United States Department of Labor
Employees' Compensation Appeals Board

A.A., Appellant	)	
and	)	**Docket No. 13-1425**
	)	**Issued: September 25, 2013**
SOCIAL SECURITY ADMINISTRATION, FIELD OFFICE, Minneapolis, MN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 29, 2013 appellant filed a timely appeal from the April 16, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying compensation for a traumatic injury. 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 that he sustained a back and neck injury in the performance of duty on November 2, 2010, as alleged.

FACTUAL HISTORY

On November 2, 2010 appellant, then a 46-year-old social insurance specialist, filed a traumatic injury claim (Form CA-1) alleging injuries to his lower back and neck in the performance of duty that day. He stated that his injuries occurred when a chair flipped over

[1] 5 U.S.C. § 8101 *et seq.*

backwards as he attempted to push it away from a computer desk in order to stand up. Appellant lost several hours of work, but less than a day, due to the injury and included a witness statement.

By letter dated March 8, 2013, OWCP requested additional factual and medical evidence. It afforded appellant 30 days to submit additional evidence.

Appellant submitted reports dated November 2 and 4, 2010 from Michael A. Gallagher, a nurse practitioner, and a patient request for authorization for disclosure of health information from Twin Cities Occupational Health and Rehabilitation. Mr. Gallagher assessed appellant as having a cervical strain and contusion of the lumbar region but were not countersigned by a physician. Appellant submitted no other factual or medical evidence.

By decision dated April 16, 2013, OWCP accepted that the November 2, 2010 incident occurred as alleged. It denied appellant's claim on the grounds that he had submitted insufficient medical evidence from a physician.

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 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]

[2] *Id.*

[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).

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

Nurse practitioners do not qualify as physicians under FECA. Therefore, their medical reports do not qualify as probative medical evidence supportive of a claim for federal workers' compensation, unless such reports are countersigned by a physician.[6]

ANALYSIS

OWCP accepted that the incident of November 2, 2010 occurred at the time, place and in the manner alleged. The issue is whether appellant's back and neck conditions resulted from the November 2, 2010 employment incident. The Board finds that he did not meet his burden of proof to establish that his conditions are causally related to the November 2, 2010 employment incident.

In support of his claim, appellant submitted reports from Mr. Gallagher, a nurse practitioner, dated November 2 and 4, 2010. Mr. Gallagher diagnosed a cervical strain and contusion of the lumbar region. A nurse practitioner is not defined as a "physician" under FECA. Such reports do not qualify as probative medical evidence to establish a claim for federal workers' compensation, unless countersigned by a physician.[7] Mr. Gallagher is a nurse practitioner and neither of his reports was signed by a physician. Therefore, the reports from Mr. Gallagher do not qualify as probative medical evidence or support appellant's claim of injury. Appellant did not submit any physician's opinion on the causal relationship of his diagnosed conditions to the accepted incident at work.

As appellant has not submitted any medical evidence to support his claim that he sustained an injury related to the November 2, 2010 employment incident, he has failed to meet his 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.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on November 2, 2010, as alleged.

[6] *See* 5 U.S.C. § 8101(2); *M.B.*, Docket No. 12-1695 (issued January 29, 2013).

[7] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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