United States Department of Labor
Employees' Compensation Appeals Board

K.T., Appellant	)	
and	)	**Docket No. 19-0228**
	)	**Issued: June 12, 2019**
DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, Denver, CO, 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 November 8, 2018 appellant filed a timely appeal from a June 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.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury causally related to the accepted February 22, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that on appeal appellant submitted additional evidence. However, section 501.2(c)(1) of 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 evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On February 26, 2018 appellant, then a 39-year-old technical information specialist, filed a traumatic injury claim (Form CA-1) alleging that on February 22, 2018 she sustained an injury to her right knee, chin, and right hand when she fell as her shoe became stuck on exposed carpet glue while in the performance of duty. She did not stop work.

In a February 27, 2018 report, Dr. Krystyna Lindenmuth, a Board-certified family practitioner, indicated that she saw appellant on February 26, 2018 after she presented for follow-up care for a hand fracture. She noted that appellant accidentally fell on her right hand at work a few days earlier. Dr. Lindenmuth assessed "[c]losed nondisplaced fracture of shaft of fifth metacarpal bone of right hand."

In a development letter dated May 18, 2018, OWCP acknowledged receipt of appellant's claim and informed her that additional evidence was needed to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. By separate letter of even date, OWCP also requested additional information from the employing establishment. It afforded appellant and the employing establishment 30 days to respond. No response was received.

By decision dated June 18, 2018, OWCP accepted that the February 22, 2018 employment incident occurred as alleged, but denied appellant's claim, finding that she had not submitted evidence containing a medical diagnosis from a qualifying physician in connection with the accepted employment incident. Specifically, it noted that the medical evidence of record included a February 27, 2018 report from "Krystyna Lindenmuth, RMPC" and explained that nurses and nurse practitioners are not considered qualified physicians under FECA, thus appellant had not satisfied the medical component of fact of injury and therefore had not met the requirements for establishing an injury as defined by FECA.

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] 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

[3] *Supra* note 1.

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

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] Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[8] 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.[9]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[10] 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.[11]

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP denied appellant's traumatic injury claim finding that the evidence of record did not contain a medical diagnosis from a qualified physician, noting that the available evidence was from a nurse or nurse practitioner and that nurses are not considered qualified physicians under FECA.[12] It correctly noted that nurses and nurse practitioners are not qualified physicians,

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

[8] *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[9] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[10] *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[11] *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[12] *See* 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); *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); *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

however, it misidentified Dr. Krystyna Lindenmuth, a Board-certified family practitioner, as a nurse or nurse practitioner.

In its June 18, 2018 decision denying appellant's claim, OWCP indicated that it received a February 27, 2018 report from "Krystyna Lindenmuth, RMPC." The Board notes that the report indicated that appellant saw "Krystyna Lindenmuth MD" during her office visit at Rocky Mountain Primary Care, which the report abbreviated as "RMPC" and identifies as Dr. Lindenmuth's clinical affiliation. In the report, Dr. Lindenmuth provides a firm diagnosis of fifth metacarpal bone fracture of the right hand and opines that appellant's injury occurred as a result of an accident at work a few days prior.

Accordingly, the Board finds that appellant has established a diagnosed medical condition. OWCP's June 18, 2018 decision shall be set aside and the case remanded. On remand, following such further development as may be deemed necessary, OWCP shall issue a *de novo* decision on the issue of casual relationship.

CONCLUSION

The Board finds the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the June 18, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: June 12, 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