United States Department of Labor
Employees' Compensation Appeals Board

S.D., Appellant	)	
and	)	**Docket No. 15-661**
	)	**Issued: May 27, 2015**
DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS, Fort Worth, TX, 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
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 12, 2015 appellant filed a timely appeal from a September 2, 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 met his burden of proof to establish a traumatic injury in the performance of duty on July 10, 2014.

FACTUAL HISTORY

On July 11, 2014 appellant, then a 43-year-old civil engineering technician, filed a traumatic injury claim (Form CA-1) alleging that he sustained knee pain as a result of stepping

[1] 5 U.S.C. § 8101 *et seq.*

off a truck and falling into a parking lot on July 10, 2014. A supervisor checked a box noting that appellant was injured within the performance of duty.

By letter dated July 25, 2014, OWCP advised appellant that the evidence of record was insufficient to support his claim. It noted, "Medical evidence must be submitted by a qualified physician. Nurse practitioners and physician assistants are not considered qualified physicians under FECA unless the medical report is countersigned by a physician." OWCP afforded him 30 days to submit additional evidence.

Appellant submitted a Form CA-16 authorization for examination and/or treatment at St. David's Medical Center.[2] The form noted that he had fallen out of a moving truck. A family nurse practitioner signed the side of the form entitled, "attending physician's report."

By decision dated September 2, 2014, OWCP denied appellant's claim. It found that he did not submit medical evidence in support of his claim. OWCP accepted that appellant was a federal civilian employee who filed a timely claim and that the evidence supported that the incident occurred as described.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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[4] was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient

[2] The Board notes that the employing establishment issued a Form CA-16 authorization for medical treatment in this case. 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 the action taken on the claim. *See Tracey P. Spillane*, 54 ECAB 608 (2003). The CA-16 of record however was not properly executed as section 6, the actual authorization section of the form was not completed.

[3] *Supra* note 1.

[4] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[5] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[6]

ANALYSIS

Appellant alleged that on July 10, 2014 he sustained a knee injury as a result of stepping off a truck and falling out of a truck into a parking lot. The Board finds, however, that he did not submit medical evidence from a qualified physician to establish that a medical condition was diagnosed in connection with this incident.[7]

In support of his claim, appellant submitted only a form report entitled, "attending physician's report," which was signed by a family nurse practitioner. Nurse practitioners do not qualify as physicians under FECA and, therefore, their medical reports do not qualify as probative medical evidence supportive of a claim for federal workers' compensation, unless such medical reports are countersigned by a physician.[8] The form report was not countersigned by a physician; the only signature appearing on this report was from the family nurse practitioner. Hence, this report does not constitute probative medical evidence. As appellant did not submit any other medical evidence in support of his claim, he did not establish a firm diagnosis of a medical condition in connection with the work-related incident of July 10, 2014.

The Board finds that appellant did not submit sufficient medical evidence providing a diagnosis from a qualified physician. Appellant failed to establish that he had any diagnosed condition resulting from the July 10, 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 did not meet his burden of proof to establish a traumatic injury in the performance of duty on July 10, 2014.

[6] *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[7] 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).

[8] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as physician as defined in 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 2, 2014 is affirmed.

Issued: May 27, 2015
Washington, DC

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

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

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