

**United States Department of Labor
Employees' Compensation Appeals Board**

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A.K., Appellant)	
)	
and)	
)	Docket No. 19-0988
DEPARTMENT OF VETERANS AFFAIRS,)	Issued: November 4, 2019
WEST LOS ANGELES VETERANS)	
ADMINISTRATION MEDICAL CENTER,)	
Los Angeles, CA, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 4, 2019 appellant filed a timely appeal from a January 4, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 appellant submitted additional evidence on appeal. 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 back condition causally related to her accepted October 9, 2018 employment incident.

FACTUAL HISTORY

On October 11, 2018 appellant, then a 54-year-old vocational nurse, filed a traumatic injury claim (Form CA-1) alleging that on October 9, 2018 she sustained an injury to her lower back when she was helping place a patient from a gurney into his wheelchair while in the performance of duty. She did not stop work. The employing establishment controverted the claim contending that an investigation of the incident did not support appellant's statements because the patient was able to assist in his transfer to the wheelchair and a witness provided an account inconsistent with appellant's statements.

In a development letter dated November 27, 2018, OWCP advised appellant that additional factual and medical evidence was necessary to establish her claim. It specifically requested that she submit a medical report from her attending physician which provided a diagnosis and an opinion, supported by medical rationale, as to how the reported employment incident caused or aggravated a medical condition. OWCP also provided a questionnaire for completion and afforded appellant 30 days to submit the necessary evidence. Appellant did not submit any additional evidence.

By decision dated January 4, 2019, OWCP accepted that the incident occurred as alleged, but denied appellant's claim finding that she had not submitted any medical evidence containing a medical diagnosis in connection with the October 9, 2018 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

A claimant seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, 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 in the performance of duty as alleged, and that any specific condition or disability 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 on a traumatic injury or an occupational disease.⁵

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.115(e), (f); *R.M.*, Docket No. 18-1281 (issued March 6, 2019); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *S.G.*, Docket No. 18-1373 (issued February 12, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

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.⁶ 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.⁷ The second component is whether the employment incident caused a personal injury.⁸ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the accepted incident.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 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.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a back condition causally related to the accepted October 9, 2018 employment incident.

The Board finds that appellant has not submitted medical evidence from a physician containing a diagnosis in connection with the October 9, 2018 employment incident.¹³ The only evidence appellant submitted to the record was her completed Form CA-1. OWCP advised appellant in a November 27, 2018 development letter that further medical evidence was necessary to establish her claim. It also afforded her an opportunity to submit a narrative medical report from her physician, which included a diagnosis and an opinion regarding causal relationship.¹⁴

⁶ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁷ *C.L.*, Docket No. 18-1732 (issued April 2, 2019); *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *C.L.*, *id.*; *R.M.*, *supra* note 4; *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *D.D.*, Docket No. 18-0648 (issued October 15, 2018); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

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

¹¹ *E.V.*, Docket No. 18-1617 (issued February 26, 2019); *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹³ *C.L.*, *supra* note 7; *see E.B.*, Docket No. 18-0014 (issued July 12, 2018); *L.F.*, Docket No. 17-1511 (issued November 28, 2017); *J.P.*, Docket No. 14-0087 (issued March 14, 2014).

¹⁴ *See A.F.*, Docket No. 17-1374 (issued March 19, 2019).

However, appellant did not respond to this request. She has the burden of proof to submit rationalized medical evidence establishing that a diagnosed medical condition was causally related to the accepted November 5, 2018 employment incident.¹⁵ Appellant has not submitted such evidence and thus 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 a back condition causally related to the accepted October 9, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2019
Washington, DC

Janice B. Askin, 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 See R.C., Docket No. 18-1639 (issued February 26, 2019).