

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

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D.H., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
DORIS MILLER VA MEDICAL CENTER,)
Waco, TX, Employer)
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Docket No. 24-0328
Issued: May 9, 2024

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 9, 2024 appellant filed a timely appeal from a January 30, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 January 30, 2024 decision, appellant submitted additional evidence to OWCP. 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 a medical condition causally related to the accepted November 23, 2023 employment incident.

FACTUAL HISTORY

On November 24, 2023 appellant, then a 59-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 23, 2023 she strained her neck, lower back, and shoulders, and experienced tingling in both hands when trying to restrain a patient while in the performance of duty. She did not immediately stop work.

On November 28, 2023 the employing establishment challenged appellant's claim asserting that there were factual inconsistencies with regard to how the injury occurred.

In a development letter dated November 29, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to provide the necessary information.

In a December 6, 2023 response, appellant further described the factual circumstances surrounding her claimed work injury. She indicated that she was standing as a barrier between two patients with her right forearm on a patient's shoulder when he jumped up from his wheelchair causing her forearm to be pushed upward. Appellant attempted to restrain the patient as he was pushing and pulling her, trying to get around her, and she injured her low back, neck, and shoulders.

In a follow-up development letter dated December 28, 2023, OWCP advised that it had conducted an interim review and found that the evidence remained insufficient to support her claim. It advised her of the type of medical evidence necessary to establish her claim and also advised that she had 60 days from the date of the November 29, 2023 letter to submit the requested evidence.

OWCP received additional evidence. A December 26, 2023 magnetic resonance imaging (MRI) scan of the cervical spine revealed C4-5 left lateralizing disc herniation impinging on the left ventral cord and left C5 nerve root, C6-7 disc herniation and uncovertebral joint hypertrophy resulting in bilateral foraminal stenosis abutting the bilateral C7 nerve roots, C5-6 right paracentral disc herniation, and left thyroid nodules. An MRI scan of the lumbar spine of even date revealed multilevel disc pathology, facet arthropathy at L3-4 with moderate bilateral foraminal stenosis impinging the exiting bilateral L3 nerve roots, disc herniations at T11-12, L4-5, and L5-S1, and a cyst on the pancreas. An MRI scan of the right shoulder of even date revealed evidence of a prior rotator cuff repair with full-thickness retracted tear of the supraspinatus and infraspinatus tendons, partial-thickness tear of the subscapularis tendon, biceps tenodesis, osteoarthritis of the glenohumeral joint, and mild-to-moderate acromioclavicular (AC) joint osteoarthritis. An MRI scan of the left shoulder of even date revealed high-grade partial-thickness tear of the supraspinatus tendon with bursal-sided partial-thickness tear, low-to-moderate grade intrasubstance delaminating partial-thickness tear of the infraspinatus tendon, severe biceps tendinosis, tendinitis

and high-grade partial-thickness tear, mild-to-moderate glenohumeral joint osteoarthritis with moderate joint effusion, mild synovitis, and moderate-to-severe AC joint osteoarthritis with subacromial impingement.

On December 28, 2023 Dr. Thomas Martens, an osteopath specializing in family medicine, treated appellant for low back, bilateral shoulder, and neck pain with numbness and tingling going down to her hands. Appellant related that on November 23, 2023 while trying to restrain a patient her right arm and shoulder were jerked upward. Dr. Martens noted that the incident directly caused a traumatic injury to her neck, low back, and shoulders. He diagnosed other cervical disc displacement of the cervical region, cervical radiculopathy, other intervertebral disc displacement of the lumbar region, other spondylosis of the lumbar region, lumbar radiculopathy, unspecified rotator cuff tear or rupture of the left and right shoulders, bicipital tendinitis of the shoulders, and strain of the muscle, fascia, and tendon of the biceps, and left arm. Dr. Martens opined that these conditions were a direct result of appellant attempting to stop an altercation between two patients by restraining a wheelchair patient who jerked her right arm and shoulder upward. He opined that the medical records and initial diagnoses support the mechanism of injury thus establishing the relationship between the fact of injury and the traumatic diagnoses. Dr. Martens concluded that appellant's diagnosed conditions were due to her traumatic work-related injury.

By decision dated January 30, 2024, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient establish a medical condition causally related to the accepted November 23, 2023 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including 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 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 whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the

³ *Supra* note 1.

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.⁷

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁸ 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 specific employment incident identified by the employee.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted November 23, 2023 employment incident.

On December 28, 2023 Dr. Martens related that on November 23, 2023 appellant was trying to restrain a wheelchair patient when the patient jerked her right arm and shoulder upward causing her to sustain a traumatic injury to her neck, lower back, and bilateral shoulders. He provided diagnoses and opined that these conditions were a direct result of appellant attempting to stop an altercation between two patients. Dr. Martens opined that the medical records and initial diagnoses support the mechanism of injury thus establishing the relationship between the facts of injury and the traumatic diagnoses. He concluded that appellant's diagnosed conditions were due to her traumatic work-related injury. While Dr. Martens indicated that her medical conditions were work related, he failed to provide medical rationale explaining the basis of his opinion. Without explaining, physiologically, how the specific employment incident or employment factors caused or aggravated a diagnosed condition, his opinion on causal relationship is of limited probative value and insufficient to establish appellant's claim.¹⁰

As the medical evidence of record is insufficient to establish causal relationship between a medical condition and the accepted November 23, 2023 employment incident, the Board finds that 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.

⁷ *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted November 23, 2023 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 9, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board