

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

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**CAROLYN M. FARMER, Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Lake City, FL, Employer**

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**Docket No. 05-1608  
Issued: December 1, 2005**

*Appearances:*  
*Carolyn M. Farmer, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
WILLIE T.C. THOMAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 25, 2005 appellant filed a timely appeal from the July 6, 2005 merit decision of the Office of Workers' Compensation Programs which denied her claim that she sustained an injury in the performance of duty on October 20, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the denial of her claim.

**ISSUE**

The issue is whether appellant sustained an injury in the performance of duty on October 20, 2004.

**FACTUAL HISTORY**

On October 20, 2004 appellant, then a 53-year-old nursing assistant, filed a claim alleging that she sustained a back injury in the performance of duty that day when a patient became angry with her because she did not stop to talk with him, she stated that the patient hit her on the upper back with an open hand. She went to the emergency room three and a half

hours later, not for a back injury, but for heart symptoms: “53 year old female who is a nursing assistant ... was helping a patient when she developed cardiac pain and fluttering of the heart. Cardiac pain was like pressure, nonradiating, associated with nausea, shortness of breath and diaphoresis.”

On November 10, 2004 appellant presented to the health unit with a history of having injured her lower back on October 20, 2004. She was experiencing pain rated as an 8 on a scale of 10. Appellant walked with an antalgic gait, had tenderness over her left lower back and complained of pain radiating to the gluteal muscle and posterior thigh. She stated that a magnetic resonance imaging (MRI) scan had demonstrated a bulging disc. Appellant was diagnosed with sprain and sciatica and told to continue her medications. She was given light duty. The Office received additional treatment notes, some indicating that appellant had injured her low back on October 20, 2004.

On January 20, 2005 appellant related her history of injury during a rehabilitation evaluation by Dr. Rigoberto Puente-Guzman, Board-certified in physical medicine and rehabilitation. He noted:

“Patient states that she was pushed backwards by a patient in 2003, was [sic] hit by a patient.

“This is a 54-year-old female who reports working for the Veterans Administration. After the first injury she reports that her condition was a little better, but then the second injury aggravated her low back pain and has been persistent since then.”

On June 3, 2005 the Office notified appellant that the information submitted with her claim was insufficient to establish that she sustained a work-related injury on October 20, 2004 when a patient hit her upper back. The Office asked her to submit a medical diagnosis related to this incident, as well as a physician’s opinion supported by a medical explanation on how the reported work incident caused or aggravated the claimed injury. The Office informed appellant that her case would be held open for 30 days to afford her an opportunity to submit the medical evidence requested. No additional evidence was submitted.

In a decision dated July 6, 2005, the Office denied appellant’s claim for compensation finding that the evidence of record supported that the claimed event may have occurred, but there was no medical evidence providing a diagnosis that could be connected to the event. The Office denied appellant’s claim on the grounds that she failed to establish that she sustained an injury.<sup>1</sup>

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<sup>1</sup> The Board’s jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). The Board, therefore, has no jurisdiction to review documents received by the Office on July 14 and 15, 2005.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.<sup>3</sup>

Causal relationship is a medical issue<sup>4</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>5</sup> must be one of reasonable medical certainty<sup>6</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>7</sup>

## ANALYSIS

Appellant alleged on October 20, 2004 that a patient became angry with her and hit her on the upper back with an open hand. An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>8</sup> There is no strong or persuasive evidence in this case refuting appellant's account of events. The Office did not deny her claim on the grounds that the evidence was insufficient to establish that the incident as factual. The Office noted that the claimed event may have occurred and denied her claim because there was no medical evidence providing a diagnosis that could be connected to the event. The Board finds that appellant has established that she experienced a specific event or incident occurring at the time, place and in the manner alleged. The question for determination is whether the incident on October 20, 2004 caused an injury.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

<sup>4</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>5</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>6</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>7</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>8</sup> *Virgil F. Clark*, 40 ECAB 575 (1989); *Robert A. Gregory*, 40 ECAB 478 (1989).

This is where appellant's claim fails. As noted, the question of causal relationship is a medical issue that requires reasoned medical opinion for resolution.<sup>9</sup> There is no medical opinion in this case describing the history of what happened on October 20, 2004 or explaining how such an incident caused or aggravated a particular diagnosed medical condition. Appellant went to the emergency room three and a half hours after the October 20, 2004 incident, but apparently this had nothing to do with her claim. On November 10, 2004 she reported a history of having injured her lower back on October 20, 2004, but the treatment note did not describe what happened on that date and did not relate her radiating low back pain to being hit on the upper back with an open hand. Finally, a January 20, 2005 report noted that appellant was hit by a patient, but it did not state when this took place or how the patient hit her. Although this report noted her opinion that the incident aggravated her low back pain, the physician performing the evaluation offered no opinion on the matter.

Appellant has submitted no medical opinion describing what happened on October 20, 2004 and explaining how such an incident caused or aggravated a particular diagnosed medical condition. The Board finds that she has not met her burden of proof to establish the essential element of causal relationship. The Board will affirm the Office's July 6, 2005 decision denying appellant's claim for compensation.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on October 20, 2004. The incident on October 20, 2004 is established as factual, but the record contains no medical opinion explaining how this incident is causally related to a diagnosed medical condition.

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<sup>9</sup> See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.0805.3 (July 2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 6, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board