United States Department of Labor
Employees' Compensation Appeals Board

M.G., Appellant	)	
and	)	**Docket No. 19-1863**
	)	**Issued: December 15, 2020**
DEPARTMENT OF VETERANS AFFAIRS, LOMA LINDA HEALTH CARE SYSTEM, Loma Linda, CA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 11, 2019 appellant, through counsel, filed a timely appeal from a March 18, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that following the March 18, 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 additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted September 4, 2018 employment incident.

FACTUAL HISTORY

On September 11, 2018 appellant, then a 56-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on September 4, 2018 she sustained injury to her right shoulder when moving employee folders from a cabinet while in the performance of duty. She described experiencing a burning sensation in her right shoulder. Appellant did not stop work.

In a September 5, 2018 work excuse note, E. Jean-Pierre, a physician assistant, held appellant off work until September 8, 2018, at which time she could return to work with no restrictions.

On September 12 and 24, 2018 the employing establishment noted that appellant was approved for continuation of pay from September 6 through 29, 2018 due to a traumatic injury sustained on September 4, 2018.[4]

In a September 19, 2018 work excuse note, Dr. Elliot Meltzer, Board-certified in family medicine, indicated that appellant had been under his care and requested that appellant be excused from work beginning September 19 through 28, 2019. He noted that she could return to work on October 1, 2018.

In a December 6, 2018 work excuse note, Dr. Meltzer again requested that appellant be excused from work until the following day.

Appellant submitted a January 3, 2019 list of physical therapy appointments for the period January 8 through 31, 2019.

In a February 13, 2019 development letter, OWCP informed appellant of the deficiencies in her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and afforded her 30 days to respond.

OWCP subsequently received a February 26, 2019 list of physical therapy appointments for the period February 29 through March 26, 2019.

By decision dated March 18, 2019, OWCP denied appellant's claim. It accepted that the September 4, 2018 employment incident occurred as alleged, but found that appellant had not established a diagnosed medical condition causally related to the accepted employment incident. Thus the requirements had not been met to establish an injury as defined by FECA.

[4] Appellant submitted a claim for compensation (Form CA-7) for leave buy back for the period December 6, 2018 to January 31, 2019.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim, including 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,[6] 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.[7] 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.[8]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[9]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted September 4, 2018 employment incident.

In support of her claim, appellant submitted work excuse notes from Dr. Elliot Meltzer dated September 19 and December 6, 2018. However, Dr. Meltzer did not identify a specific medical diagnosis or provide a rationalized medical opinion on causal relationship. The Board has

[5] *Supra* note 2.

[6] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[8] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[9] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[11] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[12] As such, his notes are insufficient to establish appellant's claim.[13]

Appellant also submitted a September 5, 2018 work excuse note from E. Jean-Pierre, a physician assistant. However, certain healthcare providers such as physician assistants are not considered "physician[s]" as defined under FECA.[14] Consequently, these notes will not suffice for purposes of establishing appellant's claim.

The Board finds that there is no evidence of record that establishes a valid medical diagnosis from a qualified physician in connection with the accepted employment incident. Consequently, appellant has not established a medical condition causally related to the accepted September 4, 2018 employment incident.

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 diagnosed medical condition causally related to the accepted September 4, 2018 employment incident.

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

[13] *R.D.*, Docket No. 19-1076 (issued July 2, 2020).

[14] Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section 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. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See M.M.*, Docket No. 20-0019 (issued May 6, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); *C.K.*, Docket No. 19-1549 (issued June 30, 2020) (physician assistants are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board