

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

)	
J.P., Appellant)	
)	
and)	Docket No. 20-0381
)	Issued: July 28, 2020
DEPARTMENT OF VETERANS AFFAIRS,)	
NEW YORK HARBOR HEALTH CARE)	
SYSTEM, New York, NY, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 9, 2019 appellant filed a timely appeal from a November 25, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted August 30, 2018 employment incident.

FACTUAL HISTORY

On May 29, 2019 appellant, then a 50-year-old social worker, filed a traumatic injury claim (Form CA-1) alleging that on August 30, 2018 she experienced shoulder, head, and back pain

¹ 5 U.S.C. § 8101 *et seq.*

when she was involved in a motor vehicle collision while in the performance of duty. She explained that she was purchasing gas for her work vehicle before returning to her duty station when her vehicle was struck from the rear. On the reverse side of the claim form the employing establishment acknowledged by checking a box marked "Yes" indicating that appellant was injured in the performance of duty. Appellant did not stop work.

In a June 5, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated July 11, 2019, OWCP denied appellant's traumatic injury claim, finding that the factual component of fact of injury had not been established. It found that she had not responded to its June 5, 2019 development letter requesting specific factual information regarding the motor vehicle collision. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 23, 2019 appellant requested an oral hearing before an OWCP hearing representative.

In a July 23, 2019 letter, appellant responded to OWCP's development questionnaire. She noted that she delayed filing her traumatic injury claim because her supervisor escorted her to the emergency room, and she believed that he had filed the claim for her. Appellant indicated that she was alone at the time of the motor vehicle accident and suffered shoulder, head, and back pain. She reported that she requested a magnetic resonance imaging (MRI) scan, but her request was denied. Appellant further stated that she was still experiencing back pain and headaches as a result of the incident and had received pain injections. She noted that on the day of the incident her work vehicle was struck from behind while she was returning to her duty station. Appellant indicated that was she returning from a work visit to a community site where she had performed her regular job duties. She also reported that she was driving in a work vehicle and had stopped to get gas and that the employing establishment paid for all expenses related to travel. Along with her statement, appellant submitted an August 30, 2018 police report of the accident.

A computerized tomography (CT) scan of appellant's head, dated August 31, 2018, revealed no acute intracranial pathology. Incidental findings were noted. X-ray views of appellant's right shoulder from the same day showed no acute fracture or dislocation. Incidental findings were also noted.

In an August 31, 2018 report, Dr. Ishmael Bradley, a Board-certified specialist in internal medicine, noted that appellant was experiencing headaches and shoulder pain following a motor vehicle collision. He reviewed a CT scan of appellant's head and x-rays of her right shoulder and indicated that there was no evidence of acute pathology.

An unsigned August 31, 2018 duty status report (Form CA-17), noted that appellant was seen at the employee health clinic following a motor vehicle accident that day. Findings were noted of right shoulder occipital tenderness. Appellant was advised to return to full-duty work without restrictions on August 31, 2018.

Appellant also submitted progress notes, dated August 31, 2018, from an employing establishment pharmacist.

A hearing was held on October 22, 2019. Appellant testified that, while she was returning to her workstation, her vehicle was struck while she was turning into a gas station. The hearing representative advised appellant that she needed to submit medical evidence containing a valid diagnosis and held the case record open for 30 days for the submission of additional evidence. OWCP did not receive any additional evidence.

By decision dated November 25, 2019, OWCP's hearing representative affirmed the July 11, 2019 decision, finding that the medical evidence of record was insufficient to establish a valid diagnosis causally related to the accepted August 30, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 has 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.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ 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

² *Supra* note 1.

³ *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *L.F.*, Docket No. 19-1905 (issued April 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted August 30, 2018 employment incident.

Appellant submitted an August 31, 2018 report from Dr. Bradley who indicated that she was seen for headache and right shoulder pain, but that she had no evidence of acute pathology. Dr. Bradley did not provide a specific diagnosis of an injury or medical condition. The Board has long held that headache,¹⁰ and pain¹¹ are symptoms, but not firm diagnoses. The Board has also held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.¹² As such, Dr. Bradley's report is insufficient to meet appellant's burden of proof.

Appellant also submitted an unsigned August 31, 2018 Form CA-17 duty status report from the employee health clinic which noted occipital tenderness following vehicle accident trauma. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.¹³ Therefore, this report has no probative value and is insufficient to establish appellant's claim.

Appellant submitted progress notes, dated August 31, 2018, signed solely by a pharmacist. Medical notes signed solely by a pharmacist are of no probative value as pharmacists are not considered physicians as defined under FECA.¹⁴

The record also contains a CT scan of appellant's head and x-rays of appellant's right shoulder, both dated August 31, 2018. The Board has held, however, that diagnostic test reports,

⁹ A.S., Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ See *Deborah L. Beatty*, 54 ECAB 340 (2003). See also *Larry M. Leudtke*, Docket 03-1564 (issued September 2, 2003) (where the Board found that headache described a symptom and did not constitute a firm diagnosis of a medical condition).

¹¹ *T.G.*, Docket No. 19-0904 (issued November 25, 2019).

¹² *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹³ *Id.*

¹⁴ Section 8101(2) of FECA provides that physician "includes 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 also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.C.*, Docket No. 20-0125 (issued July 15, 2020); *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).

standing alone, lack probative value as they do not provide an opinion on whether there is a causal relationship between an employment incident and a diagnosed condition.¹⁵

As there is no medical opinion evidence establishing a diagnosed medical condition causally related to the accepted August 30, 2018 employment incident, the Board finds that she has not met her burden of proof to establish her claim.¹⁶

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 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 August 30, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 28, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁵ *M.W.*, Docket No. 19-1667 (issued June 29, 2020).

¹⁶ *Id.*