

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

L.O., Appellant)	
)	
and)	Docket No. 20-0226
)	Issued: June 25, 2021
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Burbank, CA, 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 November 6, 2019 appellant filed a timely appeal from an October 7, 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the October 7, 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 additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted August 31, 2019 employment exposure.

FACTUAL HISTORY

On September 1, 2019 appellant, then a 50-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on August 31, 2019 she felt nauseous and experienced tingling in her throat, arms, and hands while in the performance of duty. In an accompanying narrative statement, she explained that, while sweeping inside an advanced imaging technology machine, the machine began moving and scanning. Appellant noted that she became nauseous and felt tingling in her throat and arms. On the reverse side of the claim form the employing establishment controverted her claim, noting that the cause of her injury was unknown.

In a September 3, 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.

In a September 4, 2019 report, Dr. Cynthia Deveikis, an osteopathic physician specializing in emergency medicine, listed diagnoses of exposure to x-ray radiation and nausea. She noted that it was inconclusive if the findings and diagnoses were consistent with appellant's account of the incident.

By decision dated October 7, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical conditions and the accepted August 31, 2019 employment exposure.

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 period 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

³ *Supra* note 1.

⁴ *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 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.⁷ The second component is whether the employment incident caused a personal injury.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ 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 incident identified by the claimant.¹⁰

However, in clear-cut traumatic injury claims, where the fact of injury is established and is clearly competent to cause the condition described (for instance, a worker falls from a scaffold and breaks an arm), a fully rationalized medical opinion is not needed.¹¹ The physician's diagnosis and an affirmative statement are sufficient to accept the claim.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted August 31, 2019 employment exposure.

Appellant submitted a September 4, 2019 report from Dr. Deveikis who diagnosed of exposure to x-ray radiation and nausea. However, Dr. Deveikis indicated that it was inconclusive if the findings and diagnoses were consistent with appellant's account of the incident. The Board has held that medical evidence that does not include an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹³ As there is no

⁵ *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ 20 C.F.R. § 10.115; *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *L.F.*, Docket No. 19-1905 (issued April 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *C.J.*, Docket No. 15-1697 (issued February 5, 2016); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3d(1) (January 2013).

¹² *Id.*

¹³ *G.L.*, *supra* note 4; *M.D.*, Docket No. 17-0478 (issued July 5, 2018).

affirmative statement from Dr. Deveikis regarding causal relationship, this report is insufficient to establish appellant's claim. The Board finds, therefore, that appellant has not met her burden of proof.

On appeal appellant contends that she sustained radiation to her body and that she is extremely sensitive to radiation. She alleges that there are no tests in the medical field that can prove exposure to radiation. As explained above, however, the medical evidence of record is insufficient to establish the claim.

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 medical condition causally related to the accepted August 31, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 25, 2021
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