United States Department of Labor
Employees' Compensation Appeals Board

K.G., Appellant	)	
and	)	**Docket No. 20-1242**
	)	**Issued: January 13, 2021**
DEPARTMENT OF VETERANS AFFAIRS, DURHAM VA MEDICAL CENTER, Durham, NC, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 4, 2020 appellant filed a timely appeal from an April 14, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the April 14, 2020 decision, appellant submitted 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 March 3, 2020 employment incident.

FACTUAL HISTORY

On March 3, 2020 appellant, then a 35-year-old advanced medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on that day she injured her lower back, buttocks, and both of her legs when the shuttle bus she was commuting to work in was rear ended by a van while in the performance of duty. She asserted that the shuttle bus was provided by the employing establishment and that she was sitting in the back row of the shuttle bus when the motor vehicle accident (MVA) occurred. On the reverse side of the claim form appellant's supervisor checked a box marked "No" to indicate that appellant was not in the performance of duty when her injury occurred because she was "in transit to work on approved [employing establishment] shuttle." She did not stop work.

In a March 5, 2020 development letter, OWCP informed appellant that it had received no evidence in support of her traumatic injury claim. It informed her of the evidence necessary to establish her claim and provided a questionnaire for her completion regarding her employment activities. OWCP also requested a narrative medical report from appellant's treating physician, which contained a detailed description of findings and a diagnosis, explaining how the claimed employment incident caused, contributed to, or aggravated her medical conditions. In a separate development letter of even date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor on the accuracy of appellant's statements. OWCP provided 30 days for both parties to respond.

Appellant submitted a March 3, 2020 traffic accident report detailing the MVA in which the shuttle bus she was riding in was struck from behind by another vehicle.

In reports dated March 6 and 9, 2020, Ordonneau Roger, a physician assistant, evaluated appellant for back pain which began on March 3, 2020 when the shuttle bus she was riding in was rear ended. He diagnosed lumbar radiculopathy and provided treatment instructions. In his March 6, 2020 treatment notes, Mr. Roger provided work restrictions and referred appellant to physical therapy for further treatment.

In a March 12, 2012 response to OWCP's development questionnaire, C.P., a human resources management specialist with the employing establishment, explained that the transportation shuttle appellant was riding in at the time of the MVA was not owned by the employing establishment; however, due to a parking deficiency, the employing establishment had a contract with the shuttle service to provide daily service for all employing establishment employees to and from an off-site assigned parking location. He indicated that she was required to ride the shuttle and the general public was not permitted to ride the shuttle. C.P. further noted that there was no alternative parking available.

In a letter of even date, A.B., an administrative officer with the employing establishment, explained that appellant was permitted to ride the shuttle and that she was required to park off-site due to a parking deficiency.

In therapy reports dated March 13 and 17, 2020, Jody Davis, a physical therapist, evaluated appellant for low back pain related to the March 3, 2020 employment incident and provided a treatment plan for her to follow.

In a March 17, 2020 response to OWCP's development questionnaire, appellant noted her normal hours of work and described the immediate effects of the March 3, 2020 accident as lower back pain with pain radiating down both of her legs to her feet. She indicated that she sustained no other injury aside from the March 3, 2020 employment incident. Appellant also asserted that she was required by the employing establishment to ride the shuttle as there was not enough on-site parking for employees.

A March 24, 2020 therapy report by Adam Luke, a physical therapist, provided an updated of appellant's progression through therapy for her low back pain.

By decision dated April 14, 2020, OWCP denied appellant's traumatic injury claim, finding that she had failed to submit medical evidence signed by a qualifying physician containing a diagnosis in connection with her claimed injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident

[3] *Supra* note 2.

[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).

at the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that 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] A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.[9] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted March 3, 2020 employment incident.

Appellant submitted evidence dated from March 6 to 24, 2020 consisting of various reports and treatment notes from Mr. Rogers, a physician assistant and Ms. Davis and Mr. Luke, physical therapists. The Board has held that certain healthcare providers such as physician assistants,[11] nurse practitioners,[12] physical therapists, and social workers are not considered physicians as defined under FECA.[13] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[14]

[7] *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q)

[8] *T.H.*, 59 ECAB 388, 393-94 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[10] *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *C.P.*, Docket No. 19-1716 (issued March 11, 2020) (a physician assistant is not a physician as defined under FECA).

[12] *S.J.*, Docket No. 17-0783 n. 2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

[13] 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); *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).

[14] *See B.W.*, Docket No. 20-1032 (issued November 17, 2020).

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 March 3, 2020 employment incident.[15] Appellant, therefore, has not met her burden of proof.

On appeal, appellant contends that she had provided new medical evidence signed by a qualified physician for the Board to review. However, as previously noted, the Board may not consider evidence for the first time on appeal that was not previously before OWCP.[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 not met her burden of proof to establish a diagnosed medical condition causally related to the accepted March 3, 2020 employment incident.

[15] *See T.J.*, Docket No. 18-1500 (issued May 1, 2019); *see D.S.*, Docket No. 18-0061 (issued May 29, 2018).

[16] *See supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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