

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

_____)	
T.D., Appellant)	
)	
and)	Docket No. 19-1644
)	Issued: June 10, 2020
DEPARTMENT OF DEFENSE, NATIONAL SECURITY AGENCY, Laurel, MD, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 30, 2019 appellant filed a timely appeal from a May 2, 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

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted October 10, 2018 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the May 2, 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.*

FACTUAL HISTORY

On October 18, 2018 appellant, then a 50-year-old Science, Technology, Engineering, and Mathematics (STEM) technical lead, filed a traumatic injury claim (Form CA-1) alleging that on October 10, 2018 she injured her head, left leg, right elbow, right shoulder, right upper back, , and neck when she fell down carpeted stairs while in the performance of duty. She explained that her heel got caught on a stair, causing her to tumble headfirst down the stairs and land on her head. On the reverse side of the claim form, the employing establishment indicated that appellant was injured in the performance of duty, stopped work on October 10, 2018, and returned to work on October 15, 2018.

An October 10, 2018 work excuse note from Katie Mellendick, a physician assistant, indicated that appellant was treated in a hospital emergency room and recommended that she be excused from work until October 13, 2018.

In a March 22, 2019 development letter, OWCP advised appellant that when her claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work, and that based on these criteria, and because the employing establishment did not controvert the continuation of pay or challenge the merits of the case, payment of a limited amount of medical expenses was administratively approved. The merits of the claim, however, had not been formally considered. OWCP advised appellant that the documentation received to date was insufficient to support her claim for FECA benefits. It advised her of the factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested factual and medical evidence.

An October 10, 2018 report signed by Ms. Mellendick indicated that appellant hit her head when she tripped and fell down stairs. Appellant presented with pain in her head, neck, and right shoulder. Her physical examination revealed muscular tenderness in her neck, but otherwise normal results. Impressions were noted of cervical strain and scalp contusion.

Contained within the October 10, 2018 report from Ms. Mellendick were individually signed computerized tomography (CT) scan and x-ray reports. A CT scan of appellant's head interpreted by Dr. Andrew Morton, a Board-certified radiologist, revealed normal results. A CT scan of appellant's cervical spine interpreted by Dr. Victor Bracey, a Board-certified radiologist, revealed straightening of the cervical lordosis with possible "second" muscle spasm and mild multilevel degenerative disc and degenerative facet changes. An x-ray of appellant's right shoulder interpreted by Dr. Morton revealed normal results. An x-ray of appellant's lumbar spine interpreted by Dr. Jerjis Alajaji, a radiology specialist, revealed a mild marginal spur formation at L4-5.

By decision dated May 2, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical diagnosis causally related to the accepted October 10, 2018 employment incident. It explained that medical evidence was required that not only contained a diagnosis, but that also established that the diagnosed medical condition was causally related to the 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 FECA³ 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

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 established cervical and lumbar diagnoses, but has not met her burden of proof to establish a medical condition causally related to the accepted October 10, 2018 employment incident.

In support of her claim, appellant submitted October 10, 2018 medical reports by Ms. Mellendick, a physician assistant, which indicated that appellant hit her head when she tripped and fell down stairs and that she presented with pain in her head, neck, and right shoulder. Ms. Mellendick conducted a physical examination and diagnosed cervical strain and a scalp contusion. The Board has previously explained, however, that certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered “physician[s]” as defined under FECA.¹³ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁴

The record additionally contains October 10, 2018 CT scans and x-ray diagnostic reports which were signed by physicians. A CT scan of appellant’s cervical spine interpreted by Dr. Bracey revealed straightening of the cervical lordosis with possible “second” muscle spasm and mild multilevel degenerative disc and degenerative facet changes. An x-ray of appellant’s lumbar spine interpreted by Dr. Alajaji revealed a mild marginal spur formation at L4-5. The Board has previously explained that diagnostic studies standing alone lack probative value as they do not provide an opinion regarding the cause of the diagnosed conditions.¹⁵ These diagnostic studies are therefore insufficient to establish appellant’s claim.

The Board finds that the record lacks rationalized medical evidence establishing that appellant’s diagnosed conditions were causally related to the accepted October 10, 2018 employment incident. Thus, appellant has not met her burden of proof.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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has established cervical and lumbar diagnoses, but has not met her burden of proof to establish a medical condition causally related to the accepted October 10, 2018 employment incident.

¹³ 5 U.S.C. § 8102(2) of FECA provides that the term 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 K.C.*, Docket No. 19-0834 (issued October 28, 2019); and *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

¹⁴ *R.G.*, Docket No. 18-0236 (issued December 17, 2019).

¹⁵ *See J.C.*, Docket No. 18-1503 (issued May 2, 2019).

¹⁶ *See supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2019 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: June 10, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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