

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

J.M., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
CORPORAL MICHAEL J. CRESCENZ VA)
MEDICAL CENTER, Philadelphia, PA,)
Employer)

Docket No. 22-0897
Issued: March 17, 2023

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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 16, 2022 appellant filed a timely appeal from an April 7, 2022 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a left arm injury causally related to the accepted February 17, 2022 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 23, 2022 appellant, then a 63-year-old medical instrument technician, filed a traumatic injury claim (Form CA-1) alleging that on February 17, 2022 she sustained a radius fracture of her left arm when she fell to the floor and landed on her left elbow while in the performance of duty. She stopped work on the date of the claimed injury.

In a February 28, 2022 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and afforded her 30 days to respond.

By decision dated March 30, 2022, OWCP accepted that appellant had established that the February 17, 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 February 17, 2022 employment incident. OWCP concluded, therefore, that appellant had not met the requirements to establish an injury as defined by FECA.

On April 4, 2022 appellant requested reconsideration of the March 30, 2022 decision and submitted additional evidence.

Appellant submitted a February 24, 2022 narrative report, wherein Dr. Richard J. Tosti, a Board-certified orthopedic surgeon, related that appellant fell at work on February 17, 2022 and injured her left elbow. Dr. Tosti detailed the findings of his physical examination, noting that she exhibited pain on pronation of her left elbow but was able to make a full arc. He advised that x-rays showed partial articular fracture of the left radial head and diagnosed left radial head fracture. Dr. Tosti noted that he would treat appellant nonoperatively and make a brace for her.

In a February 24, 2022 work status report, Dr. Tosti listed the date of injury as February 17, 2022 and provided a diagnosis of left radial head fracture. He indicated that appellant could not return to work for four to six weeks.

In a narrative report dated March 31, 2022, received by OWCP on April 5, 2022, Dr. Tosti noted that appellant “had a radial head fracture on the left we are treating nonoperatively.” He reported physical examination findings, noted that x-rays showed no displacement, and diagnosed left radial head fracture. Dr. Tosti indicated that appellant wished to return to full-duty work on April 12, 2022 and advised that such a return to work was a reasonable goal. In an accompanying work status report of the same date, he diagnosed radial head fracture and noted that appellant could return to full-duty work on April 12, 2022.

Appellant also submitted a March 31, 2022 duty status report (Form CA-17) by Dr. Tosti, who listed the date of injury as February 17, 2022 and the “diagnosis(es) due to injury” as left radial head fracture. He noted that appellant could perform regular full-time work on April 12, 2022.

By decision dated April 7, 2022, OWCP modified its prior decision to reflect that appellant submitted medical evidence establishing a medical diagnosis in connection with the accepted February 17, 2022 employment incident. The claim remained denied, however, as OWCP found

that the medical evidence of record was insufficient to establish causal relationship between a diagnosed condition and the accepted February 17, 2022 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including 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.² 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.³

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 at the time and place, and in the manner alleged.⁴ The second component is whether the employment incident caused a personal injury.⁵

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. The opinion of the physician must be based on a complete factual and medical background, 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.⁶ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left arm injury causally related to the accepted February 17, 2022 employment incident.

Appellant submitted a February 24, 2022 narrative report from Dr. Tosti who indicated that she reported to him that she fell at work on February 17, 2022 and injured her left elbow. Dr. Tosti

² *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

³ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁴ *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

discussed her x-rays and diagnosed left radial head fracture. In a February 24, 2022 work status report, he listed the date of injury as February 17, 2022 and provided a diagnosis of radial head fracture. In a March 31, 2022 narrative report and a March 31, 2022 work status report, Dr. Tosti diagnosed left radial head fracture. However, these reports do not contain an opinion that appellant sustained the diagnosed condition, a left radial head fracture, causally related to the accepted February 17, 2022 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.⁸ Therefore, these reports are insufficient to establish appellant's claim.

In a March 31, 2022 Form CA-17, Dr. Tosti listed the date of injury as February 17, 2022, but did not otherwise describe how the injury occurred. He listed left radial head fracture as the "diagnosis(es) due to injury." However, Dr. Tosti did not provide an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.⁹

As the medical evidence of record is insufficient to establish a left arm injury causally related to the accepted February 17, 2022 employment incident, the Board finds that appellant has not met her burden of proof.

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 left arm injury causally related to the accepted February 17, 2022 employment incident.

⁸ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2023
Washington, DC

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

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

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