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

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| **M.M., Appellant** | ) | |
| | ) | **Docket No. 15-1054** |
| **and** | ) | **Issued: August 24, 2015** |
| | ) | |
| **DEPARTMENT OF THE ARMY,** | ) | |
| **Fort Bliss, TX, Employer** | ) | |
| | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On April 6, 2015 appellant filed a timely appeal from a March 23, 2015 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 this case.[2]

### ***ISSUE***

The issue is whether appellant met his burden of proof to establish an injury causally related to a September 17, 2014 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted additional evidence on appeal. The Board has no jurisdiction to review new evidence on appeal. *See* 20 C.F.R. § 501.2(c)(1).

## ***FACTUAL HISTORY***

On October 6, 2014 appellant, then a 60-year-old security guard, filed a traumatic injury claim alleging that on September 17, 2014 he sustained an injury at work. He stated that combative training irritated his December 30, 2013 left inguinal hernia repair.

In a medical statement dated January 5, 2015, Dr. Eric T. Raschke, an employing establishment osteopath specializing in general surgery, related that appellant sustained an acute injury on January 5, 2015 and provided physical restrictions.

Presurgical instructions contained an illegible signature and indicated that appellant was scheduled to undergo an umbilical hernia repair on January 16, 2015.

In a January 16, 2015 letter, Dr. Daniel J. Roubik, an employing establishment resident physician in general surgery, stated that appellant had undergone abdominal surgery on that day. He advised that appellant may require two weeks for recovery with limitations and four to six weeks to return to his baseline. Dr. Roubik requested accommodation during appellant's recovery.

In discharge instructions dated January 16, 2015, Dr. Josiah D. Freemyer, a general surgeon with the employing establishment, addressed appellant's medications, wound care, and physical restrictions.

On January 30, 2015 appellant filed a claim requesting compensation for leave without pay from January 16 to February 13, 2015. He was separated from the employing establishment on January 10, 2015 due to a reduction-in-force.

By letter dated February 9, 2015, OWCP indicated that, when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work. Because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. OWCP reopened the claim for adjudication because it had received a claim for wage-loss compensation.

Thereafter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional medical evidence. It also requested that the employing establishment submit medical evidence, if appellant had been treated at its medical facility.

No response was received from appellant within the allotted time.

In a March 23, 2015 decision, OWCP accepted that the September 17, 2014 incident occurred as alleged. However, it denied appellant's claim as he had not submitted any medical evidence containing a medical diagnosis in connection to the accepted employment incident. OWCP noted that he did not respond to the request for additional necessary medical evidence to support his claim.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5]

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.[6] There are two components involved in establishing the 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.[7]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[9] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[10]

## ***ANALYSIS***

The Board finds that appellant has not established a traumatic injury caused by the accepted September 17, 2014 employment incident. Appellant failed to submit medical evidence sufficient to establish any medical condition causally related to the accepted incident.

The January 5 and 16, 2015 reports from Dr. Raschke and Dr. Roubik, respectively, did not provide a specific diagnosis or a medical opinion on whether the diagnosed condition was caused or aggravated by the accepted September 17, 2014 employment incident. Further, Dr. Raschke stated that appellant sustained an acute injury on January 5, 2015, but provided no

[3] 5 U.S.C. §§ 8101-8193.

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

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

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

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

[8] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[9] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[10] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

details regarding this incident or injury.[11] Similarly, Dr. Roubik did not provide any details regarding appellant's January 16, 2015 abdominal surgery. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.[12] The Board therefore finds that the reports of Drs. Raschke and Roubik are insufficient to establish appellant's burden of proof.

Dr. Freemyer's January 16, 2015 discharge instructions addressed only appellant's medications, wound care, and physical restrictions. He offered no opinion stating that appellant's umbilical hernia and surgery were caused by the accepted employment incident. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[13]

The January 16, 2015 disability report and presurgical instructions, which contained illegible signatures, are insufficient to establish appellant's claim. A report that is unsigned or bears an illegible signature lacks proper identification and, therefore, cannot be considered probative medical evidence.[14]

Therefore, the Board finds that there is insufficient medical evidence to establish that appellant sustained an injury causally related to the accepted September 17, 2014 employment incident.

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 failed to establish an injury causally related to a September 17, 2014 employment incident.

[11] There is no information on any employment-related injury sustained on January 5, 2015 in the record before the Board on appeal.

[12] *B.T.*, Docket No. 13-138 (issued March 20, 2013); *John W. Montoya*, 54 ECAB 306 (2003).

[13] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

[14] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the March 23, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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