United States Department of Labor
Employees' Compensation Appeals Board

M.J., Appellant	)	
and	)	**Docket No. 12-1189**
	)	**Issued: December 14, 2012**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 7, 2012 appellant, through her attorney, filed a timely appeal from a March 30, 2012 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 established an injury in the performance of duty on May 23, 2011.

FACTUAL HISTORY

On June 7, 2011 appellant, then a 41-year-old medical supply assistant, filed a traumatic injury claim alleging that on May 23, 2011 she was treated at the employing establishment emergency room and sustained a right hand injury. She indicated that she went to the emergency room with complaints of chest pain and had an intravenous (IV) put into her right hand, which

[1] 5 U.S.C. § 8101 *et seq.*

resulted in numbness, discoloration and hypersensitivity. The record indicates that appellant's scheduled work hours for May 23, 2011 were 7:00 a.m. to 4:30 p.m.

The record contains a report dated May 23, 2011 from Dr. Sarah Augustine, an internist, stating that appellant was treated at 1:31 p.m. for complaints of chest pain. The history stated that appellant had complained of chest pain over the last two months, with an increase in pain the last three days. Dr. Augustine noted shortness of breath and stated that appellant had reported occasional nausea. She indicated that there was no etiology for her severe symptoms.

In a report dated June 3, 2011, Dr. Stephen Lacey, a Board-certified orthopedic surgeon, reported that appellant was treated for right hand pain. He noted that she had received emergency room treatment two weeks earlier and an IV was started on the right side. Dr. Lacey provided results on examination and diagnosed complex regional pain syndrome (CRPS). In a report dated July 5, 2011, he diagnosed right hand CRPS and indicated that appellant attributed her condition to the IV placement.

In a decision dated September 7, 2011, OWCP denied the claim for compensation. It found that the medical evidence was insufficient on the issue of causal relationship.

By letter dated September 13, 2011, appellant, through her representative, requested a hearing with an OWCP hearing representative. A telephonic hearing was held January 4, 2012. At the hearing, appellant stated that she initially went to the employing establishment health unit, and was told because she was having chest pains she should be transferred to the employing establishment emergency room. She also submitted additional medical evidence.

In a decision dated March 30, 2012, OWCP's hearing representative modified the September 7, 2011 decision and denied the claim on the grounds appellant was not in the performance of duty. The hearing representative discussed Board precedent with respect to injuries resulting from medical treatment at an employing establishment facility and found any injury to appellant's hand would not be compensable under FECA.

LEGAL PRECEDENT

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[2] The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."[3]

To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in the master's business, at a place where he or she may reasonably be expected to be in connection with the employment and while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.[4]

[2] 5 U.S.C. § 8102(a).

[3] *Valerie C. Boward*, 50 ECAB 126 (1998).

[4] *R.A.*, 59 ECAB 581 (2008); *Mary Keszler*, 38 ECAB 735 (1987).

FECA Program Memorandum No. 42, dated March 3, 1966, discusses certain medical treatment or services provided at employing establishment facilities:

> "Public Law 658, 79th Congress, [5 U.S.C. § 7901] approved August 8, 1946, authorized federal agencies and Government owned and controlled corporations to establish (by contract or otherwise) health service programs to provide health services for employees under their respective jurisdictions. These services are limited to: (1) treatments of on-the-job illness and dental conditions requiring emergency attention; (2) preemployment and other examinations; (3) referral of employees to private physicians and dentists; and (4) preventive programs relating to health….
>
> "It is clear from the content of [5 U.S.C. § 7901] cited above and the circular which relates directly to it that the health service is within the ambit of the employment. An in-service employee who responds to the employer's invitation that [she] participate voluntarily in this health service program will therefore be considered in the performance of duty on those occasions when such participation causes [her] to be absent from [her] regular duties for the specific purpose of availing [herself] of the medical service offered [her] by [her] employer. Deleterious effects such as injury while undergoing a periodic medical examination, reaction to agency-sponsored inoculation or disease contracted from instrumentation will be compensable."

