United States Department of Labor
Employees' Compensation Appeals Board

J.P., Appellant	)	
and	)	**Docket No. 14-1966**
	)	**Issued: January 23, 2015**
DEPARTMENT OF THE AIR FORCE, EGLIN AIR FORCE BASE, 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
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 11, 2014 appellant filed a timely appeal from a July 16, 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 this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury in the performance of duty.

FACTUAL HISTORY

On May 9, 2014 appellant, then a 24-year-old electronics engineer, filed a traumatic injury claim alleging that on April 24, 2014 he sustained a fractured rib during a team building activity of ultimate frisbee for the employing establishment's "Wingman Day." He alleged that

[1] 5 U.S.C. § 8101 *et seq.*

he was accidentally shoved into another participant and struck by a knee or elbow. Appellant stopped work that day and returned on May 1, 2014. His supervisor indicated that the claimed injury occurred during appellant's regular work hours but questioned why he did not sooner file his claim.

By letter dated June 10, 2014, OWCP notified appellant that evidence was insufficient to establish his claim and advised him of the type of evidence needed.

Appellant subsequently submitted evidence from his healthcare providers. In an April 24, 2014 disability status report, a physician's assistant advised that appellant was restricted from lifting or pulling more than 10 pounds, overhead work, and climbing for the next 10 days.

In a May 1, 2014 report, Dr. Chinh Van, Board-certified in family medicine, noted that appellant was experiencing left chest wall/rib pain. He advised that appellant was injured seven days prior while playing ultimate frisbee. Dr. Van stated that appellant related that his pain was sharp and stabbing and that on physical examination there was point tenderness at the 10 to 11th rib on the left. He noted that an x-ray of the ribs was negative for fracture; however, the official reading of the x-ray was pending. Dr. Van diagnosed left side rib pain and costochondritis. An accompanying May 1, 2014 clinical summary report from Dr. Van advised that appellant was instructed to avoid repetitive bending, lifting, pushing, pulling, and twisting. Appellant was also restricted from lifting more than 25 pounds, squatting, prolonged standing, and strenuous activity for two weeks. In a May 1, 2014 report, Dr. Norman Clinkscales, a Board-certified diagnostic radiologist, advised that a rib cage x-ray revealed an anterior left sixth rib hairline fracture.

In a May 31, 2014 statement, appellant explained that there was a delay in filing his claim because he was unable to work due to his injury. He noted that he stopped work on the date of injury and returned on May 1, 2014, but his supervisor was out of the office that day. Appellant also noted that he had to leave work early on May 1, 2014 due to his injury, and that he was not again at work until the week of May 5 through 9, 2014.

In a June 23, 2014 statement, an employing establishment injury compensation specialist, Rava Defenbach, controverted appellant's claim arguing that he was not in the performance of duty. She argued that he was injured playing ultimate frisbee during "Wingman Day" which was a voluntary activity that did not provide any substantial direct benefit to the employing establishment. Ms. Defenbach further argued that appellant was not in the course or scope of his assigned duties when he was injured.

By letter dated June 24, 2014, OWCP notified appellant that the employing establishment controverted his claim because he was not in the performance of duty when he was injured and gave him the opportunity to respond.

In a June 26, 2014 statement, appellant advised that he was injured at Foster Field located on a multipurpose field at the employing establishment during a team building activity. He stated that he fractured his ribs while playing in an ultimate frisbee tournament. Appellant noted that he felt pain, had trouble breathing, standing, and walking. In a June 30, 2014 statement, he advised that "Wingman Day" was encouraged by all levels of management, the 96th Test Wing

Commander sent out a memorandum encouraging participation, and set aside an entire day for the activities. He also noted that such activities were a recurring practice for his work group and the site where he was injured was an authorized alternate duty location. An accompanying April 21, 2014 e-mail from Brigadier General David Harris noted that the Spring "Wingman Day" was scheduled for April 24, 2014. He stated that the theme of the "Wingman Day" event was encouraging mentorship throughout the department and was a time for units to reflect on professional work environments and other topics important to personnel. Brigadier General Harris advised that the "unit locations for morning sessions and the afternoon events at Foster Field are approved alternate duty locations."

