United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 18-0873**
	)	**Issued: December 18, 2019**
DEPARTMENT OF HOMELAND SECURITY, U.S. CITIZENSHIP & IMMIGRATION SERVICES, Detroit, MI, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 19, 2018 appellant filed a timely appeal from a January 9, 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 causally related to the accepted June 22, 2017 employment incident.

FACTUAL HISTORY

On June 27, 2017 appellant, then a 33-year-old immigration services assistant, filed a traumatic injury claim (Form CA-1) alleging that, on June 22, 2017 while in the performance of

[1] 5 U.S.C. § 8101 *et seq.*

duty, she sustained neck, back, right knee, and head injuries when her government vehicle was rear-ended while she was traveling to a field office to attend a citizenship ceremony. An employing establishment supervisor confirmed that she was injured in the performance of duty.

In a development letter dated August 7, 2017, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated September 15, 2017, OWCP denied appellant's claim, finding that she had established that the June 22, 2017 incident occurred in the performance of duty, as alleged, but she had not submitted medical evidence diagnosing a medical condition in connection with the accepted incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP thereafter received medical evidence. On June 22, 2017 appellant was seen by Dr. Eric C. Ohlson, a specialist in emergency medicine, for motor vehicle accident (MVA) related pain. Dr. Ohlson indicated that she had neck pain, headache, lower back pain, right hand pain, and right knee pain. He advised that appellant had been restrained as the driver of the vehicle, that her vehicle was rear-ended indirectly, and that no air-bag deployed. Dr. Ohlson explained that she was able to drive to work to fill out paperwork for the injury and then drove herself to the emergency room. He examined appellant and diagnosed: MVA, initial encounter; cervical paraspinal muscle spasm; wrist pain, acute, on the left; and acute bilateral low back pain without sciatica.

Appellant was also seen by Dr. Laura Owczarek, a Board-certified emergency room physician, on June 22, 2017. Dr. Owczarek related that appellant could return to work on June 26, 2017 with no restrictions. On June 25, 2017 she reviewed appellant's diagnostic evaluations including computerized tomography scans of the head, neck, and lumbar spine, as well as x-rays of the right knee and wrist, which were all negative. Dr. Owczarek discharged appellant from further care.

On September 30, 2017 appellant responded to the factual development questionnaire. She confirmed that she was on duty at the time of the accident. Appellant also indicated that she was not experiencing further pain.

On November 17, 2017 appellant requested reconsideration.

By decision dated January 9, 2018, OWCP denied modification of the September 15, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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

[2] *Id*.

United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,[3] 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.[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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[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 employee.[9] 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.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted June 22, 2017 employment incident.

On June 22, 2017 appellant was seen by Dr. Ohlson, who described her history of a June 22, 2017 MVA and his examination findings. Dr. Ohlson assessed cervical paraspinal muscle spasm, left wrist pain, and acute bilateral low back pain without sciatica, but did not provide a medical diagnosis. The Board has found that pain and spasm are symptoms and not a specific

[3] *See C.W.*, Docket No. 19-0231 (issued July 15, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[5] *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).

[6] *O.C.*, Docket No. 19-0551 (issued September 17, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[9] *L.D., id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[10] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

medical diagnosis.[11] Lacking a firm diagnosis and rationalized medical opinion regarding causal relationship, this report is of no probative value.[12]

Dr. Owczarek indicated that appellant was seen on June 22, 2017 after she was involved in a MVA. She indicated that appellant could return to work on June 26, 2017 with no restrictions. On June 25 2017 Dr. Owczarek reported that the diagnostic studies were all negative and appellant did not require further medical treatment; however, she did not provide an opinion on the issue of causal relationship. Therefore, these reports are of no probative value.[13]

OWCP also received nurses' notes and discharge instructions dated June 22 and 23, 2017. The Board has held that nurses are not considered physicians under FECA and therefore are not competent to render a medical opinion.[14] Thus, these notes and discharge instructions are of no probative value and are insufficient to establish the claim.

As the record before the Board is without rationalized medical evidence establishing that appellant sustained a medical condition causally related to the accepted June 22, 2017 work incident, 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 has not met her burden of proof to establish an injury causally related to the accepted June 22, 2017 employment incident.

[11] *J.S.*, Docket No. 19-0863 (issued November 4, 2019); *V.B.*, Docket No. 19-0643 (issued September 6, 2019).

[12] *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

[13] *Id*.

[14] *T.A.*, Docket No. 19-1030 (issued November 22, 2019); *see* 5 U.S.C. § 8101(2). 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2019
Washington, DC

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

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

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