

On appeal, appellant asserts that he is not requesting wage-loss compensation but that his medical expenses, including ambulance services, are covered.

FACTUAL HISTORY

On January 3, 2012 appellant, then a 69-year-old volunteer visitor use assistant, filed a traumatic injury claim alleging that he injured his left shoulder and elbow on November 16, 2011 when he fell from the back of a pickup truck while assisting Park Ranger Chris Beers to load a canoe. He indicated that his elbow was lacerated and bleeding freely and that both the elbow and shoulder were bruised and swollen.

In a January 11, 2012 letter, OWCP informed appellant of the type of evidence needed to establish his claim and asked that the employing establishment respond. Appellant was given 30 days to provide the requested information.

By decision dated February 13, 2012, OWCP denied the claim, finding that, although appellant was an employee who timely filed a claim, he did not establish fact of injury. It indicated that medical treatment was not authorized and prior authorization, if any, was terminated. OWCP noted that appellant did not respond to the January 11, 2012 letter.

On March 7, 2012 appellant requested a review of the written record. He submitted additional evidence including an undated statement in which Ranger Beers provided a history of injury, stating that he and appellant were attempting to load canoes from the bed of the truck onto a trailer and when they began to lift the back part of the canoe in order to try to slide it across, the canoe began to slip. Ranger Beers indicated that he could not see appellant because he was obscured by the body of the canoe. The canoe then collapsed and he discovered that appellant had fallen out of the bed of the truck. Ranger Beers checked appellant who seemed to be alert but in pain. He stated that he called for help immediately and it shortly arrived on the scene.

An employing establishment medical note dated November 16, 2011, completed by emergency medical technicians Evan Pickford and Jared Brierly, indicated that they were called at 3:40 p.m. and arrived on scene at 3:42 p.m. The report indicated a history that appellant fell from a truck onto pavement and hit his left shoulder and that he complained of left shoulder pain and had a laceration on the left shoulder. An ambulance service was called and arrived at 3:58 p.m.

A Miami Dade Ambulance Service report dated November 16, 2011, completed by Jorge Miranda and Wilberto Madera, indicated that, upon arrival at 3:58 p.m., appellant was complaining of sharp and constant pain radiating through his left shoulder. Examination findings indicated that the left upper extremity had limited range of motion. Appellant was transported to Homestead Hospital.

Appellant was admitted to the emergency room at Homestead Hospital at 4:50 p.m. with a chief complaint of left shoulder injury caused by a fall from a truck. Nursing progress notes indicated that an abrasion on his left elbow was cleaned and dressed and that a splint and sling were applied to the left arm. Appellant was seen by Joseph Rodolfo, a physician's assistant, who

reported a chief complaint of left upper extremity pain due to a fall from a truck. Left shoulder examination demonstrated limited range of motion due to pain. No swelling, laceration or abrasion was noted and the extremities were otherwise negative. Two left shoulder x-rays were completed. The first demonstrated a questionable posterior subluxation of the humeral head and repeat study found no dislocation. Appellant was discharged at 9:17 p.m. in improved condition with a diagnosis of upper extremity pain involving the left shoulder and fall. He was prescribed medication and advised to wear a sling, elevate affected areas above chest level, limit lifting with no strenuous activity and was instructed to not work on the following day.

At 6:58 p.m. on November 16, 2011, Matthew Johnson, a supervisor, requested help from Teri Gage, the employer's chief of administration, in obtaining a billing address for the hospital. He indicated that appellant was still at the emergency room and that a workers' compensation claim for him could not be processed because he was not in the "SMIS" database.

In a report dated December 6, 2011, Dr. Hossein Joukar, Board-certified in emergency medicine, noted that appellant had a two-week history of a swollen left elbow following a fall from a truck. Physical examination of the left elbow demonstrated a golf ball-sized swelling. Dr. Joukar diagnosed elbow bursitis.

By decision dated May 30, 2012, an OWCP hearing representative affirmed the February 13, 2012 decision, finding that the emergency room diagnosis of pain was not sufficient to establish a work injury and that the medical evidence did not have an opinion as to whether appellant's claimed condition was related to the work incident November 16, 2011.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.³

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.⁴ To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that

³ Gary J. Watling, 52 ECAB 278 (2001).

