United States Department of Labor
Employees' Compensation Appeals Board

K.B., Appellant	)	
and	)	**Docket No. 16-0122**
	)	**Issued: April 19, 2016**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, NY Harbor HCS, New York, NY, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 26, 2015 appellant filed a timely appeal from a July 6, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained a left wrist condition on October 20, 2014 causally related to the accepted work incident.

FACTUAL HISTORY

On October 20, 2014 appellant, then a 60-year-old information technology specialist, filed a traumatic injury claim (Form CA-1) alleging he sustained a left wrist injury that day when

[1] 5 U.S.C. § 8101 *et seq.*

he moved a heavy box from the top of a rolling cart, and the box fell, causing him to twist his left wrist. He stopped work the same day.

In an October 20, 2014 duty status report (Form CA-17), Dr. Marjet M. Cordon, an internist, noted that appellant twisted his left wrist when lifting a box he did not realize was heavy. Clinical findings were provided. An attached October 20, 2014 x-ray of left wrist found no evidence of acute fracture or dislocation.

A November 3, 2014 nurse's report by Lynne Tomlinson indicated that appellant was sick with an infected nonwork-related left total knee replacement from February 2014. She related that appellant was recently hospitalized for one week and was home on intravenous antibiotics for six weeks. X-rays taken of the left wrist in the hospital showed no fracture, but indicated bruising of the muscle of the left wrist. Nurse Tomlinson noted that appellant had swelling and no strength in his wrist, but the predominate problem was the nonwork-related knee infection.

In a November 6, 2014 letter, OWCP advised appellant of the deficiencies in his claim and provided him 30 days in which to submit additional factual and medical evidence, which provided a diagnosis of a medical condition which was sustained as a result of the claimed events and a physician's rationalized medical opinion which explained how the reported work incident caused or aggravated a medical condition.

In a November 10, 2014 report, Dr. Brian Bauer, a Board-certified orthopedic surgeon, provided diagnostic codes for triangular fibrocartilage complex (TFCC) tear and wrist pain. He noted the history of injury as "patient got hurt at work," provided examination findings, and noted that a left wrist x-ray was taken. In a November 10, 2014 report, Dr. Bauer noted that the "[m]echanism of injury is injury at work" on October 20, 2014. He presented examination findings of the left hand/wrist and diagnosed wrist pain and TFCC tear with November 10, 2014 as the date of onset. Dr. Bauer reported that the x-ray revealed a fracture and bone destruction. A magnetic resonance imaging (MRI) scan was ordered.

By decision dated December 9, 2014, OWCP denied the claim, finding that the medical component of fact of injury was not established. It was accepted that the incident occurred as alleged. However, a medical condition was not diagnosed in connection with the incident.

On December 30, 2014 OWCP received appellant's request for a hearing before OWCP's Branch of Hearings and Review, which was held on April 16, 2015. Appellant testified that Dr. Bauer advised him that there was a tear in his wrist, which was a diagnosis. He indicated that an x-ray was taken which showed bone destruction. He was told that an MRI scan was necessary but he was unable to undergo the MRI scan because of the peripherally inserted central catheter (PICC) line in his arm due to an infection from his nonwork-related knee condition. Appellant indicated that the MRI scan was never done as he was not contacted about scheduling the MRI scan after the PICC line was removed and he did not know whom to contact to schedule the MRI scan.

Copies of Dr. Bauer's prior reports were provided along with medical reports pertaining to appellant's knee condition. In a November 10, 2014 letter, he advised that appellant was

under his care for wrist pain and TFCC tear. Dr. Bauer advised that appellant would be off work from October 20, 2014 until further notice or December 4, 2014 and was awaiting MRI scan results.

In an April 27, 2015 report, Dr. Bauer advised that appellant remained under his care for an injury sustained in a fall at work. He noted that appellant was at work on October 20, 2014 and was lifting a heavy box on or off a shelf when he became dizzy. Appellant subsequently fell and the box came down with him twisting his left wrist. There is no history of prior injury to that wrist. Appellant was seen in the emergency room on October 25, 2014 following several days of illness and wrist pain. Once seen in the emergency room, it was determined that he had developed an infection around his knee replacement and was admitted for immediate treatment and possible surgery. Appellant's wrist was evaluated at the same time and no fracture was found. After he was released from the hospital, he was evaluated on November 10, 2014 for wrist pain. Dr. Bauer referred appellant for an MRI scan of the left wrist to determine if there was a TFCC tear and indicated that authorization for the MRI scan was ultimately denied. He noted that he allowed appellant to remain off work while the authorization process continued, but the test was never approved and his treatment for the wrist came to a standstill. Dr. Bauer advised that appellant's description of his injury coincides with the injury found at the time of evaluation. He opined that appellant's wrist pain was due to this fall at work on October 20, 2014.