The Board has also allowed compensation for complications arising from treatment of a nonemployment-related condition at an employing establishment health facility in the following specified situations: when OWCP has given prior authorization for surgery for a nonemployment-related condition; when the medical treatment which leads to the complications is given while the question of causal relation of the original condition is in doubt; and when the human instincts doctrine applies.[5]

ANALYSIS

In the present case, appellant alleged that she sustained an injury resulting from an IV placement during medical treatment at the employing establishment on May 23, 2011. The evidence of record supports that she sought treatment on May 23, 2011 at the employing establishment health unit and then was transferred to the employing establishment emergency room with complaints of chest pain and shortness of breath and received an IV placement in her right hand. The initial issue is whether appellant was in the performance of duty, in view of the provisions of Program Memorandum No. 42 and Board precedent.

OWCP's hearing representative refers to the case of *Beverly Sweeny,* noting that the Board held that not all medical treatment for nonemployment-related conditions at an employing establishment facility would be covered under FECA.[6] While *Sweeny* held that the scope of

[5] *Lorenzo Smith*, Docket No. 05-1651 (issued February 16, 2006); *Beverly Sweeny*, 37 ECAB 651 (1986).

[6] In *Sweeny* the Board found that Program Memorandum No. 186, issued December 23, 1974, which discussed deleterious effects of medical treatment furnished by the employing establishment for nonwork-related conditions, applied only to those situations described in Program Memorandum No. 42 and did not expand the scope of coverage.

Program Memorandum No. 42 was not expanded, there remains the issue of whether the current case falls within the ambit of 5 U.S.C. § 7901 and Program Memorandum No. 42. *Sweeny* clearly finds that deleterious effects from medical treatment for "on-the-job illness and dental conditions requiring emergency attention" would be covered pursuant to Program Memorandum No. 42.[7]

The question, therefore, is whether the present case involved medical treatment involved for an "on-the-job illness … requiring emergency attention." As to "emergency attention," the record indicated that appellant presented to the emergency room with chest pains and shortness of breath. The Board finds that an employee with such symptoms may reasonably be found to require emergency attention. The treatment provided was consistent with an emergency situation and the emergency room physician noted severe symptoms.

The remaining issue is the interpretation of "on-the-job illness." The record indicates that appellant was working at the employing establishment on May 23, 2011; her work hours for that date were 7:00 a.m. to 3:30 p.m. and she was treated at approximately 1:30 p.m. The evidence indicates that she was at work, on the employing establishment premises, at the time of treatment. The Board notes there is no indication, either in the language of 5 U.S.C. § 7901, Program Memorandum No. 42, or Board precedent, indicating that "on-the-job" was limited to employment-related conditions.[8] Indeed, the language used in *Sweeny* was as follows: "Program Memorandum No. 42 states that an employee is covered by [FECA] for deleterious effects from medical treatment given for "on-the-job" illness in emergency conditions. Program Memorandum No. 186 does not express an intent to expand this from medical treatment by the employing establishment for "on-the-job illness and dental conditions requiring emergency attention" to any medical treatment given by the employing establishment for a nonemployment-related condition."[9] The Board's finding clearly indicates that even though a claimant requiring emergency attention while at work for a nonemployment-related condition could be covered, this did not mean (exclude coverage to any medical treatment) by the employing establishment for nonemployment-related conditions.

In *Sweeny* there was no evidence that the employee was "on-the-job," as she reported to an employing establishment hospital at 10:10 p.m. and was employed as a teacher. The employee's injury was a left knee injury sustained in a ski accident. The Board found that the claimant would not be covered under Program Memorandum No. 42, and the Board declined to expand the coverage. The Board also noted that appellant had chosen to receive treatment at the employing establishment hospital, although she had "the freedom and opportunity to receive treatment at alternative medical facilities."[10]

In the present case, the evidence indicates that appellant was on-the-job and required emergency attention and the employing establishment health unit transported her to the

[7] *Beverly Sweeny*, *supra* note 5 at 657.

[8] It is well established that a subsequent injury is compensable if it is the direct and natural result of a compensable primary injury. *S.S.*, 59 ECAB 315 (2008).

[9] *Supra* note 7.

[10] *Beverly Sweeny*, *supra* note 5 at 660; *see also Esther E. Mauselle*, 24 ECAB 238 (1973)..

employing establishment hospital for emergency treatment. The Board finds this falls directly within the scope of Program Memorandum No. 42.

The case will be remanded for proper consideration of whether appellant has established causal relationship. After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that appellant was in the performance of duty at the time of medical treatment at the employing establishment on May 23, 2011 and the case is remanded for proper consideration of causal relationship.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 30, 2012 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 14, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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