

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

G.R., Appellant)	
)	
and)	Docket No. 13-1889
)	Issued: January 6, 2014
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Coleman, FL, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 13, 2013 appellant filed a timely appeal from a May 10, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his traumatic injury claim. 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.²

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a left arm or back condition as a result of a March 12, 2013 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal appellant alleged that he was submitting additional medical reports with a physician's signature. The Board's jurisdiction, however, is limited to evidence that was before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

FACTUAL HISTORY

On March 12, 2013 appellant, then a 47-year-old senior officer specialist, filed a traumatic injury claim alleging injury to his left shoulder, neck, and upper back that day when he tripped over a large rock while exiting a government van. He stopped work.

In March 12, 2013 attending physician's report and emergency room records, Deborah Greer, a nurse practitioner, listed complaints of pain in appellant's neck and numbness down his left arm with tingling. She related that appellant stepped out of a van and fell down, twisting his left arm and neck. Ms. Greer obtained a history that in October 2012 he sustained a cervical fracture. Upon examination, she observed paravertebral spasms and diminished cervical spine rotation. Ms. Greer diagnosed cervical strain and neck pain. In the attending physician's report, she checked "yes" that appellant's condition was aggravated or caused by an employment activity. Ms. Greer recommended that appellant to return to light duty with restrictions of no lifting over five pounds.

By letter dated March 29, 2013, OWCP informed appellant that his claim was initially accepted as a minor injury. It would adjudicate his claim because he did not return to work. It advised him that additional evidence was needed to establish his claim.

In a March 15, 2013 report, Dr. J. Eric Taylor, a diagnostic radiologist, related that appellant was seen for complaints of cervical spine pain. He noted that appellant sustained a previous cervical fracture as a result of a motorcycle accident. Dr. Taylor reported that open mouth and lateral screening views of the cervical spine revealed some right side bending at the first and second vertebrae but no acute fractures. He also observed significant discogenic changes at C4-5, C5-6 and C6-7 with anterior and posterior spondylosis and some milder disc space narrowing at C3-4 and C7-D1. Dr. Taylor diagnosed minimal to moderate arthrosis at all levels and minor anterolisthesis by two mm of C3 upon four.³

In a decision dated May 10, 2013, OWCP denied appellant's claim. It accepted that the March 12, 2013 employment incident occurred as alleged but denied his claim finding insufficient medical evidence to establish that he sustained a cervical condition as a result of the accepted incident.

³ The Board notes that on March 12, 2013 the employing establishment issued a Form CA-16 authorizing medical treatment. The CA-16 authorization may constitute a contract for payment of medical expense to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300 (c); *Tracy P. Spillane*, 54 ECAB 608 (2003). The record indicates that appellant was seen by Ms. Geer and Dr. Taylor, however the record is silent as to whether OWCP paid for the cost of appellant's treatment pursuant to this form.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence⁵ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether “fact of injury” has been established.⁷ There are two components involved in establishing the fact of injury. 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.⁸ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁹ An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.¹⁰

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.¹¹ 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.¹² The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician’s opinion.¹³

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁹ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹¹ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹² *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹³ *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

Appellant alleged that on March 12, 2013 he sustained left shoulder, neck, and upper back conditions as a result of tripping over a large rock at work. OWCP accepted that the March 12, 2013 incident occurred as alleged. It denied his claim finding insufficient medical evidence to establish that his cervical condition was a result of the accepted incident. The Board finds that appellant failed to establish that he sustained neck, back, and shoulder conditions causally related to the March 12, 2013 employment incident.

Appellant was treated by Dr. Taylor on March 12, 2013 for complaints of cervical spine pain. He reviewed appellant's history and noted a previous cervical fracture from a motorcycle accident. Dr. Taylor reported that open mouth and lateral screening views of the cervical spine revealed some right side bending at the first and second vertebrae but no acute fractures. He conducted an examination and diagnosed minimal to moderate arthrosis at all levels and minor anterolisthesis by 2 mm of C3 upon C4. The Board notes that Dr. Taylor provided a medical diagnosis based on examination findings; but did not provide any opinion on the cause of appellant's cervical condition or address the March 12, 2013 employment incident. The Board has found that 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.¹⁴ Accordingly, Dr. Taylor's report is insufficient to establish that appellant's cervical condition was causally related to the March 12, 2013 employment incident.

The additional hospital reports by Ms. Greer, the nurse practitioner, are insufficient to establish causal relationship. The Board has held that a report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician under FECA.¹⁵ A nurse practitioner is not considered a "physician" as defined under FECA. The reports of Ms. Greer are not sufficient to establish appellant's claim.

The Board may not consider evidence for the first time on appeal.

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 did not establish that his cervical condition was causally related to the March 12, 2013 employment incident.

¹⁴ *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

¹⁵ *R.M.*, 59 ECAB 690 (2008); section 8101(2) of FECA provides as follows: the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

ORDER

IT IS HEREBY ORDERED THAT the May 10, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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