By decision dated July 6, 2015, an OWCP hearing representative affirmed the December 9, 2014 prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while 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.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[4] 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

[2] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[3] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

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]

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.[6]

ANALYSIS

Appellant alleged that on October 20, 2014, while moving a box from the top of a rolling cart, the box was too heavy and it fell, causing him to twist his left wrist. The evidence supports and OWCP found that the claimed incident occurred as alleged. Therefore, the Board finds that the first component of fact of injury is established. However, the Board finds that the medical evidence of record is insufficient to establish a medical diagnosis in connection with the accepted October 20, 2014 employment incident.

Dr. Cordon completed a duty status report (Form CA-17) on October 20, 2014 relating appellant's history of injury and work restrictions. She noted that x-ray examination of appellant's left wrist was within normal limits. To meet his burden of proof appellant must establish that he has a specific condition which is causally related to the employment incident.[7] As Dr. Cordon offered no diagnosis, and no opinion that appellant sustained a work-related condition, her report is of limited probative value.

Appellant also submitted a November 3, 2014 report from Nurse Tomlinson, which summarized his hospitalization for his left knee infection, but also noted that while x-rays of the left wrist were normal, he had bruising of the left wrist muscle. However, the Board has held that reports signed by a nurse are of diminished probative value as nurses are not considered physicians under FECA.[8]

In his November 10, 2014 report, Dr. Bauer noted examination findings, took a left wrist x-ray, and diagnosed TFCC tear and wrist pain. While he noted that appellant was hurt at work on October 20, 2014, he failed to provide a history of the October 20, 2014 work incident or offer an opinion on how the diagnosis of TFCC tear was causally related to the accepted October 20, 2014 work incident. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the

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

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

[7] *See Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

issue of causal relationship.[9] The Board has further held that pain is a description of a symptom and is not considered a compensable medical diagnosis.[10] Thus, this report is insufficient to establish appellant's claim.

In his April 27, 2015 report, Dr. Bauer provided a history of injury that was inconsistent with appellant's claim, that a heavy box he was moving fell, causing him to twist his wrist. He related that appellant became dizzy, fell and that the heavy box fell on his left wrist, causing him to twist the wrist. This factual recitation by Dr. Bauer is based upon an inaccurate history of injury. Furthermore, while he attempted to explain that appellant was unable to seek treatment for his wrist until November 10, 2014 because five days after the work incident he was hospitalized due to an infection around his knee replacement, and he noted that while appellant was in the hospital, his wrist was evaluated and no fracture was found. Dr. Bauer, however, failed to note that an x-ray was in fact taken of appellant's left wrist on October 20, 2014 which did not reveal a fracture. He did not provide an explanation as to why, when he evaluated appellant one month later, he found a wrist fracture on x-ray. Dr. Bauer also reported that the incident had caused pain in appellant's wrist. However, pain is a symptom and not a diagnosis of a medical condition.[11] Insofar as Dr. Bauer indicated that an MRI scan was needed to determine if appellant had an TFCC tear, he has not provided a firm diagnosis of a medical condition. Without a valid medical diagnosis, the medical component of fact of injury cannot be met. Thus, this report is insufficient to establish the medical component of fact of injury.

Dr. Bauer's other reports pertain to appellant's knee condition and are irrelevant to the instant claim.

The Board finds that the evidence of record does not establish a medical diagnosis in connection with appellant's October 20, 2014 employment incident. Consequently, appellant failed to establish fact of injury.

On appeal, appellant argues that the medical evidence supports his claim. However, as found above, Dr. Bauer's reports are insufficient to support that appellant was diagnosed with a specific medical condition that was related to the October 20, 2014 work 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.

[9] *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

[10] *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

[11] *Id.*

CONCLUSION

The Board finds that appellant has not established that he sustained a left wrist injury on October 20, 2014 causally related to the accepted work incident.

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board