

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

R.C., Appellant

and

**DEPARTMENT OF THE ARMY, ARMY
DEPOT, Tobyhanna, PA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 13-926
Issued: June 21, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 6, 2013 appellant filed a timely appeal from a November 21, 2012 merit decision and a February 27, 2013 nonmerit 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.

ISSUES

The issues are: (1) whether appellant sustained a right-sided hernia in the performance of duty on March 15, 2012; and (2) whether OWCP properly denied appellant's request for review of the written record as untimely under 5 U.S.C. § 8124.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 19, 2012 appellant, a 52-year-old painter, filed a claim for benefits, alleging that he sustained a right-sided inguinal hernia while pulling a two-ton overhead crane on March 15, 2012.

In a disability slip dated March 22, 2012, Dr. Eugene D. Harasym, Board-certified in family practice, noted that appellant could return to work on light duty with restrictions.

Appellant submitted a March 26, 2012 work restriction form and health clinic permit form from Christine Flick, a registered nurse, who listed a history that appellant sustained a right-sided hernia on March 15, 2012 and that he was scheduled to undergo hernia surgery on April 10, 2012.

On October 9, 2012 appellant filed a Form CA-7, claiming compensation for wage loss from September 24 to October 5, 2012.

Appellant underwent surgery on September 24, 2012 to repair bilateral inguinal and umbilical hernias. The procedure was performed by Dr. James Roche, Board-certified in general surgery.

By letter to appellant dated October 17, 2012, OWCP informed appellant that, while it had initially handled his claim administratively and authorized payment of medical expenses, it was reopening his claim for adjudication because he had filed a claim for wage loss. It requested additional factual and medical evidence to determine whether he was eligible for compensation benefits. OWCP asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. It requested that appellant submit the additional evidence within 30 days.

In a report dated September 10, 2012, received by OWCP on November 9, 2012, Dr. Roche diagnosed a hernia of five months severity which was improving. Appellant described sharp aching with physical activity and aggravated by lifting weight. He stated that appellant had an obvious inguinal hernia in addition to an increased symptomatic umbilical hernia. Dr. Roche recommended laparoscopic surgery.

In an October 1, 2012 report, received by OWCP on November 9, 2012, Dr. Roche advised that appellant's condition had improved following surgery on September 24, 2012. On October 4, 2012 he released appellant to return to work without restrictions as of October 12, 2012.

By decision dated November 21, 2012, OWCP denied appellant's claim, finding that he failed to submit sufficient medical evidence to establish that his right-sided inguinal hernia was causally related to the March 15, 2012 incident.

On February 1, 2013 appellant requested a review of the written record.

By decision dated February 27, 2013, OWCP denied appellant's request for an examination of the written record as untimely.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² has the burden of establishing that 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.³ 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.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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ 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.⁶

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁷

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁸ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS -- ISSUE 1

Appellant experienced right groin pain while pulling a two-ton crane on March 15, 2012. The question of whether an employment incident caused a personal injury can only be established

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(ee).

⁷ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁸ *Id.*

by probative medical evidence.⁹ Appellant has not submitted sufficient rationalized, medical evidence to establish that the March 15, 2012 employment incident caused his hearing condition for which he underwent surgery.

Appellant submitted reports from Dr. Roche, who diagnosed inguinal and umbilical hernias and performed surgery on September 24, 2012. Dr. Roche did not provide a probative, rationalized opinion regarding whether the March 15, 2012 work incident caused the hernia. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹⁰ Dr. Roche presented a diagnosis of appellant's hernia conditions. He did not set forth a history of the March 15, 2012 employment incident but only noted a hernia of five months duration, with symptoms increased by identified risk factors and physical activities. Dr. Roche did not address how the hernias were causally related to the March 15, 2012 work incident. He did not describe the accepted incident in detail or explain how the incident would have been competent to cause the claimed conditions. The medical reports from Dr. Roche did not explain how medically appellant would have sustained a hernia while pulling a two-ton crane on March 15, 2012. Thus his opinion regarding causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.¹¹

The March 22, 2012 disability slip from Dr. Harasym did not provide any opinion regarding whether appellant sustained a hernia on March 15, 2012 which was causally related to the March 15, 2012 work incident.

Appellant has also submitted records signed by a nurse practitioner. A nurse is not a "physician" as defined. Under FECA, his or her reports do not constitute competent medical opinion to establish causal relationship.¹² Therefore, the reports signed by the nurse practitioner do not constitute competent medical evidence. Appellant failed to provide a medical report from a physician that adequately explains how the work incident of March 15, 2012 caused or contributed to the claimed hernia conditions.

OWCP advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. He did not provide a medical opinion which describes or explains the medical process through which the March 15, 2012 work incident would have caused the claimed injury. Accordingly, appellant did not establish that he sustained hernia conditions in the performance of duty. OWCP properly denied his claim for compensation.

⁹ *Carlone, supra* note 5.

¹⁰ *See Anna C. Leanza*, 48 ECAB 115 (1996).

¹¹ *William C. Thomas*, 45 ECAB 591 (1994).

¹² 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

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.

LEGAL PRECEDENT -- ISSUE 2

A claimant dissatisfied with a decision of OWCP shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record.¹³ A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing or a review of the written record as a matter of right.¹⁴ The Board has held that OWCP, in its broad discretionary authority in the administration of FECA has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the OWCP must exercise this discretionary authority in deciding whether to grant a hearing.¹⁵ OWCP procedures, which require it to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of FECA and Board precedent.¹⁶

If the claimant is not entitled to a hearing or review (*i.e.*, the request was untimely, the claim was previously reconsidered, etc.), the Branch of Hearings and Review will determine whether a discretionary hearing or review should be granted and, if not, will so advise the claimant, explaining the reasons.¹⁷

ANALYSIS

Appellant's request for review of the written record was submitted February 1, 2013, more than 30 days after the November 21, 2012 decision. Therefore, his request was not timely and he was not entitled to a review of the written record as a matter of right.¹⁸

The Branch of Hearings and Review, in its February 27, 2013 decision, properly exercised its discretion in determining whether to grant appellant's review of the written record and noted that it had reviewed his claim and found that the issue involved in his claim could be equally addressed through submitting additional evidence and requesting reconsideration. Thus, the Board finds that the Branch of Hearings and Review did not abuse its discretionary authority in denying his untimely request for review of the written record.

¹³ 5 U.S.C. § 8124(b)(1).

¹⁴ *Claudio Vazquez*, 52 ECAB 496 (2001).

¹⁵ *Marilyn F. Wilson*, 52 ECAB 347 (2001).

¹⁶ *Claudio Vazquez*, *supra* note 14.

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 2005).

¹⁸ 20 C.F.R. § 10.616(a).

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a hernia in the performance of duty on March 15, 2012. The Board also finds that OWCP properly denied appellant's request for review of the written record as untimely under 5 U.S.C. § 8124.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2013 and November 21, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 21, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board