In a report dated December 7, 2018, Dr. Evans reviewed appellant's history of injury. She indicated that she examined appellant regarding her October 29, 2018 injury on November 6 and 20, 2018. Dr. Evans noted that appellant had x-rays completed of her lumbar spine and right knee on November 30, 2018, which revealed only minimal spondylosis of the back and some degenerative changes in the knee. She diagnosed back injury, right knee injury, and knee pain. Dr. Evans opined that appellant sustained injury due to a "fall at work" which caused back spasm and pain.

By decision dated December 12, 2018, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish a diagnosis in connection with the accepted October 29, 2018 employment 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,[4] and 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.[5] 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.[6]

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.[7] 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.[8] The second component is whether the employment incident caused a personal injury.[9]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 incident.[10] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

[3] *Supra* note 1.

[4] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *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).

[7] *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *E.M., id.; John J. Carlone*, 41 ECAB 354 (1989).

[10] *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *S.S., supra* note 7.

[11] *T.M., id.*; *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted October 29, 2018 employment incident.

Appellant submitted a report and letter dated October 29, 2018 from Mr. Davenport, a physician assistant. The Board has held that medical reports signed solely by a physician assistant are of no probative value as physician assistants are not considered physicians as defined under FECA and are therefore not competent to render a medical opinion.[12] These reports are therefore insufficient to establish the claim.

In her December 7, 2018 report, Dr. Evans reviewed appellant's history of injury and diagnosed back injury, right knee injury, and knee pain. She also opined that appellant's injuries were caused by a "fall at work." A vague description of an "injury" fails to establish a firm medical diagnosis and provides no causal support for an injury.[13] The Board also notes that pain and spasm are symptoms, not compensable medical diagnoses.[14] While Dr. Evans related that appellant's fall at work caused back spasm and pain, the Board has held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition, or offer a specific opinion as to whether the accepted employment incident caused or aggravated the claimed conditions.[15]

Appellant also submitted her own personal statement dated October 29, 2018, in which she related that she injured her knee and back when her foot got stuck to the floor mat and she fell forward. However, her own lay opinion is not relevant to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician containing a medical diagnosis.[16]

As the medical evidence of record is insufficient to establish a diagnosed medical condition causally related to the accepted October 29, 2018 employment incident, the Board finds that appellant has not met her burden of proof.

[12] *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA); *see David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (health care providers 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).

[13] *See J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[14] *T.J.*, Docket No. 18-1500 (issued May 1, 2019) (the Board has held that pain and spasm are symptoms not medical diagnoses).

[15] *T.J., id.*; *see M.J.*, Docket No. 18-1114 (issued February 5, 2019).

[16] *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *see G.C.*, Docket No. 18-0506 (issued August 15, 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 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 October 29, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 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