

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

L.M., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS, VA
MEDICAL CENTER, Pittsburgh, PA, Employer**

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**Docket No. 20-1592
Issued: May 3, 2021**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 9, 2020 appellant, through counsel, filed a timely appeal from a May 13, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the May 13, 2020 decision, appellant submitted additional evidence to OWCP. 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 that a traumatic incident occurred in the performance of duty on April 3, 2018, as alleged.

FACTUAL HISTORY

On March 20, 2020 appellant, then a 53-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on April 3, 2018 she suffered right arm paresthesia, right-sided neck pain, headache, right shoulder pain, and right-sided head numbness and tingling while in the performance of duty. On the reverse side of the claim form the employing establishment acknowledged that appellant was injured in the performance of duty. Appellant did not stop work.

In a development letter dated April 9, 2020, 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.⁴

By decision dated May 13, 2020, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that an incident occurred on April 3, 2018, as alleged. It noted that the mechanism of injury was unclear in appellant's claim form and that she had not responded to its April 9, 2020 development questionnaire. 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 FECA⁵ 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,⁶ 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.⁷ 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.⁸

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

⁴ By decision dated April 9, 2020, OWCP denied appellant continuation of pay (COP) as she had not reported her alleged April 3, 2018 injury on an OWCP-approved form within 30 days of the date of injury.

⁵ *Supra* note 2.

⁶ *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).

⁷ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *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).

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.⁹ The second component is whether the employment incident caused a personal injury.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that a traumatic incident occurred in the performance of duty on April 3, 2018, as alleged.

In her Form CA-1, appellant reported that on April 3, 2018 she experienced right arm paresthesia, right-sided neck pain, headache, right shoulder pain, and right-sided head numbness and tingling due to advice and work restrictions from the employing establishment. She did not submit a detailed account of the alleged injury or any additional corroborating factual evidence describing how she sustained an injury on April 3, 2018. The Board has found that such a vague recitation of facts does not support a claimant's allegation that a specific event occurred to cause a work-related injury.¹¹

In a development letter dated April 9, 2020, OWCP informed appellant that the factual evidence of record was insufficient to establish that the April 3, 2018 employment incident occurred as alleged. It requested that appellant complete an attached questionnaire and provide a detailed factual description of the alleged employment incident. Appellant, however, did not respond to OWCP's development letter. She neither presented evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury, nor did she allege that she experienced a specific event, incident, or exposure at a definite time and place, and in a definite manner.¹² As appellant has not provided a detailed factual statement describing the April 3, 2018 employment incident alleged to have caused the claimed conditions, the Board finds that she has not met her burden of proof to establish that she experienced the employment incident at the time, place, and in the manner alleged, or that it caused an injury.¹³

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 that a traumatic incident occurred in the performance of duty on April 3, 2018, as alleged.

⁹ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *R.R.*, Docket No. 20-1057 (issued December 21, 2020); *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *M.B.*, Docket No. 11-1785 (issued February 15, 2012).

¹² *Id.*; *see also E.R.*, Docket No. 18-1235 (issued April 2, 2019); *Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002).

¹³ *R.R.*, *supra* note 11; *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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