

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

Y.G., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS, VA
PACIFIC ISLANDS HEALTHCARE SYSTEM,
SPARK A. MATSUNAGA VA MEDICAL
CENTER, Honolulu, HI, Employer**

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**Docket No. 20-0688
Issued: November 13, 2020**

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 February 10, 2020 appellant filed a timely appeal from a January 10, 2020 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish exposure to norovirus in the performance of duty, as alleged.

FACTUAL HISTORY

On July 18, 2019 appellant, then a 59-year-old advanced practice registered float nurse (APRN), filed an occupational disease claim (Form CA-2) alleging that she contracted a viral

¹ 5 U.S.C. § 8101 *et seq.*

infection while treating patients due to factors of her federal employment. She noted that she first became aware of the condition on July 12, 2019 and related it to factors of her federal employment on July 13, 2019. Appellant stopped work on July 15, 2019.

In a July 18, 2019 statement, K.S., appellant's supervisor, noted that appellant reported a viral respiratory illness on July 15, 2019 which she attributed to exposure to ill patients in the ambulatory care center on July 12, 2019. In a development letter dated July 22, 2019, OWCP notified appellant of the factual and medical deficiencies of her claim. It advised her of the type of evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit additional medical evidence.

In response, appellant provided a completed questionnaire dated July 31, 2019. She asserted that she was exposed to a virus on or before July 12, 2019, in the employing establishment's ambulatory care center. Appellant noted that a viral infection affected 8 of 10 unit employees.

By decision dated August 22, 2019, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that the identified exposure occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On November 12, 2019 appellant requested reconsideration and submitted additional evidence.² In a July 18, 2019 e-mail, she notified supervisor, K.S. that she believed that she had contracted "the virus that is going around in module 2." On Friday July 12, 2019 appellant experienced fatigue, a sore throat, and a chest rash. She then experienced the onset of nausea, vomiting, and headache.

Dr. Steven M. Sovich, an osteopathic physician Board-certified in family practice, noted in a July 18, 2019 report that appellant experienced an illness during an outbreak from July 10 to 12, 2019 among ambulatory care center staff. He diagnosed "most likely nonspecific viral illness." Dr. Sovich noted that an employing establishment infectious disease physician had been notified of appellant's illness during the previous week. He provided an updated report to an employing establishment infection control nurse.

In a report dated August 2, 2019, Dr. Blake A. Smith, Board-certified in emergency medicine, observed right upper quadrant tenderness and mild diffuse abdominal tenderness. He obtained abdominal imaging studies indicative of a bowel ileus. Dr. Smith offered several differential diagnoses.

On August 5, 2019 Dr. Geoffrey C. Alexander, Board-certified in emergency medicine, reported a three-week history of diffuse abdominal pain. He diagnosed abdominal pain.

² An August 2, 2019 abdominal imaging record demonstrated common bile duct dilatation to 10 millimeter of indeterminate significance. September 18, 2019 bilateral hand x-rays were within normal limits. Appellant also provided serology and stool culture reports dated from July 30 to October 18, 2019, and nurses notes dated August 9, 15, and 30, 2019.

Dr. David R. Worthen, a Board-certified family practitioner, noted in an August 13, 2019 report appellant's complaints of weakness, nausea, and abdominal discomfort. He diagnosed possible irritable bowel syndrome, spasm, or gastroenteritis.

In a report dated August 19, 2019, Dr. James A. Fitch, a physician specializing in emergency medicine, diagnosed subacute norovirus gastroenteritis.

In a September 17, 2019 report, Dr. Francis D. Pien, Board-certified in internal medicine and infectious disease, returned appellant to full-duty work effective that day. In a report dated October 18, 2019, he diagnosed polyarthralgia following onset of norovirus and possible post-viral syndrome.

Dr. Mary Li, a Board-certified internist, summarized appellant's history of injury and treatment in a November 1, 2019 report. She noted that an August 10, 2019 stool sample, was positive for norovirus. Dr. Li diagnosed gastroenteritis, dilation of the common bile duct, neuropathy, stool positive for norovirus, post-viral syndrome, and polyarthralgia. She opined that appellant became ill while at work on July 12, 2019.

By decision dated January 10, 2010, OWCP denied modification, finding that the evidence of record was insufficient to establish that the occupational exposure occurred, as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 filed within the applicable time limitation period of FECA,⁴ that an injury was sustained while in the performance of duty as alleged, and that any disability or specific 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

In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical

³ *Supra* note 1.

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *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 *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Elyett*, 41 ECAB 992 (1990).

evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁸ The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a *prima facie* case has been established.⁹ An employee's statements alleging 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.¹⁰

ANALYSIS

The Board finds that appellant has established exposure to norovirus in the performance of duty, as alleged.

In response to OWCP development questionnaire, appellant asserted that she was exposed to a virus on or before July 12, 2019, in the employing establishment's ambulatory care center. She noted that a viral infection affected 8 of 10 unit employees. The record establishes that appellant promptly reported the onset of gastric and respiratory symptoms to K.S., her supervisor on July 15, 2019. She sought treatment on July 18, 2019 from Dr. Sovich, who noted a viral outbreak in her work area from July 10 to 12, 2019, which resulted in notification of an employing establishment infectious disease physician. Dr. Pien confirmed the specific diagnosis of norovirus in September 17 and October 18, 2019 reports. Additionally, Dr. Li related in her November 1, 2019 report that appellant contracted norovirus while at work on July 12, 2019.

As noted above, an employee's statements alleging 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 The Board thus finds that appellant has established exposure to norovirus in the performance of duty, as alleged.

⁷ *J.V.*, Docket No. 18-0177 (issued August 26, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁸ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667-71 (1987).

⁹ *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

¹⁰ *M.H.*, Docket No. 20-0576 (issued August 6, 2020); see *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹¹ *Id.*

As appellant has established the claimed occupational exposure, the question becomes whether this exposure caused an injury.¹² As OWCP found that she had not established fact of injury, it did not evaluate the medical evidence. The Board, therefore, will set aside OWCP's January 10, 2020 decision and remand the case for consideration of the medical evidence of record.¹³ After any further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish a medical condition causally related to the accepted employment exposure.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that occupational exposure to norovirus occurred in the performance of duty, as alleged. The Board further finds that the case is not in posture for decision regarding whether she has established a medical condition causally related to the accepted employment exposure.

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2020 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 13, 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

¹² See R.S., 20-0471 (issued October 7, 2020); N.B., Docket No. 13-0513 (issued August 27, 2017).

¹³ M.H., *supra* note 10; S.M., Docket No. 16-0875 (issued December 1, 2017).