United States Department of Labor
Employees' Compensation Appeals Board

J.F., Appellant	)	
and	)	**Docket No. 13-306**
	)	**Issued: April 19, 2013**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Mesa, AZ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 26, 2012 appellant filed a timely appeal from the November 7, 2012 Office of Workers' Compensation Programs' (OWCP) decision finding that she failed to establish that she sustained an injury as alleged. 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.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on March 27, 2012.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 27, 2012 appellant, then a 51-year-old administrative assistant, filed a traumatic injury claim alleging that on that same date, she sustained an injury to her right hand, knee and right side of her back in the performance of duty. She alleged that she exited a lavatory stall and slipped on a wet floor injuring her right hand, right knee, right side of back and neck. The employing establishment controverted the claim and alleged that she was not performing her work activities. Appellant did not stop work.

OWCP received treatment notes dating from March 28 to May 9, 2012 from Dr. John Klitzke, a chiropractor. In his March 28, 2012 note, Dr. Klitzke diagnosed sprain/strain, cervical sprain, lumbar sprain/ wrist and knee. In a March 28, 2012 form report, he indicated that he did not take x-rays. Dr. Klitzke continued to treat appellant and submit reports.

By letter dated September 13, 2012, OWCP advised appellant that additional factual and medical evidence was needed. It explained that the medical reports were signed by a chiropractor but that a chiropractor did not qualify as a physician without a diagnosed spinal subluxation as demonstrated by x-ray. OWCP explained that a physician's opinion was crucial to her claim and allotted appellant 30 days within which to submit the requested information.

In a September 20, 2012 statement, appellant again described her injury which included that she went to the restroom and when exiting the stall, slipped on a wet floor and fell forward where her "body wrenched sideways." She indicated that her right hand slammed into the sink, and her right knee hit the hard tiled floor and she landed on her back end. Appellant explained that she alerted her manager, Mike Rulli, and immediately started a workers' compensation claim and after an hour, she was in distress with pain in her lower back, right hand, wrist, right knee and neck. She noted that she could not turn to the right or left. Appellant advised that she began seeing Dr. Klitzke and alleged that she met the requirements to establish her claim.

In a September 20, 2012 statement, Mr. Rulli confirmed that appellant advised him that she had fallen in the women's restroom and there was water on the floor. He confirmed appellant's description of the injury.

By decision dated November 7, 2012, OWCP denied appellant's claim on the grounds that the medical component of fact of injury had not been established.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing the essential elements of his or her claim, including the fact 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 period of FECA[3] and that an injury was sustained in the performance of duty.[4] These

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *James E. Chadden Sr.*, 40 ECAB 312 (1988).

are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

> In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[6] The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[7] The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.[9]

ANALYSIS

The Board finds that appellant did not meet her burden of proof. The evidence supports that the March 27, 2012 slip and fall in the women's restroom at work occurred as alleged.[10] However, she has not submitted medical evidence from a physician addressing how the March 27, 2012 incident caused or aggravated her alleged injury. For appellant to establish that she sustained an employment-related injury, she must submit a medical report from a physician with an accurate history of injury, a diagnosis of her condition and rationalized medical opinion that explains how her medical condition was caused by the accepted slip and fall in the women's restroom.

Appellant submitted several reports from her chiropractor, Dr. Klitzke. Under section 8101(2) of FECA, chiropractors are only considered physicians, and their reports considered

[5] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *Steven S. Saleh*, 55 ECAB 169 (2003).

[7] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[8] *Id*. For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

[9] *Id.*

[10] There is no dispute that appellant was in the course of employment when the restroom incident occurred on March 27, 2012. *See, e.g., James P. Schilling*, 54 ECAB 641 (2003) (the personal comfort doctrine holds that acts of personal comfort, such as eating a snack, using the bathroom or drinking water or other beverages, are considered to be in the performance of duty; an employee engaging in such actions within the time and space limits of employment does not leave the course of employment).

medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.[11] OWCP's regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.[12] Dr. Klitzke diagnosed sprain/strain, cervical sprain, lumbar sprain/ wrist and knee. However, he did not diagnose a spinal subluxation and base his findings on a review of x-rays. Since he did not diagnose a spinal subluxation based on an x-ray, he is not considered a physician under FECA. Dr. Klitzke's opinion is, therefore, of no probative value.[13] Thus, his reports do not establish the issue of causal relation. No other medical evidence was submitted.

Appellant has the burden to submit medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed and medical evidence establishing that the diagnosed condition is causally related to the implicated employment factors. The Board finds that she failed to submit any competent medical evidence pertaining to her claim of injury. On September 13, 2012 OWCP informed appellant of the deficiencies in the evidence, but she did not submit any medical evidence to establish her claim. Appellant did not establish a claim for compensation.[14]

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 in establishing that she sustained an injury in the performance of duty on March 27, 2012.

[11] 5 U.S.C. § 8101(2). *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

[12] 20 C.F.R. § 10.5(bb); *see also Bruce Chameroy*, 42 ECAB 121, 126 (1990).

[13] *T.B.*, Docket No. 12-244 (issued June 8, 2012).

[14] *See Donald W. Wenzel*, 56 ECAB 390 (2005).

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board