United States Department of Labor
Employees' Compensation Appeals Board

C.L., Appellant	)	
and	)	**Docket No. 18-1323**
	)	**Issued: January 3, 2019**
SOCIAL SECURITY ADMINISTRATION, NORTHEASTERN PROGRAM SERVICE CENTER, Jamaica, NY, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 20, 2018 appellant filed a timely appeal from a May 4, 2018 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted November 22, 2017 employment incident.

FACTUAL HISTORY

On December 1, 2017 appellant, then a 61-year-old contact service representative, filed a traumatic injury claim (Form CA-1) alleging that, while entering the employing establishment on

[1] 5 U.S.C. § 8101 *et seq.*

November 22, 2017, she slipped and fell on a wet floor. She explained that the floor at the employee entrance was slippery due to rain. Appellant described her injuries as a muscle strain of the right neck, shoulder and right side of body. She stopped work on November 22, 2017, and resumed work on November 28, 2017.

In a November 22, 2017 note, Dr. Elaine C. Oliviera, an emergency medicine specialist, advised that appellant received treatment in the emergency department that day and was released. She excused appellant from work for eight days.

In a December 7, 2017 development letter, OWCP advised appellant of the deficiencies in her claim. It requested additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded her 30 days to provide her response.

In response appellant submitted a letter dated December 13, 2017 from Dr. Nancy Fan-Paul, a Board-certified ophthalmologist, who noted that appellant was seen that day and found to have inflammation of the right eye, which "may be due to past injury or trauma." Dr. Fan-Paul prescribed eye drops and suggested that for best recovery, appellant should rest her eye through December 22, 2017.

By decision dated January 12, 2018, OWCP denied appellant's traumatic injury claim. It found that factual evidence established that she slipped and fell on a slippery wet floor on November 22, 2017. OWCP explained that although the evidence supported that the injury and/or event(s) occurred as described, appellant had failed to establish the medical component of fact of injury. Specifically, it found that the medical evidence of record did not contain a valid diagnosis in connection with the November 22, 2017 employment incident. OWCP concluded, therefore, that appellant had not established "an injury as defined by the FECA." It further explained that the November 22, 2017 work excuse did not contain a specific medical diagnosis. With respect to Dr. Fan-Paul's December 13, 2017 notation of right eye inflammation, OWCP explained that inflammation was a symptom of a medical condition, not a specific diagnosis. Moreover, Dr. Fan-Paul had not explained how a slip and fall could result in inflammation of the right eye.

On February 5, 2018 appellant requested reconsideration and submitted additional medical evidence. She provided November 22, 2017 emergency department discharge instructions for "[m]uscle [s]train." The discharge documents identified Dr. Oliveira as the caregiver. However, the diagnosis section of the patient education summary was left blank.

In a December 1, 2017 handwritten note, Dr. Parviz R. Rafaelmehr, a Board-certified internist, noted that appellant presented that day for evaluation and treatment of severe pain in the right shoulder, right neck, right elbow, and the right side of her back due to "recent fall." He reported findings of muscle spasm and limited motion in the right neck, right shoulder, and right elbow. Dr. Rafaelmehr treated appellant for contusion of the right body and recommended physical therapy. Additionally, he noted that appellant had vascular damage around the right eye with red spots "due to fall." Dr. Rafaelmehr referred her to ophthalmology.

By decision dated May 4, 2018, OWCP reviewed the merits of the claim, but denied modification of the January 12, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.[3]

To determine whether an employee has met his or her burden of proof to establish a traumatic 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 that must be considered in conjunction with one another.[4] The first component is whether the employee actually experienced the employment incident that allegedly occurred.[5] The second component is whether the employment incident caused a personal injury.[6]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[7] Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] 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 employee.[9] 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 incident is sufficient to establish causal relationship.[10]

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[2] *See supra* note 1.

[3] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (August 2012).

[5] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *John J. Carlone*, 41 ECAB 354 (1989); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury determination).

[7] *J.L.*, Docket No. 18-0698 (issued November 5, 2018)*; I.J.*, 59 ECAB 408 (2008); *M.W.*, 57 ECAB 710 (2006); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[8] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[9] *L.D., id.; see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[10] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted November 22, 2017 employment incident.

On November 22, 2017 Dr. Oliviera treated appellant in the emergency department and excused her from work for eight days. The work excuse note of that date did not include a specific medical diagnosis or identify a particular date or history of injury. Similarly, the emergency department discharge instructions for nonspecific "[m]uscle [s]train" did not include a date or history of injury. Moreover, the diagnosis section of the discharge instructions remained blank. In the absence of a history and/or date of injury and a specific medical diagnosis, appellant's November 22, 2017 emergency department discharge instructions and work excuse are insufficient to establish the medical component of fact of injury.[11]

In a December 1, 2017 letter, Dr. Rafaelmehr noted that appellant presented that day for evaluation and treatment of severe pain in the right shoulder, right neck, right elbow, and the right side of her back due to a "recent fall." He also reported findings of muscle spasm and limited motion in the right neck, right shoulder, and right elbow. The Board has held that pain and spasm are descriptions of symptoms and are not, in themselves, considered firm medical diagnoses.[12] Similarly, loss of motion is a symptom or finding, but not a firm medical diagnosis.[13]

Dr. Rafaelmehr also reported that appellant was treated for "contusion of [right] body" and that she had vascular damage around her right eye with "red spots." Vascular damage and nonspecific "red spots" are symptoms and/or findings, and do not represent a specific medical diagnosis.[14] Lastly, Dr. Rafaelmehr's mention of appellant having been treated for "contusion of [right] body" is too vague to be considered a medical diagnosis in connection with the November 22, 2017 employment incident. Not only did he fail to identify the specific area(s) involved, Dr. Rafaelmehr did not identify a date of injury or describe a mechanism of injury other than noting appellant had a "recent fall."[15]

Dr. Fan-Paul's December 13, 2017 report similarly fails to establish a medical diagnosis in connection with the November 22, 2017 employment incident because "inflammation" is a symptom, and not a specific medical diagnosis.[16] Also, she did not identify a specific date and/or

[11] *See Michael E. Smith*, 50 ECAB 313, 316 (1999).

[12] *See B.P.*, Docket No. 12-1345 (issued November 13, 2012) (regarding pain); *C.F.*, Docket No. 08-1102 (issued October 10, 2008) (regarding pain); *J.S.*, Docket No. 07-881 (issued August 1, 2007) (regarding spasm).

[13] *See J.P.*, Docket No. 14-0087 (issued March 14, 2014).

[14] *See A.G.*, Docket No. 14-0938 (issued August 1, 2014). Moreover, Dr. Rafaelmehr referred appellant to an ophthalmologists, whose subsequent report made no mention of any injury-related "vascular damage" affecting appellant's right eye.

[15] *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[16] *See T.J.*, Docket No. 16-0325 (issued June 22, 2016).

history of injury, but merely noted appellant's right eye inflammation "may" be due to past injury or trauma.[17]

As the evidence of record fails to establish a specific medical diagnosis in connection with the November 22, 2017 employment incident, 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 diagnosed medical condition causally related to the accepted November 22, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2019
Washington, D.C.

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

[17] *See T.M.*, Docket No. 08-0975 (issued February 6, 2009) (medical opinions that are speculative or equivocal in character are of diminished probative value).