United States Department of Labor
Employees' Compensation Appeals Board

N.G., Appellant	)	
	)	
and	)	**Docket No. 14-1023**
	)	**Issued: August 4, 2014**
DEPARTMENT OF THE NAVY, FLEET READINESS CENTER SOUTHWEST, San Diego, CA, 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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 31, 2014 appellant timely appealed the December 23, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his traumatic injury claim. 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 the claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on October 31, 2013.

FACTUAL HISTORY

Appellant, a 44-year-old painter, allegedly injured his right knee in the performance of duty on October 31, 2013. He claimed his right knee was against an F-18 stand when an artisan

[1] 5 U.S.C. §§ 8101-8193 (2006).

pushed the stand towards his knee. In the process, appellant's knee got caught and hyperextended. The claim forms (Form CA-1) noted that he received treatment for his injury at the base clinic. Although the employing establishment indicated that appellant was in the performance of duty when injured, it controverted the claim noting that the nature of injury may not be the result of the described cause of injury.

In addition to the October 31, 2013 Form CA-1, OWCP received treatment records from the employing establishment's occupational medicine branch health clinic. On October 31, 2013 appellant was seen by Michael L. Walker, a physician assistant. No diagnosis was identified. However, appellant was taken off duty until November 4, 2013, and advised to follow-up with his orthopedic physician as soon as possible. Appellant returned to the occupational medicine clinic on November 4, 2013, at which time he was seen by a Dr. C.M. Schindler.[2] Again, no diagnosis was identified, but Dr. Schindler placed appellant on sedentary duty with no climbing, no work on scaffolds or ladders, no prolonged walking or standing, no squatting or kneeling and no lifting over five pounds. During a November 14, 2013 follow-up visit, Mr. Walker extended appellant's work restrictions through January 3, 2014. His revised limitations included no climbing, no prolonged walking, no squatting or kneeling and no lifting over 20 pounds.

On November 21, 2013 OWCP advised appellant of the need for additional factual and medical evidence to establish his claim. After identifying the five basic elements for establishing a FECA claim, it advised appellant of the need for medical evidence diagnosing an injury-related condition. The development letter also noted that the evidence was insufficient to establish the alleged incident. OWCP afforded appellant 30 days to submit the requested factual and medical information.

By decision dated December 23, 2013, OWCP denied appellant's traumatic injury claim because he failed to establish fact of injury. Appellant had not responded to OWCP's November 21, 2013 development letter.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[3]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that

[2] No indication of Dr. Schindler's specialty is found in the record.

[3] 20 C.F.R. § 10.115(e), (f) (2012); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

allegedly occurred.[4] The second component is whether the employment incident caused a personal injury.[5]

ANALYSIS

Appellant claimed to have injured his right knee on October 31, 2013 when an artisan pushed an F-18 stand towards his knee. His right knee allegedly got caught and hyperextended. On November 21, 2013 OWCP requested that appellant provide a detailed description of how the alleged injury occurred. It also requested that he submit a narrative medical report from his treating physician. Appellant did not respond to OWCP's request.

The facts are unclear as to how the alleged incident involving an artisan and an F-18 stand occurred. It is not clear what appellant meant by his knee "got caught." Also, it is unclear what type injury appellant sustained. Hyperextension is the movement of a joint beyond its normal anatomic position. Assuming appellant hyperextended his right knee as alleged, the question remains as to what damage occurred to the knee as a result. The branch clinic records do not provide a specific injury-related diagnosis, and although OWCP provided an opportunity for him to elaborate, appellant did not respond. Consequently, he failed to establish both components of fact of injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision.[6]

CONCLUSION

Appellant has not established that he sustained an injury in the performance of duty on October 31, 2013.

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[6] 5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605-10.607.

ORDER

IT IS HEREBY ORDERED THAT the December 23, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 4, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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