⁴ 20 C.F.R. § 10.5(ee); Ellen L. Noble, 55 ECAB 530 (2004).

the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁵

When determining whether the implicated employment factors caused the claimant's diagnosed condition, OWCP generally relies on the rationalized medical opinion of a physician.⁶ OWCP's procedures provide, however, that a case may be accepted without a medical report if: (1) the condition reported is a minor one that can be identified on visual inspection by a lay person (*e.g.*, burn, laceration, insect sting or animal bite); (2) the injury was witnessed or reported promptly and no dispute exists as to the fact of injury; and (3) no time was lost from work due to disability.⁷

ANALYSIS

OWCP accepted that appellant fell from a truck on November 16, 2011. The issue therefore is whether appellant established that he sustained an injury as a result of that incident and whether he is entitled to coverage of medical expenses incurred due to the November 16, 2011 incident.

The facts in this case indicated that the fall was witnessed by Ranger Beers, who called employing establishment emergency personnel who responded shortly, examined appellant and called a private ambulance. The ambulance personnel also examined appellant and transported him to Homestead Hospital where he was seen in the emergency room.

Although medical evidence is generally required under FECA, the Board finds that appellant's claim falls into the category of cases, described above, that can be established without a physician's report. In this case, appellant was seen in the emergency room by nursing staff and Mr. Rodolfo, a physician's assistant. Reports by nurses and physician's assistants are not considered medical evidence as these persons are not considered physicians under FECA.⁸

The Board finds, however, that appellant's left upper extremity condition included an elbow laceration that could be identified on visual inspection by a lay person and was identified by employing establishment emergency personnel and by a nurse in the emergency room who cleaned and dressed the elbow.⁹ Moreover, Ranger Beers witnessed the injury which was promptly reported to the employing establishment, which did not dispute his claim.¹⁰ Appellant, who is a volunteer, did not miss time from "work" and is not requesting wage-loss compensation. The Board finds that, under these circumstances, he has established that he

⁵ Gary J. Watling, *supra* note 3.

⁶ Conard Hightower, 54 ECAB 796 (2003).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3.d(1) (January 2013).

⁸ 5 U.S.C. § 8101(2); *see Sean O'Connell*, 56 ECAB 195 (2004).

⁹ Federal (FECA) Procedure Manual, *supra* note 7 at Chapter 2.805.3.d(1)(a) (January 2013).

¹⁰ *Id.* at Chapter 2.805.3.d(1)(b) (January 2013).

sustained a left elbow laceration on November 16, 2011. Appellant therefore met his burden of establishing fact of injury.¹¹

The Board, however, finds that appellant has not established that a left elbow bursitis, diagnosed by Dr. Joukar on December 6, 2011 was caused by the November 16, 2011 employment injury because the physician's report did not contain an opinion regarding a cause of the diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹²

On appeal, appellant requests that his medical expenses be covered. OWCP's procedures provide that a Form CA-16 is the vehicle to be used by an employing establishment to authorize initial examination and/or medical treatment at OWCP expense. It is used to refer an employee who sustains a traumatic injury to a local physician or hospital.¹³ The procedures further provide that OWCP may approve payment for medical expenses incurred even if a CA-16 form has not been issued. Payment in such situations must be determined on a case-by-case basis.¹⁴ Pursuant to section 8103 of FECA,¹⁵ OWCP has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances.¹⁶ It may exercise its discretion to authorize medical care even if a CA-16 form has not been issued and the claim is subsequently denied. Payment in such situations is determined on a case-by-case basis.¹⁷

In the case at hand, a CA-16 form was not used. As noted above, Ranger Beers verified that appellant was assisting him when he fell from the truck. Appellant was first examined by employing establishment emergency medical personnel and was transported to Homestead Hospital by ambulance where he received treatment that day. In denying his claim, OWCP did not consider whether emergency or otherwise unusual circumstances were present such that

¹¹ A.S., 59 ECAB 246 (2007).

¹² *Willie M. Miller*, 53 ECAB 697 (2002). Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000). 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 claimant. *Victor J. Woodhams*, 41 ECAB 385 (1989). 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 factors or incidents is sufficient to establish causal relationship. *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3 (February 2012).

¹⁴ *Id.* at Chapter 3.300.3(a)(3); *see D.P.*, Docket No. 11-50 (issued October 26, 2011).

¹⁵ 5 U.S.C. § 8103.

¹⁶ *Supra* note 14.

¹⁷ *Id.*

reimbursement of medical expenses would be appropriate in this case. The Board finds that, as appellant has established fact of injury, the circumstances of the case warrant coverage of medical expenses incurred on November 16, 2011.

With regard to the denial that a left elbow bursitis condition was caused by the accepted November 16, 2011 employment injury, 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 established that he sustained an injury in the performance of duty on November 16, 2011 and the case is remanded for adjudication of the reimbursement of medical expenses.

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2012 decision of the Office of Workers' Compensation Programs is reversed in part and remanded in part.

Issued: April 23, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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