

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

C.S., Appellant	)	
	)	
and	)	<b>Docket No. 21-0560</b>
	)	<b>Issued: July 13, 2023</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>DORIS MILLER VA MEDICAL CENTER,</b>	)	
<b>Waco, TX, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On February 26, 2021 appellant filed a timely appeal from a November 12, 2020 merit decision and a February 4, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted September 21, 2020 employment incident; and

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the February 4, 2021 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.*

(2) whether OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

### **FACTUAL HISTORY**

On September 29, 2020 appellant, then a 59-year-old laundry worker, filed a traumatic injury claim (Form CA-1) alleging that on September 21, 2020 she was struck on the left side of her face with a closed fist by a coworker who began speaking profanities and threatening her while in the performance of duty. On the reverse side of the claim form, L.D., appellant's supervisor, contended that the injury was due to willful misconduct as the two employees were trying to fist fight each other. L.D. reported that appellant was in a verbal confrontation with a coworker and both employees swung at each other. Appellant did not stop work.

In a duty status report (Form CA-17) dated October 2, 2020, Dr. Gilbert Mayorga, a Board-certified family medicine specialist, noted a September 21, 2020 employment incident when appellant was assaulted by a coworker and hit on her left cheek. He described clinical findings and diagnosed facial contusion.

In a letter dated October 7, 2020, the employing establishment controverted appellant's claim, contending that she had not established fact of injury or provided a medical report establishing a diagnosed condition in connection to the employment incident.

In a September 21, 2020 narrative statement, appellant reported that following an employee meeting, her coworker, began yelling profanities at her, ran towards her, and hit her in the lip. She related that staff members grabbed both of them and the coworker picked up a piece of the ice box, which she used to try to swing at her. Appellant reported that she called the VA police and provided a statement immediately following the incident.

A number of witness statements were also submitted describing the September 21, 2020 employment incident between appellant and a coworker, including statements from appellant, and witnesses.

In an October 7, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her as to the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP received additional evidence including an October 29, 2020 response to OWCP's development questionnaire, wherein appellant further described the circumstances surrounding the alleged September 21, 2020 employment incident.

OWCP also received an undated witness statement, wherein S.V., appellant's supervisor, related the events of the alleged September 21, 2020 employment incident.

By decision dated November 12, 2020, OWCP accepted that appellant had established that the September 21, 2022 employment incident occurred, as alleged. However, it denied her claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted September 21, 2020 employment incident.

OWCP subsequently received an October 2, 2020 medical report from Dr. Mayorga, who discussed his initial consultation with appellant on that date following an alleged September 21, 2020 employment incident when she was struck in the face by a coworker with a closed fist. Appellant complained of headaches, pain, soreness, and swelling of her left cheek, and anxiety at work due to fear of being attacked again. He noted physical examination findings of minimal swelling of the left facial malar surface area with no bruising, minimal discomfort to the cheek to palpation, and essentially unremarkable balance of facial and neurologic examination. Dr. Mayorga diagnosed facial contusion, post-traumatic headaches, and post-traumatic stress disorder (PTSD). He recommended x-rays of the face, a magnetic resonance imaging (MRI) scan of the brain to rule out a concussion, and restricted appellant from returning to work pending test results.

In a November 23, 2020 Form CA-17, Dr. Mayorga restricted appellant from returning to work.

On January 14, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In support of her claim, she submitted an additional September 21, 2020 narrative statement describing the circumstances surrounding her injury, and a January 6, 2021 Form CA-17 from Dr. Mayorga further restricting appellant from returning to work.

By decision dated February 4, 2021, OWCP denied appellant's request for an oral hearing as untimely filed, finding that her request was not made within 30 days of the November 12, 2020 decision as it was received on January 14, 2021. It further exercised discretion and determined that the issue in this case could equally well be addressed through a request for reconsideration before OWCP along with the submission of new evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> 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 timely filed within the applicable time limitation of FECA,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment incident identified by the employee.<sup>9</sup>

Pursuant to OWCP's procedures, no development of a claim is necessary where the condition reported is a minor one, which can be identified on visual inspection by a lay person (e.g., burn, laceration, insect sting, or animal bite).<sup>10</sup> No medical report is required to establish a minor condition such as a contusion.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has met her burden of proof to establish a facial contusion causally related to the accepted September 21, 2020 employment incident.

In a Form CA-17 dated October 2, 2020, Dr. Mayorga noted a September 21, 2020 injury when appellant was assaulted by a coworker and hit on her left cheek. He described clinical findings and diagnosed facial contusion. OWCP's procedures provide that, if a condition reported is a minor one, such as a burn, laceration, insect sting, or animal bite, which can be identified on visual inspection by a lay person, a case may be accepted without a medical report.<sup>12</sup> As the evidence of record establishes that appellant's employment incident resulted in a visible injury,

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<sup>7</sup> *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.800.6a (June 2011). *See also* Chapter 2.805.3c (January 2013); *A.J.*, Docket No. 19-1289 (issued December 31, 2019).

<sup>11</sup> *Id.*; *see B.C.*, Docket No. 20-0498 (issued August 27, 2020) (the Board accepted lumbar contusion as causally related to the accepted employment incident); *S.H.*, Docket No. 20-0113 (issued June 24, 2020) (the Board accepted a right ankle contusion as causally related to the accepted employment incident); *M.A.*, Docket No. 13-1630 (issued June 18, 2014).

<sup>12</sup> *Id.*; *see also S.G.*, Docket No. 22-0016 (issued October 31, 2022).

the Board finds that she has met her burden of proof to establish a facial contusion causally related to the accepted September 21, 2020 employment incident.<sup>13</sup>

Accordingly, the November 12, 2020 decision is reversed to find that the claim is accepted for facial contusion.<sup>14</sup> The case shall therefore be remanded to OWCP for payment of medical expenses for appellant's diagnosed contusion.<sup>15</sup>

**CONCLUSION**

The Board finds that appellant has met her burden of proof to establish a facial contusion causally related to the accepted September 21, 2020 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 12, 2020 decision of the Office of Workers' Compensation Programs is reversed.<sup>16</sup> The case is remanded for further proceedings consistent with this decision.

Issued: July 13, 2023  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>13</sup> *J.B.*, Docket No. 21-1322 (issued April 4, 2022).

<sup>14</sup> *T.A.*, Docket No. 22-0955 (issued December 16, 2022).

<sup>15</sup> *U.S.*, Docket No. 22-0461 (issued March 13, 2023).

<sup>16</sup> Given the disposition of the first issue, the second issue is rendered moot.