United States Department of Labor
Employees' Compensation Appeals Board

A.P., Appellant	)	
and	)	**Docket No. 22-1084**
	)	**Issued: March 8, 2023**
DEPARTMENT OF VETERAN AFFAIRS, CORPORAL MICHAEL J. CRESCENZ VA MEDICAL CENTER, Philadelphia, PA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On July 11, 2022 appellant filed a timely appeal from a May 6, 2022 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 May 6, 2022 decision, OWCP received additional evidence. 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 in connection with the accepted March 17, 2022 employment incident.

FACTUAL HISTORY

On March 28, 2022 appellant, then a 33-year-old medical technician, filed a traumatic injury claim (Form CA-1) alleging that on March 17, 2022 she sustained a head, neck, and back injury when another vehicle rear ended her vehicle as she attempted to exit the employing establishment parking lot while in the performance of duty. She explained that immediately following the incident she began experiencing a warming and burning sensation in her lower back, she had difficulty standing, and developed an unbearable headache. Appellant stopped work on the date of the alleged incident.

In support of her claim, appellant submitted a March 17, 2022 return to work note from Patrick Phelan, a physician assistant, excusing her from work for two days.

In a letter dated March 22, 2022, Lauren Thomas, a patient care coordinator, confirmed that appellant had been seen in the office on that day, and requested that appellant be excused for her appointment.

In a March 29, 2022 letter, the employing establishment controverted appellant's claim, contending that the accident happened after her work shift ended, and therefore, she was not in the performance of duty when injured. It did not dispute that the incident occurred on March 17, 2022 as alleged and that she was injured.

In an April 6, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, OWCP received a March 17, 2022 return to work note from Mr. Phelan, excusing appellant from work through March 22, 2022. An office visit summary dated March 30, 2022 confirmed that appellant was seen that day by Eric Bartholomew, a nurse practitioner, and noted diagnoses of an autoimmune disease, asthma, low vitamin D, and lower back and neck pain. He ordered diagnostic studies of her thoracic spine due to lower back pain.

April 1, 2022 diagnostic reports of appellant's thoracic and lumbar spine completed by Dr. Antoni Parellada, a Board-certified diagnostic radiologist, demonstrated moderate degenerative disc disease with height loss and marginal osteophytes in the thoracic spine and no abnormalities of the lumbar spine.

In an April 6, 2022 letter, Chandani Borad, a physical therapist, requested 45 days of medical leave for appellant so that she may recover from cervical and lumbar pain with accompanying headaches.

In an April 12, 2022 letter, the employing establishment controverted appellant's claim for continuation of pay contending that the medical reports submitted were not signed by a qualified physician as defined by 5 U.S.C. § 8101(2).

An undated return to work note from Mr. Bartholomew, confirmed that appellant was under his care for changes to her thoracic spine related to an accident, and noted that she would need to see a physical therapist and spinal surgeon. He held her off work until June 13, 2022.

In an April 20, 2022 response to OWCP's questionnaire, appellant reiterated that she was rear ended by a vehicle near the front entry of the employing establishment.

By decision dated May 6, 2022, OWCP accepted that the March 17, 2022 employment incident occurred, as alleged and that appellant was in the performance of duty when the employment incident occurred. However, it denied her traumatic injury claim, finding that she had not submitted any medical evidence containing a medical diagnosis in connection with the accepted employment incident. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

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.[3] 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.[4]

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, place, and in the manner alleged.[5] The second component is whether the employment incident caused a personal injury.[6]

Rationalized medical opinion evidence is required to establish causal relationship. 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

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

[4] *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).

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

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

nature of the relationship between the diagnosed condition and the specific employment incident.[7] 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.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted March 17, 2022 employment incident.

Appellant submitted April 1, 2022 diagnostic studies which revealed degenerative disc disease with height loss and marginal osteophytes in the thoracic spine and no abnormalities of the lumbar spine. The Board has explained, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[9] Thus, these reports are also insufficient to establish appellant's claim.

The remaining medical evidence of record consists of notes from Mr. Bartholomew, a nurse practitioner; Mr. Phelan, a physician assistant; and Ms. Borad, a physical therapist. The Board has held that medical reports signed solely by physician assistants, nurse practitioners, and physical therapists are of no probative value as such healthcare providers are not considered physicians as defined by FECA and therefore, are not competent to provide a medical opinion. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[10]

As a result, there is no medical evidence of record sufficient to establish a diagnosed medical condition in connection with the accepted March 17, 2022 employment incident. The Board finds, therefore, 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 10.607.15.

---

[7] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

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

[9] *M.B.*, Docket No. 19-1638 (issued July 17, 2020); *T.S.*, Docket No. 18-0150 (issued April 12, 2019).

[10] 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* 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). *See also A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA); *A.C.*, Docket No. 20-1510 (issued April 23, 2021) (physician assistants are not physicians as defined by FECA); *C.A.*, Docket No. 18-0824 (issued November 15, 2018) (nurse practitioners are not considered physicians as defined by FECA).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted March 17, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2023
Washington, DC

Alec J. Koromilas, 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