United States Department of Labor
Employees' Compensation Appeals Board

J.K., Appellant	)	
and	)	**Docket No. 18-1508**
U.S. POSTAL SERVICE, POST OFFICE, Topeka, KS, Employer	)	**Issued: February 5, 2019**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 1, 2018 appellant filed a timely appeal from an April 18, 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 a traumatic injury causally related to the accepted February 16, 2018 employment incident.

FACTUAL HISTORY

On March 7, 2018 appellant, then a 31-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury as a result of inhaling smoke while

[1] 5 U.S.C. § 8101 *et seq.*

at work on February 16, 2018. A trash can fire produced smoke, which appellant alleged caused dizziness, lightheadedness, shortness of breath, and headache. She stopped work on the date of injury, was taken by ambulance to Stormont Vail Health, and was cleared to return to work by their medical staff.

In a March 7, 2018 statement, appellant's supervisor indicated that he had followed the ambulance to the hospital and stayed with appellant for approximately three hours. Shortly after, appellant was released, she sent him a text message which stated that her chest was still "tight" and that she had a bad headache. The supervisor further noted that appellant was scheduled to work the following day, February 17, 2018, but she sent him text messages complaining of dizziness and not feeling well. Appellant indicated that she may check back into the hospital and requested permission to rest. She was scheduled off work on February 18, 2018. The supervisor noted that on February 19, 2018 appellant texted him complaining of body aches and indicating that she was going to an emergency room since she did not feel well on her way to work. He noted that later that afternoon he received another text message from appellant which indicated that she now had the flu which caused weakness, aches, and fever. The supervisor noted that appellant remained off work the entire week with the flu and that her absence was unrelated to any smoke inhalation.

In a March 13, 2018 development letter, OWCP acknowledged receipt of appellant's claim and informed her that additional evidence was needed in support of her claim. It provided her a factual questionnaire to complete setting forth the factual basis of her claim. OWCP also noted that the medical portion of appellant's claim was reviewed and was found to be insufficient. It requested a narrative report from her attending physician, including an explanation of how her alleged February 16, 2018 employment incident caused or aggravated a medical condition. OWCP afforded appellant 30 days to submit the requested evidence.

In an emergency room report dated February 16, 2018, Dr. David Ricketts-Kingfisher, a specialist in emergency medicine, reviewed appellant's symptoms and examination findings. He noted visual disturbance, shortness of breath, and lightheadedness. Dr. Ricketts-Kingfisher concluded "No diagnosis found." He explained that appellant's symptoms had cleared during her visit to the emergency room.

In an emergency room report dated February 19, 2018, Dr. Clayton Wood, an osteopath who specializes in emergency medicine, noted that appellant complained of fever, body aches, myalgias, nausea, vomiting, and a cough. He diagnosed her as positive for Influenza B.

In a clinic note dated February 21, 2018, Kelly S. Busby, a nurse practitioner, related appellant's continued flu symptoms and hearing loss in her left ear. After reviewing appellant's past medical history and examination findings, she diagnosed appellant with acute supportive otitis media without spontaneous rupture of eardrum and influenza due to other identified influenza virus with other respiratory manifestations.

On March 26, 2018 OWCP received appellant's supplemental statement wherein she described in detail the trash can fire and her exposure to smoke on February 16, 2018.

By decision dated April 18, 2018, OWCP denied appellant's traumatic injury claim. It accepted that the February 16, 2018 employment incident occurred as alleged, but denied her claim because the evidence was insufficient to establish that she sustained an injury as defined by FECA. OWCP stated that appellant's claim for compensation was denied because she had not submitted medical evidence containing a medical diagnosis in connection with the accepted employment incident.

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 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 employment injury.[3] 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.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[5] First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[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 sufficient to establish 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of

[2] *Id.*

[3] *T.M.*, Docket No. 18-0972 (issued December 13, 2018); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[4] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras, supra* note 3.

[6] *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[7] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras, supra* note 3.

[8] *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *see* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury causally related to the accepted February 16, 2018 employment incident. In support of her claim, appellant submitted emergency room notes dated from February 16, 2018 in which Dr. Ricketts-Kingfisher indicated that she had inhaled smoke. However, Dr. Ricketts-Kingfisher also indicated that appellant's symptoms quickly cleared and noted specifically "No diagnosis found." He neither provided evidence as to the diagnosis of an injury from the smoke inhalation, nor did he explain how the smoke inhalation caused her symptoms. Lacking a firm diagnosis and rationalized medical opinion regarding causal relationship, his medical report is of limited probative value.[10]

Appellant also submitted February 19, 2018 emergency room notes from Dr. Wood indicating that she received medical treatment for Influenza B. However, Dr. Wood did not opine that appellant sustained a diagnosis in relation to the accepted employment incident. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[11]

Appellant also submitted clinic notes from Ms. Busby. However, health care providers such as nurses, acupuncturists, physician assistants, and physical therapists are not considered physicians under FECA.[12] Thus, their opinions do not constitute medical evidence and are of no probative value on the issue of causal relationship.[13]

Section 10.303 of OWCP's regulations provides that simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under FECA unless the employee has sustained an identifiable injury or medical condition as a result of that exposure.[14] Because the medical reports submitted by appellant do not adequately address how the February 16, 2018 employment incident caused a diagnosed medical condition, these

[9] *D.H., id.*; *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *James Mack*, 43 ECAB 321 (1991).

[10] *J.F.*, Docket No. 18-0904 (issued November 27, 2018); *see D.S.*, Docket No. 18-0061 (issued May 29, 2018).

[11] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] 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] *S.J.*, Docket No. 17-0783, (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA). *See also 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).

[14] *M.B.*, Docket No. 18-0717 (issued September 5, 2018); 20 C.F.R. § 10.303.

reports are insufficient to establish entitlement under FECA.[15] Accordingly, appellant has failed to meet her burden of proof to establish a traumatic injury claim.

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 established a traumatic injury causally related to the accepted February 16, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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

[15] *D.H.*, *supra* note 8; *see Linda I. Sprague*, 48 ECAB 386 (1997).