

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

P.A., Appellant)	
)	
and)	Docket No. 14-179
)	Issued: March 9, 2015
DEPARTMENT OF HOMELAND SECURITY,)	
CUSTOMS & BORDER PROTECTION,)	
Yuma, AZ, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 1, 2013 appellant filed a timely appeal from the July 3, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), 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.

ISSUE

The issue is whether appellant met his burden of proof to establish an injury in the performance of duty on January 25, 2013, as alleged.

On appeal, appellant contends that his injury occurred in the performance of duty. He further noted that he supplied additional evidence on appeal in support of his claim.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On January 26, 2013 appellant, then a 31-year-old border patrol agent, filed a traumatic injury claim alleging that on January 25, 2013, while driving an all-terrain vehicle (ATV), he approached a curve, his right front tire hit a boulder causing uneven weight distribution, the vehicle began to rollover, and he was ejected from the vehicle. He noted that as a result of this incident, he had head swelling to the left side, right wrist swelling, right and left knee pain, stiffness to the neck and back, and left ankle sprain and swelling. The employing establishment properly issued appellant an authorization for medical examination (Form CA-16). He was treated and released at St. Joseph's Hospital Emergency Room.²

By letter dated February 1, 2013, OWCP informed appellant that it was necessary to submit further information, including medical information, to support his claim. Appellant did not file a timely response to OWCP's letter.

By decision dated March 4, 2013, OWCP denied appellant's claim as it found that he had not submitted medical evidence establishing a diagnosis in connection with the accepted incident.

On March 12, 2013 appellant requested review of the written record by an OWCP hearing representative.

Appellant submitted a January 25, 2013 injury report by the Buckey Valley Rural Volunteer Fire District that indicated that he was transported to St. Joseph's Hospital complaining of right wrist pain.

Appellant submitted notes from his visit at the Emergency Department at St. Joseph's Hospital on January 25, 2013. An emergency room intake note authored by Jason Jacobson, RN, dated January 25, 2013 indicated that during working hours appellant was thrown from his vehicle striking his head and was notable for right wrist deformity.

In the CA-16 attending physician's report form dated January 25, 2013, Dr. Michael Christopher, a physician Board-certified in emergency medicine, noted that appellant was thrown from an ATV after it struck a rock. He diagnosed wrist sprain, closed head injury and cervical strain. Dr. Christopher also checked a box indicating that the injuries were caused or aggravated by appellant's employment activity. Appellant had a computerized tomography (CT) scan of the head, which was interpreted by Dr. James Murphy, a Board-certified radiologist, as evincing no evidence of acute intracranial abnormality. A CT scan of the cervical spine was interpreted as detecting no abnormalities. Appellant's right wrist x-ray, as interpreted Dr. Nell Dunn, a radiologist, evinced no acute fracture or dislocation.

In a March 12, 2013 note, Richard A. Ramirez, a supervisory border patrol agent, stated that on January 25, 2013 at approximately 6:30 a.m. appellant was involved a rollover accident while in the performance of duty and was transported to St. Joseph's medical facility in Phoenix,

² When a CA-16 form is properly executed, it 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 Tracey P. Spillane, 54 ECAB 608 (2003); 20 C.F.R. § 10.300(c).

Arizona. He further noted that during the accident, appellant sustained injuries to his right wrist, knees, ankles, head, and cervical spine.

By decision dated July 3, 2013, the hearing representative modified the prior decision by noting that appellant had established that he had a closed head injury, a right wrist sprain and a cervical sprain, but that he had not established that these injuries were causally related to the accepted employment incident and accordingly affirmed the January 25, 2013 decision as modified.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee actually sustained an 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, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 of the claimant, 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.⁶

ANALYSIS

OWCP accepted that appellant was involved in a vehicular accident on January 25, 2013 while in the performance of duty and that he was diagnosed with wrist sprain, closed head injury and cervical sprain. However, it determined that he had not submitted rationalized, probative medical evidence to establish that the January 25, 2013 employment accident caused the injuries.

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁴ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁶ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

Appellant submitted records from his visit to the Emergency Department at St. Joseph's Hospital on the date of the accident, January 25, 2013. Dr. Christopher, the treating physician at the Emergency Department, diagnosed appellant with wrist sprain, closed head injury and cervical strain. He also checked a box indicating that the injuries were caused or aggravated by appellant's employment activity described, but he did not explain his answer despite instructions that asked for an explanation. The Board has held that, without further explanation or rationale, a checked box on a form report is not sufficient to establish causal relation.⁷ Dr. Christopher did not explain how appellant's vehicular accident caused his listed injuries. In the absence of such explanation, his opinion is insufficient to establish causal relationship in this case.⁸ The record also contains further reports from St. Joseph's Hospital; however these reports are not helpful in establishing a medical diagnosis or causal relationship. Dr. Murphy noted that the CT of appellant's head evinced no acute intracranial abnormality and that the CT of the cervical spine showed no abnormalities. Similarly, Dr. Dunn interpreted an x-ray of appellant's right wrist as showing no acute fracture or dislocation.

Appellant also submitted nurse's intake notes, however, health care providers such as nurses, physician's assistants and physical therapists are not physicians under FECA. Thus, their opinions do not constitute medical evidence and have no weight or probative value.⁹

The Board notes that appellant's supervisor indicated that as a result of the January 25, 2013 accident, appellant sustained injuries to his right wrist, knees, ankles, head and cervical spine. The record also contains a report from the Rural Volunteer Fire District that transported appellant to the hospital. However, neither of these items constitutes medical evidence. The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician.¹⁰

The Board, however, notes that where, as in this case, 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 CA-16 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.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 The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form.

⁷ See also *T.C.*, Docket No. 12-1766 (issued February 4, 2013); *Calvin E. King*, 51 ECAB 284 (2000); *Debra S. King*, 44 ECAB 203 (1992).

⁸ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁹ See *George H. Clark*, 56 ECAB 162 (2004); *Jane A. White*, 34 ECAB 515, 518 (1983). See 5 U.S.C. § 8101(2). This subsection defines the term physician. 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 *I.A.*, Docket No. 13-1701 (issued January 17, 2014).

¹¹ See *Tracy P. Spillane*, 54 ECAB 608 (2003).

¹² See 20 C.F.R. § 10.300(c).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish causal relationship.¹³ As appellant did not establish that his medical condition was causally related to the accepted factor of his employment, OWCP properly denied appellant's claim.

Appellant submitted new medical evidence on appeal. The Board has no jurisdiction to review new evidence on appeal.¹⁴ However, he may submit 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 not met his burden of proof to establish that he sustained an injury in the performance of duty on January 25, 2013.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 3, 2013 is affirmed.¹⁵

Issued: March 9, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹³ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

¹⁴ See 20 C.F.R. § 501.2(c)(1).

¹⁵ Richard J. Daschbach, Chief Judge, who participated in the preparation of the opinion, was no longer a member of the Board after May 16, 2014.