United States Department of Labor
Employees' Compensation Appeals Board

A.B., Appellant	)	
and	)	**Docket No. 15-1002**
	)	**Issued: August 14, 2015**
DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, Palm Springs, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 30, 2015 appellant filed a timely appeal from a November 7, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 case.

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic injury in the performance of duty on September 10, 2014.

FACTUAL HISTORY

On September 13, 2014 appellant, then a 30-year-old forestry aide, filed a traumatic injury claim (Form CA-1), alleging that on September 10, 2014 he experienced a sharp pain in

[1] 5 U.S.C. § 8101 *et seq.*

his left knee while stepping out of a fire engine. His supervisor indicated that appellant was injured in the performance of duty. Appellant did not stop work.

In a September 22, 2014 letter, OWCP advised appellant of the type of medical evidence needed to establish his claim for compensation. It requested that he provide a medical report with a physician's explanation as to how his employment activities caused or aggravated a medical condition. OWCP specified that medical evidence must be submitted by a qualified physician, and that nurse practitioners and physician assistants were not considered physicians under FECA.[2]

Following the request, appellant submitted an undated workers' compensation report from Carol Engel, a family nurse practitioner, diagnosing left knee pain. In a September 14, 2014 emergency room report, Ms. Engel stated that on that date she treated appellant for left knee pain. Examination of appellant's knee revealed no swelling or redness. X-rays were negative for acute fracture. Ms. Engel diagnosed left knee pain, discharged appellant with instructions for knee pain and sprain, and provided him with a work restrictions note.

In a September 14, 2014 x-ray report, Dr. Deborah Ash, a Board-certified diagnostic radiologist, noted that appellant was seen for left knee pain. A left knee x-ray showed minimal degenerative change. There was no evidence of an acute fracture.

The employing establishment issued an authorization for examination (Form CA-16) on September 14, 2014, authorizing necessary medical treatment. On that date, Ms. Engel diagnosed knee pain and indicated, with an affirmative mark, that the condition was caused or aggravated by an employment activity. In a duty status report (Form CA-17) of that same date, she diagnosed left knee pain and provided work restrictions.

In a November 7, 2014 decision, OWCP denied appellant's claim finding that he had not submitted medical evidence establishing a diagnosis in connection with the alleged incident.

LEGAL PRECEDENT

An employee seeking compensation under FECA must establish the essential elements of his or her claim by the weight of reliable, probative and substantial evidence,[3] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[4] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[5]

[2] 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. 5 U.S.C. § 8102(2); *C.H.*, Docket No. 13-1879 (issued February 18, 2014) (finding that evidence from a family nurse practitioner had no probative medical value as a nurse is not a physician as defined under FECA).

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, 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.[7]

ANALYSIS

OWCP accepted that on September 10, 2014 appellant stepped out of a fire engine. The Board finds, however, that he failed to establish a diagnosed condition causally related to the September 10, 2014 employment incident.

In a September 14, 2014 report, Dr. Ash related appellant's complaint of left knee pain and noted that x-rays were negative for an acute fracture. He did not, however, provide any diagnosis or opinion as to the cause of appellant's pain. Medical evidence that does not offer an opinion or diagnosis is of limited probative value on the issue of causal relationship.[8]

The remainder of the medical evidence was completed by Ms. Engel, a family nurse practitioner. The Board has held that nurse practitioners are not considered physicians under FECA.[9] Accordingly, Ms. Engel's reports regarding diagnosis and causal relationship are of no probative medical value.[10]

The Board notes that the employing establishment issued a Form CA-16 authorization for medical treatment on September 14, 2014. Where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of

[6] *T.H.*, 59 ECAB 388 (2008).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

[9] *See supra* note 2.

[10] *Thomas L. Agee*, 56 ECAB 465 (2005) (holding that a medical report may not be considered probative medical evidence unless it can be established that the person completing the report is a physician as defined in 5 U.S.C. § 8101(2)).

the action taken on the claim.[11] The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP.[12] In this case, it is unclear whether OWCP paid for the cost of appellant's examinations. On return of the case record, OWCP should further address the issue.[13]

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 meet his burden of proof to establish a traumatic injury in the performance of duty on September 10, 2014.

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[11] *Tracey P. Spillane*, 54 ECAB 608 (2003).

[12] *See* 20 C.F.R. § 10.300(c).

[13] *See W.R.*, Docket No. 14-1869 (issued January 28, 2015).