United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
	)	
and	)	**Docket No. 19-1237**
	)	**Issued: November 12, 2019**
DEPARTMENT OF VETERANS AFFAIRS, BRUCE W. CARTER VETERANS ADMINISTRATION MEDICAL CENTER, Miami, FL, Employer	)	

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 May 16, 2019 appellant filed a timely appeal from a May 10, 2019 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 May 10, 2019 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 evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury causally related to the accepted March 27, 2019 employment incident.

FACTUAL HISTORY

On March 27, 2019 appellant, then a 54-year-old secretary, filed a traumatic injury claim (Form CA-1) alleging that on that day a snake bit her right foot while in the performance of duty. She stated that she unlocked her office door and after taking a couple steps inside the office, she felt a pinch on her right foot and something brush the top of her foot. Appellant looked down and saw a snake had bitten her and it was still on her foot. She screamed and kicked her foot to shake the snake loose. Appellant then left her office to seek medical treatment. On the reverse side of the claim form the employing establishment indicated that appellant was injured in the performance of duty and stopped working on March 27, 2019.

In a March 27, 2019 report of contact, appellant's supervisor, M.W., indicated that she was at Starbucks that morning (7:15 a.m.) when she received a text from appellant, which included a picture of a snake. Appellant's text message also indicated that she was going to the emergency room (ER). After initially thinking it was a joke, M.W. went to the ER, where appellant recounted her story of having encountered a snake in the office that was "attempting to bite her foot." She noted that appellant was visibly shaken. M.W. reported the incident to various employing establishment officials. When she returned to the office, the employing establishment police were there searching for the snake, which they soon captured. A pest control officer identified the snake as a Corn snake, and no additional snakes were found. M.W. further noted that, after being discharged from the ER, appellant went to the employing establishment's occupational health unit, where a nurse practitioner, Zaida Bruno, determined that she was unfit to return to work that day. A copy of the March 27, 2019 work excuse form accompanied the report of contact.

In an April 8, 2019 development letter, OWCP advised appellant that additional evidence was required in support of her claim for FECA benefits. It noted that no diagnosis of any condition resulting from her injury had been received. OWCP requested that appellant submit a comprehensive narrative medical report from a qualified physician that included a diagnosis and an opinion, supported by medical rationale, addressing how the claimed employment incident caused or aggravated a medical condition. It afforded her 30 days to submit the requested medical evidence. No evidence was received.

By decision dated May 10, 2019, OWCP denied appellant's traumatic injury claim, finding that, although she established that employment incident occurred, as alleged, no further evidence had been received in response to the April 8, 2019 claim development letter. Consequently, it found that appellant failed to establish a medical diagnosis in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish 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 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 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 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.[7] 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.[8] Second, the employee must submit sufficient evidence, generally 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 or incidents 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]

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[3] *Supra* note 1.

[4] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[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] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990

[7] *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[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, supra* note 7.

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

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

[12] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted March 27, 2019 employment incident.

The record includes a March 27, 2019 report of the employee's emergency treatment (VA Form 3831b), which noted that appellant had been examined and/or treated for an injury and was unfit for duty that day. The form report did not include a specific diagnosis. Moreover, it was signed by a nurse practitioner, who is not considered a "physician" as that term is defined under FECA.[13]

In its April 8, 2019 development letter, OWCP noted that no diagnosis of any condition resulting from appellant's injury had been received and advised appellant on the type of medical evidence needed to establish her claim. It provided her 30 days to submit the requested medical evidence. It is appellant's burden of proof to obtain and submit medical documentation containing a firm diagnosis, and that diagnosis must have medical evidence upon which it stands.[14] Appellant failed to submit appropriate medical evidence within the 30-day period provided and on May 10, 2019 OWCP denied her traumatic injury claim.[15]

As appellant has not submitted rationalized medical evidence establishing an injury causally related to the accepted March 27, 2019 employment incident, she has not met her burden of proof.

Appellant may submit new evidence and/or argument with a written request for reconsideration 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 March 27, 2019 employment incident.

[13] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). 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).

[14] *C.W.*, Docket No. 19-0468 (issued July 16, 2019).

[15] As previously noted, appellant submitted additional evidence after the May 10, 2019 OWCP decision, but the Board can only review the evidence that was before OWCP at the time of its final decision. *Supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the May 10, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 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