United States Department of Labor
Employees' Compensation Appeals Board

A.C., Appellant	)	
and	)	**Docket No. 19-1950**
	)	**Issued: May 27, 2020**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Lincoln, NE, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 24, 2019 appellant filed a timely appeal from an August 21, 2019 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]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the August 21, 2019 decision, OWCP received additional evidence. However, 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish medical conditions causally related to the accepted February 26, 2019 employment incident.

FACTUAL HISTORY

On February 28, 2019 appellant, then a 40-year-old air traffic controller, filed a traumatic injury claim (Form CA-1) alleging that on February 26, 2019 she injured her left knee, left hip, left shoulder, neck, and back when she slipped stepping out of her vehicle onto the employing establishment parking lot while in the performance of duty. On the reverse side of the claim form appellant's supervisor noted that appellant was in the performance of duty when injured. Appellant stopped work on February 26, 2019 and returned to work on March 4, 2019.

Appellant began treatment with Dr. David L. Timperley, a chiropractor, on February 27, 2019, for neck, left trapezius, left shoulder, upper back, and left hip pain. She indicated that on February 26, 2019 she stepped out of her vehicle and slipped on ice and fell landing on the left side of her buttocks and left knee. Appellant complained of left shoulder pain, neck pain, low back, and left hip pain. Anteroposterior (AP) and lateral cervical and lumbosacral x-rays were performed on February 27, 2019. An x-ray analysis dated February 27, 2019 revealed subluxations at C2, C5, C6, T1, T6, L1, left sacral, and left illiums. Dr. Timperley noted structural changes of hypolordosis in the cervical spine and convexity in the right lumbar, cervical, and thoracic spine with no evidence of fracture, dislocation, or any other osseous neoplastic changes. He continued to treat appellant from February 27 to June 21, 2019 using percussion therapy for the left lumbar and thoracic paraspinals, left sacroiliac, left piriformis, left gluteals, left and right trapezius, and left rhomboids. Dr. Timperley performed specific spinal adjustments to three or four regions to improve the function of the segments of the spine that were fixated, as well as electric muscle stimulation.

In a development letter dated July 17, 2019, OWCP advised that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment had not controverted continuation of pay or challenged the case, payment of a limited amount of medical expenses was administratively approved. It explained that it had reopened the claim for formal consideration of the merits because the medical bills exceeded $1,500.00. OWCP requested additional evidence and provided a questionnaire for completion. By separate letter of even date, it also requested additional information from the employing establishment. OWCP afforded both appellant and the employing establishment 30 days to respond to its inquiries.

In response to OWCP's questionnaire, on July 24, 2019, appellant indicated that at the time of her injury she was in the gated parking lot of her facility reporting for work when she stepped on a patch of black ice and fell while exiting her vehicle. She indicated that the lot was secured by a fence and only accessed by employing establishment employees who worked inside the building and that she did not pay for parking. Appellant reported that she was on the agency premises and the incident occurred during her regular work hours. She also provided a position description for an air traffic controller and a black and white photograph of her knee.

In response to OWCP's questionnaire, the employing establishment concurred with appellant's allegations relative to her claim. It noted that when the incident occurred she had just arrived at work and was exiting her vehicle. The employing establishment indicated that the premises are owned, operated and controlled by it and was used by control tower and technical operations employees and secured by a cypher lock gate. It further noted that appellant missed time from work intermittently beginning February 27, 2019.

By decision dated August 21, 2019, OWCP accepted that the injury occurred as alleged, that a medical condition was diagnosed, and that appellant was in the performance of duty. However, it denied her claim because the medical evidence of record failed to establish a causal relationship between her diagnosed left knee, left hip, left shoulder, neck, and back conditions and the accepted February 26, 2019 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish 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,[4] 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.[5] 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.[6]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[7] There are two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[8] The second component is whether the employment incident caused a personal injury.[9]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[10] A physician's opinion on whether there is causal relationship

[3] 5 U.S.C. § 8101 *et seq.*

[4] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *E.M., id.*; *John J. Carlone*, 41 ECAB 354 (1989).

[10] *S.S., supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.[11] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition, and appellant's specific employment incident.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish medical conditions causally related to the accepted February 26, 2019 employment incident.

Appellant submitted reports from Dr. Timperley, a chiropractor. Under FECA[13] the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. 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 an x-ray film to an individual trained in the reading of x-rays.[14] If the diagnosis of a subluxation as demonstrated by x-ray is not established, the chiropractor is not a physician as defined under FECA and his or her report is of no probative value to the medical issue presented.[15]

The Board notes that Dr. Timperley performed AP and lateral cervical and lumbosacral x-rays. In an x-ray analysis dated February 27, 2019, Dr. Timperley diagnosed subluxations at C2, C5, C6, T1, T6, L1, left sacral and left illiums based upon x-ray evidence. As he diagnosed a subluxation as demonstrated by an x-ray he is considered a physician under FECA.[16] However, Dr. Timperley did not provide an opinion in his series of treatment and intake notes relating the accepted employment incident to the diagnosed medical conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[17] Because Dr. Timperley did not provide a reasoned opinion explaining how the February 26, 2019 employment incident physiologically caused or contributed to her conditions, his reports are insufficient to establish her claim.

[11] *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[12] *Id.*

[13] *Supra* note 1.

[14] 20 C.F.R. § 10.5(bb).

[15] *R.P.*, Docket No. 18-0860 (issued December 4, 2018); *Mary A. Ceglia*, 55 ECAB 626 (2004); *Jack B. Wood*, 40 ECAB 95, 109 (1988).

[16] *Supra* note 1 and 14.

[17] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

As appellant has not submitted reasoned medical evidence explaining how the diagnosed medical conditions are causally related to her accepted February 26, 2019 employment incident, she has not met her burden of proof.[18]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish medical conditions were causally related to the accepted February 26, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 27, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[18] *See A.J.*, Docket No. 18-1116 (issued January 23, 2019); *E.C.*, Docket No. 17-0902 (issued March 9, 2018).