United States Department of Labor
Employees' Compensation Appeals Board

K.P., Appellant	)	
and	)	**Docket No. 18-0350**
	)	**Issued: February 11, 2020**
DEPARTMENT OF AGRICULTURE, INSPECTION OPERATIONS PROGRAM, Broken Bow, OK, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On April 14, 2017 appellant filed a timely appeal from a March 14, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issues is whether appellant has met her burden of proof to establish an injury in the performance of duty as alleged.

[1] The case record also contains a separate decision dated March 14, 2017 which denied wage-loss compensation as there were no accepted conditions. The wage-loss compensation (Form CA-7) at issue, however, was filed by an individual other than appellant. The Board finds that this decision should be set aside as to appellant. Upon return of the case record, OWCP shall administratively remove all evidence relating to a different claimant's claim.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 11, 2016 appellant, then a 55-year-old consumer safety inspector, filed a traumatic injury claim (Form CA-1) alleging that on August 4, 2016, while driving to update a work pass, she struck a deer and her airbag deployed causing injuries to both hands and her right arm. She noted that her left hand was cut and bruised and required stitches. Appellant stopped work on August 4, 2016. Her supervisor noted on the Form CA-1 that appellant was injured in the performance of duty.

Appellant was treated in an emergency room on August 4, 2018 by a provider with an illegible signature who examined her and indicated that she was able to return to work on August 11, 2016.

In a development letter dated September 14, 2016, OWCP advised appellant that her claim was originally received as an uncontroverted case which resulted in minimal or no time loss from work. It indicated that her claim was administratively handled to allow limited medical payments, but the merits of the claim had not been formally adjudicated. OWCP advised that, because appellant had not returned to work in a full-time capacity, her claim would now be formally adjudicated. It requested that she submit additional factual and medical information and provided a questionnaire to substantiate the factual elements of her claim. Appellant was afforded 30 days to respond.

On September 7, 2016 Dr. Jon T. Maxwell, an osteopath specializing in family medicine, noted appellant's history of a work-related injury and sustaining a bilateral wrist and right knee injury. Appellant reported being involved in a work-related accident on August 4, 2016 and sustained injuries to both wrists and her right knee which had impaired her ability to return to full duties. Dr. Maxwell indicated that he was awaiting radiology studies and a specialty care consultation and advised that she was totally disabled until further notice.

Appellant was treated by a Tabatha LeForce, a certified nurse practitioner, on August 30, 2016, who noted that appellant had been involved in a work-related accident on August 4, 2016 and had been off work since that time. Ms. LeForce noted that appellant was evaluated on August 30, 2016 and released to work without restrictions on August 31, 2016. In a progress note dated September 7, 2016, she reported treatment provided for appellant's right leg pain, bilateral wrists, and hand pain. Appellant reported being involved in a work-related motor vehicle accident on August 4, 2016 and was unsure if she twisted her knee during the accident, but indicated that her knee had contact with the airbag and dashboard of the car. Her history was significant for a left knee replacement in 2008 and a right knee replacement in 2014, lumbosacral degenerative disc disease, and degenerative joint disease of the knee. Ms. LeForce diagnosed right knee pain and wrist pain. In a September 20, 2016 report, she released appellant to return to work without restrictions.

In a September 20, 2016 report, Dr. Maxwell noted treating appellant on August 30 and September 20, 2016. He noted clinical findings and diagnosed laceration of the left hand and right knee pain. Dr. Maxwell returned appellant to work full time on September 20, 2016.

Appellant submitted a duty status report (Form CA-17) dated September 20, 2016 from a physician with an illegible signature. The report described that appellant hit a deer while driving her car and injured her bilateral hands, right arm, lower leg, and knee when the airbag was deployed. Clinical findings included laceration of left hand and right knee pain.

