

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

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M.M., Appellant)	
)	
and)	Docket No. 23-0855
)	Issued: November 13, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
CARL T. HAYDEN VA MEDICAL CENTER,)	
Phoenix, AZ, Employer)	
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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 June 7, 2023 appellant filed a timely appeal from January 9 and April 11, 2023 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

¹ The Board notes that, following the April 11, 2023 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.*

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted March 25, 2022 employment incident.

FACTUAL HISTORY

On November 23, 2022 appellant, then a 43-year-old recreation specialist, filed a traumatic injury claim (Form CA-1) alleging that on March 25, 2022 she sustained a laceration to her right hand and injuries to her left wrist and knee when she tripped over uneven pavement, landing on her hands and scraping her knee while moving while in the performance of duty. She did not stop work.

On November 22, 2022 appellant sought treatment from Dr. Ernest Lee, a family practitioner, due to her March 25, 2022 fall. Dr. Lee diagnosed right hand and elbow pain. He found that appellant could work without restrictions. Appellant also provided a form report from Minnerva E. Carroz, a nurse practitioner.

In a November 29, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim, and provided a development questionnaire for completion. OWCP afforded appellant 30 days to submit the necessary evidence.³

On November 29, 2022 Dr. Lee examined appellant for right wrist and elbow pain and noted her March 25, 2022 fall.

In a December 13, 2022 report, Dr. Rohan Kambeyanda, a general surgeon, recounted appellant's fall at work in March 2022 and diagnosed bilateral carpal tunnel syndrome (CTS). He opined that she developed bilateral CTS symptoms after a traumatic fall. Marie Brewer, a nurse practitioner, also completed treatment notes on December 7, 2022.

On December 22, 2022 Dr. Lee noted the March 25, 2022 fall with a history of numbness and tingling in both hands. He diagnosed bilateral CTS and provided work restrictions.

By decision dated January 9, 2023, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed condition(s) and the accepted March 25, 2022 employment incident.

On January 19, 2023 appellant requested reconsideration. She provided a January 17, 2023 note from Dr. Kambeyanda diagnosing bilateral CTS and trigger finger right ring finger. Dr. Kambeyanda opined that appellant's bilateral hand numbness was precipitated by a fall on both outstretched hands in March 2022 while at work. He recounted that her hand pain began after her fall. Dr. Kambeyanda further related that it was possible that the diagnosed trigger finger was a

³ In a separate November 30, 2022 development letter, OWCP requested additional information from the employing establishment. It responded on December 2, 2022 and concurred that appellant was injured in its controlled parking lot.

sequela of her other hand injuries and that she continued to experience pain at the medial right elbow. He recommended surgery and provided work restrictions.

Dr. Ales Hlubocky, a Board-certified neurologist and clinical neurophysiologist, completed electromyogram and nerve conduction velocity (EMG/NCV) testing on January 10, 2023. He found severe right median neuropathy at the wrist or right carpal tunnel syndrome, but no evidence of left carpal tunnel syndrome nor right cervical radiculopathy.

By decision dated April 11, 2023, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

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.⁸

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ 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

⁴ *Supra* note 2.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted March 25, 2022 employment incident.

In reports dated December 13, 2022 and January 17, 2023, Dr. Kambeyanda opined that appellant's accepted March 25, 2022 employment incident caused her bilateral carpal tunnel syndrome. While he opined that her bilateral carpal tunnel syndrome was work related, he failed to provide medical rationale explaining the basis of his opinion. The Board has held that an opinion that does not explain, physiologically, how the specific employment incident or employment factors caused or aggravated the diagnosed condition, is of limited probative value on the issue of causal relationship.¹¹ Therefore, this evidence is insufficient to establish the claim.

On December 22, 2022 Dr. Lee noted the March 25, 2022 fall with a history of numbness and tingling in both hands and diagnosed bilateral carpal tunnel syndrome. However, he did not offer an opinion as to whether appellant's diagnosed condition was causally related to the accepted employment incident on March 25, 2022. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹² Accordingly, this report is insufficient to establish appellant's claim.

On November 22 and 29, 2022 Dr. Lee completed treatment notes diagnosing right hand/wrist and elbow pain. The Board has consistently held that pain is a symptom and not a compensable medical diagnosis.¹³ A medical report lacking a firm diagnosis is of no probative value.¹⁴ Accordingly, these reports are insufficient to satisfy appellant's burden of proof.¹⁵

Appellant also submitted notes from nurse practitioners. However, certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA and their reports do not constitute

¹⁰ *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).

¹¹ *Id.*

¹² *S.C.*, Docket No. 22-1317 (issued May 18, 2023); *S.P.*, Docket No. 22-0711 (issued March 13, 2023); *L.B.*, Docket No. 19-1907 (issued August 14, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *L.S.*, Docket No. 22-1238 (issued May 19, 2023); *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020), *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁴ *L.S.*, *id.*; *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹⁵ *L.S.*, *id.*; *R.H.*, Docket No. 21-1382 (issued March 7, 2022); *S.E.*, Docket No. 21-0666 (issued December 28, 2021).

competent medical evidence.¹⁶ These reports are therefore of no probative value and are insufficient to establish appellant's claim.

Appellant also submitted diagnostic studies of her bilateral upper extremities, including January 10, 2023 EMG/NCV testing. However, diagnostic studies, standing alone, lack probative value on causal relationship as they do not address whether employment factors caused the diagnosed condition.¹⁷

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted March 25, 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 medical condition causally related to the accepted March 25, 2022 employment incident.

¹⁶ 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 B.D.*, Docket No. 22-0503 (issued September 27, 2022) (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a nurse practitioner is not considered a physician as defined under FECA).

¹⁷ *S.P.*, Docket No. 22-0944 (issued May 5, 2023); *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 9 and April 11, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 13, 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