United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 14-726**
	)	**Issued: June 23, 2014**
DEPARTMENT OF HOMELAND SECURITY, YUMA STATION, Yuma, AZ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 11, 2014 appellant filed a timely appeal from a November 1, 2013 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 met his burden of proof to establish a traumatic injury in the performance of duty on September 9, 2013.

FACTUAL HISTORY

On September 24, 2013 appellant, then a 33-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging injury to his upper chest and breast bone area in the performance of duty on September 9, 2013. He stated that he was injured while practicing

[1] 5 U.S.C. § 8101 *et seq.*

handcuffing techniques on several different training partners to replicate the scenario of handcuffing combative subjects on the ground. A supervisor checked a box indicating that appellant was not injured in the performance of duty, stating that, after participating in quarterly physical training, appellant felt pain and soreness along his chest and breast bone.

By letter dated October 1, 2013, OWCP advised appellant that the evidence of record was insufficient to support his claim. It afforded him 30 days to submit additional medical evidence, noting that it had not received a diagnosis of a condition resulting from his injury.

In an emergency department report dated September 24, 2013, Dr. Douglas K. Perkins, Board-certified in emergency medicine, diagnosed appellant with "sprains and strains" and included discharge instructions relating to thoracic spine strain. Dr. Perkins recommended that appellant could return to work the next day with restrictions of limited upper body exercise for one week.

In a record of diagnostic testing dated October 4, 2013, Dr. Shahram Askari, a Board-certified radiologist, examined an x-ray of appellant's chest and noted that no acute intrathoracic process had been identified. He noted appellant's history of injury as "chest injury."

By decision dated November 1, 2013, OWCP denied appellant's claim. It found that he had not submitted any medical evidence containing a diagnosis in connection with the alleged traumatic event. OWCP explained that the medical evidence must not only contain a diagnosis, but establish that a diagnosed medical condition was causally related to the work incident. OWCP accepted that appellant was a federal civilian employee who filed a timely claim and that the traumatic event of September 9, 2013 occurred as described.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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[3] 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.[4]

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

[2] *Supra* note 1.

[3] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of 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).

[4] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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 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.[5]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident. 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.[6]

ANALYSIS

Appellant alleged that on September 9, 2013 he sustained an injury to his upper chest and breast bone area in the performance of duty. The Board finds that he did not submit to OWCP sufficient medical evidence from a physician establishing that a medical condition had been diagnosed in connection with this incident.

In support of his claim, appellant submitted reports from Dr. Perkins and Dr. Askari. In an emergency department report dated September 24, 2013, Dr. Perkins diagnosed appellant with "sprains and strains" and included discharge instructions relating to thoracic spine strain. In a record of diagnostic testing dated October 4, 2013, Dr. Askari examined an x-ray of appellant's chest and noted that no acute intrathoracic process had been identified. Neither Dr. Perkins nor Dr. Askari provided a diagnosis of a condition related to a traumatic injury. Dr. Perkins' emergency room report merely diagnosed appellant with "sprains and strains" without providing any information or history as to the cause of that diagnosis. Medical conclusions based on inaccurate or incomplete histories are of little probative value.[7] The Board finds that Dr. Perkins' report, lacking a history of injury and opinion regarding the cause of appellant's diagnosed condition does not meet appellant's burden of proof to establish a medical condition causally related to the accepted incident. The Board finds that Dr. Askari's report lacked even a diagnosis of a medical condition. Thus, the medical evidence submitted by appellant was insufficient to establish an employment-related traumatic injury on September 9, 2013.

Because the medical evidence fails to establish that appellant had been diagnosed with any specific medical condition related to the September 9, 2013 employment incident, the Board

[5] *Id*. *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[6] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[7] *James A. Wyrick*, 31 ECAB 1805, 1807 (1980) (finding that a physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty. The Board will therefore affirm OWCP's November 1, 2013 decision.

Appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.[8] 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 his burden of proof to establish that he sustained an injury in the performance of duty on September 9, 2013.

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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

[8] 20 C.F.R. § 501.2(c).