United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 15-1870**
	)	**Issued: January 11, 2016**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION Philadelphia, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 14, 2015 appellant filed a timely appeal from an August 11, 2015 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]

ISSUE

The issue is whether appellant met her burden of proof to establish an injury causally related to a June 29, 2015 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the August 11, 2015 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence, together with a formal request for reconsideration to OWCP pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

FACTUAL HISTORY

On July 6, 2015 appellant, then a 59-year-old housekeeping aid, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury to both knees, lower back, and left arm on June 29, 2015 while in the performance of duty. She stated that she was injured by elevator doors repeatedly shutting on her while she was attempting to clean the elevator.

Appellant submitted a June 29, 2015 partially legible emergency room report which reflects a diagnosis of back pain. A June 30, 2015 occupational health report from a nurse practitioner restricted appellant from lifting more than 15 pounds. On July 6, 2015 a nurse practitioner of the employing establishment medical center advised that appellant's condition was severe enough to warrant her to remain off duty from July 6 to 21, 2015 and advised that she would be able to return to full-time, light-duty work on July 21, 2015.

In a July 9, 2015 letter, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries. Appellant did not respond within the time allotted.

By decision dated August 11, 2015, OWCP denied appellant's claim as the medical evidence submitted failed to establish a diagnosis causally related to the employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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, that an injury[4] 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.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment

[3] *Supra* note 1.

[4] OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[5] *See T.H.*, 59 ECAB 388 (2008). *See also Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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 by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[7]

ANALYSIS

OWCP has accepted that the employment incident of June 29, 2015 occurred at the time, place, and in the manner alleged. The issue is whether appellant sustained an injury as a result. The Board finds that appellant did not meet her burden of proof to establish an injury related to the June 29, 2015 employment incident. Appellant has submitted no medical evidence supporting that the June 29, 2015 work incident caused or contributed to a diagnosed medical condition.

Appellant submitted a June 29, 2015 emergency room report diagnosing back pain. However, the emergency room records are only partially legible and are from a healthcare provider whose identity cannot be discerned from the record. Because it cannot be determined whether these records are from a physician as defined in 5 U.S.C. § 8101(2), they do not constitute competent medical evidence.[8]

Appellant also submitted a June 30, 2015 occupational health report from a nurse practitioner restricting her from lifting more than 15 pounds and a July 6, 2015 letter from the employing establishment. This also does not constitute competent medical evidence as a nurse practitioner is not a physician as defined under FECA.[9] As noted, causal relationship is a medical issue that must be addressed by medical evidence.[10]

Consequently, the Board finds that appellant has not met her burden of proof as she has not submitted competent medical evidence addressing how the June 29, 2015 work incident caused or contributed to a diagnosed medical condition.

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[6] *Id. See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Id. See Gary J. Watling*, 52 ECAB 278 (2001).

[8] *R.M.*, 59 ECAB 690, 693 (2008). *See C.B.*, Docket No. 09-2027 (issued May 12, 2010) (a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence).

[9] 5 U.S.C. § 8101(2). *See Sean O'Connell*, 56 ECAB 195 (2004) (reports by nurse practitioners and physician assistants are not considered medical evidence as these persons are not considered physicians under FECA).

[10] *See supra* note 7.

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 an injury causally related to a June 29, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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