Appellant also provided statements from coworkers. In a June 20, 2014 statement, Alan Colthorp advised that he did not witness the incident, but appellant told him that he injured his ribs when he was struck during the game of frisbee. He stated that it was obvious that appellant was in pain and that he had to sit out for the two games that followed. In a June 18, 2014 statement, another coworker, Benjamin Baird, advised that he did not see the injury, but appellant had to sit out for the rest of the game and the subsequent games.

In an April 24, 2014 report, a physician's assistant advised that appellant was injured when he collided with another player while playing ultimate frisbee. Appellant was diagnosed with a chest wall strain and the report advised that a chest x-ray revealed no acute abnormalities. An undated note from an office desk clerk noted that the healthcare facility only had physician's assistants on site and that the overseeing physician only signed charts of patients that he personally saw.

By decision dated July 16, 2014, OWCP denied appellant's claim. It found that the claimed events occurred as alleged but that the medical evidence was insufficient to establish the claim. OWCP stated that the medical evidence did not establish that a medical condition was diagnosed in connection with the work event.

On appeal, appellant argued that causal relationship between the work incident and his diagnosed condition was established by the medical evidence and witness statements.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[2] 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.[3] 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.[4]

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

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

[4] *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 medical evidence to establish that the employment incident caused a personal injury.[5]

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[6] Rationalized medical opinion evidence is generally required to establish causal relationship. 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

On April 24, 2014 appellant was playing ultimate frisbee in a team building event sponsored by the employing establishment and the location where appellant the claimed injury occurred was an approved alternate duty location. The evidence supports that the claimed work incident occurred and was in the performance of duty. Therefore, the Board finds that the first component of fact of injury is established. However, medical evidence is insufficient to establish that the employment incident on April 24, 2014 caused appellant's fractured rib.

In his May 1, 2014 report, Dr. Van noted that appellant was experiencing left chest wall/rib pain. He advised that appellant was injured seven days prior while playing ultimate frisbee and diagnosed left side rib pain and costochondritis. Although Dr. Van's report included a history of the injury, he did not offer a clear opinion on causal relationship in which he specifically addressed how the work incident contributed to the diagnosed condition. His May 1, 2014 clinical summary did not address the cause of appellant's condition.

In his May 1, 2014 x-ray report, Dr. Clinkscales advised that a rib cage x-ray revealed an anterior left sixth rib hairline fracture. This report is insufficient to discharge appellant's burden of proof because it does not address causal relationship. Dr. Clinkscales did not address what caused the fracture. The Board has held that a report without an opinion as to causal relationship is of little probative value.[8]

Appellant also provided evidence from a physician's assistant. In an April 24, 2014 report, a physician's assistant advised that appellant was injured when he collided with another player while playing ultimate frisbee. Appellant was diagnosed with a chest wall strain. While

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

[6] *Jennifer Atkerson*, 55 ECAB 317 (2004).

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

[8] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

this report offers some support for causal relationship, it is of no probative medical value as a physician's assistant is not a physician as defined under the FECA.[9] Thus, this report is insufficient to establish the claim.

Consequently, the medical evidence is insufficient to establish that the April 24, 2014 work incident caused or aggravated a diagnosed medical condition.[10] Appellant argued that causal relationship was established by the medical evidence and witness statements. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician. The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated his condition.[11] Because appellant has not provided such medical opinion evidence in this case, he has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on April 24, 2014.

[9] *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Under FECA, a "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. § 8101(2). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[10] Although causal relationship generally requires rationalized medical opinion, OWCP procedures provide for acceptance of a claim without a medical report when the following criteria are satisfied: (1) the condition reported is a minor one which can be identified on visual inspection by a lay person (*e.g.*, burns, lacerations, insect stings, or animal bites); (2) the injury was witnessed or reported promptly and no dispute exists as to the fact of injury; and (3) no time was lost from work due to disability. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3 (January 2013); *Melissa A. Carter*, 45 ECAB 618 (1994). In the present case, the condition reported, fractured rib, is not the clear-cut type of condition that can be identified on visual inspection by a lay person. Furthermore, appellant also missed time from work. Thus, rationalized medical evidence is required.

[11] *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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