By decision dated March 14, 2017, OWCP denied the claim finding that appellant failed to submit medical evidence establishing that a medical condition was diagnosed in connection with the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,[3] 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.[4] 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.[5]

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. 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.[6] The second component is whether the employment incident caused a personal injury. 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 injury.[7]

Pursuant to OWCP's procedures, no development of a claim is necessary when there is a visible injury, even when time has been lost from work due to disability, following a serious injury (motor vehicle accidents, stabbings, shootings, etc.).[8] The procedures provide that no development is necessary when the employing establishment does not dispute the facts of the case and there are no questionable circumstances surrounding the case. No medical report is required to establish a

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

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *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).

[6] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[8] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011).

minor condition such as a laceration.[9] Sound judgment should be employed in these cases to provide appropriate and immediate medical care for the injured worker since expeditious treatment for these injuries is critical.[10] An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[11]

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 supporting such causal relationship.[12] Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[13] 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.[14] 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.[15]

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[16]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a left hand laceration causally related to the accepted August 4, 2016 employment incident. The Board further finds that she has not met her burden of proof to establish right hand or right knee conditions causally related to her accepted employment incident.

OWCP found that the August 4, 2016 employment incident, in which appellant hit a deer causing her air bag in her vehicle to deploy, occurred as alleged. Appellant noted that during the

[9] *Id*.

[10] *See E.H.*, Docket No. 19-1282 (issued December 23, 2019); *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *R.T.*, Docket No. 08-0408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[11] *Supra* note 7.

[12] *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

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

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

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

[16] *Supra* note 8 at Chapter 2.805.3e (January 2013).

incident her left hand was cut and bruised and required stitches. There were no questionable circumstances as the employing establishment confirmed that the incident had occurred in the performance of duty as alleged. The contemporaneous medical reports provide a consistent history of injury and Dr. Maxwell's September 20, 2016 report noted clinical findings and diagnosed a laceration of the left hand and right knee pain. The Board finds that this evidence is sufficient to establish that appellant sustained a left hand laceration on August 4, 2016.

The medical evidence of record does not, however, support a finding that appellant sustained other hand or knee conditions due to the accepted employment incident.

In his September 7, 2016 report, Dr. Maxwell noted that appellant sustained injuries to both wrists and her right knee. He did not, however, provide a specific diagnosis of a medical condition of the wrists or right knee. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[17] Therefore, Dr. Maxwell's September 7, 2016 report is insufficient to establish the claim for right hand and knee conditions.

In his September 20, 2016 report, Dr. Maxwell diagnosed the now accepted laceration of the left hand and right knee pain. As to the right knee condition, the diagnosis of pain is insufficient. The Board has held that it is not possible to establish the cause of a medical condition if the physician has not provided a diagnosis, but only notes pain.[18] It has consistently been held that pain is a symptom and not a compensable medical diagnosis.[19] Therefore, Dr. Maxwell's September 20, 2016 report is also insufficient to establish the claim for right hand and knee conditions.

The remaining medical evidence that appellant has submitted in support of her claim are reports signed by a nurse practitioner or which contain an illegible signature or are unsigned. A nurse practitioner is not, however, considered a physician as defined under FECA.[20] Also, the Board has previously held that unsigned reports or reports that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification that the author is a physician.[21] Therefore, these reports are of no probative value and are insufficient to establish appellant's claim for right hand and right knee conditions.

[17] *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

[18] *See A.C.*, Docket No. 16-1587 (issued December 27, 2016).

[19] *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

[20] Section 8101(2) of FECA provides that medical opinion, in general, 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. *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. *Supra* note 8 at Chapter 2.805.3a(1) (January 2013).

[21] *G.N.*, Docket No. 19-0184 (issued May 29, 2019); *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

The Board therefore finds that appellant has submitted insufficient medical evidence to establish a right hand or right knee condition causally related to the accepted 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.

As appellant has established a left hand laceration as an accepted, employment-related condition the Board will reverse, in part, the March 14, 2017 decision and remand the case for payment of medical costs and wage-loss compensation, if any.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a left hand laceration causally related to the accepted August 4, 2016 employment incident. The Board further finds that she has not met her burden of proof to establish right hand or right knee conditions causally related to her accepted employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 11, 2020
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board