United States Department of Labor
Employees' Compensation Appeals Board

F.O., Appellant	)	
and	)	**Docket No. 16-1500**
	)	**Issued: December 15, 2016**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS & BORDER PATROL, Miami, FL, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 14, 2016 appellant filed a timely appeal from a March 30, 2016 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 established a right hand injury in the performance of duty as alleged.

FACTUAL HISTORY

On February 22, 2016 appellant, than a 47-year-old agriculture specialist, filed a traumatic injury claim (Form CA-1) alleging that on February 17, 2016 he sustained a crush

[1] 5 U.S.C. § 8101 *et seq.*

injury to his right ring finger when he accidentally slammed it in his vehicle lift gate. He did not stop work.

In a February 25, 2016 letter, OWCP advised appellant of the evidence needed to establish his claim, including medical evidence diagnosing an injury related to the February 17, 2016 incident. It noted that nurse practitioners and physician assistants were not considered physicians under FECA. OWCP afforded appellant 30 days to submit such evidence.

In response, appellant provided a March 16, 2016 witness statement from coworker M.P., who confirmed that at approximately 7:15 p.m. on February 17, 2016, he heard appellant "cry out in pain" when closing his vehicle lift gate. M.P. saw that appellant's right ring finger "was turning dark blue." Appellant explained in March 22, 2016 statements that the tip of his right ring finger became trapped in the gap between the lift gate glass and frame. The employing establishment provided a March 22, 2016 e-mail confirming that appellant was engaged in official duties at the time of the February 17, 2016 injury.

Appellant also submitted treatment reports. In a report of February 18, 2016 examination, Yanira Serralta, a physician assistant at an orthopedic urgent care facility, related appellant's account of crushing his right ring finger in a vehicle door on February 17, 2016. She diagnosed a laceration with foreign body and crush injury of the right ring finger. Ms. Serralta applied a splint. The report was electronically signed by Ms. Serralta "under supervision of" Dr. Alejandro Badia, a Board-certified orthopedic surgeon specializing in the upper extremity.

In a March 17, 2016 duty status report, a medical provider whose signature is illegible released appellant to full duty.

By decision dated March 30, 2016, OWCP denied the claim, finding that fact of injury was not established. It accepted that the February 17, 2016 occurred in the performance of duty, at the time, place, and in the manner alleged. OWCP found, however, that appellant did not submit medical evidence establishing that the accepted incident caused a diagnosed condition. It asserted that the February 18, 2016 report was not medical evidence as it was signed only by a physician assistant and not "countersigned by a physician."

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 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]

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

To determine whether an employee sustained a traumatic 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 that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident that is alleged to have occurred.[4] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

The medical evidence required to establish causal relationship is generally rationalized medical opinion 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.[7]

ANALYSIS

Appellant claimed that he sustained a crush injury to his right ring finger on February 17, 2016 when it became trapped in a vehicle lift gate. In support of his claim, he submitted witness and supervisory statements affirming that the incident occurred as alleged. Appellant also provided a February 18, 2016 report signed by a physician assistant, and a March 17, 2016 duty status report with an illegible signature. OWCP accepted that the February 17, 2016 incident occurred at the time, place, and in the manner alleged, but denied the claim because of the lack of medical evidence.

Appellant submitted a February 18, 2016 urgent care report, signed by Ms. Serralta, a physician assistant "under supervision of" Dr. Badia, a Board-certified orthopedic surgeon. However, the scope of Dr. Badia's supervision of Ms. Serralta is not clear from the record. Dr. Badia did not sign or initial Ms. Serralta's report. There is no evidence that Dr. Badia reviewed or approved it. Physician assistants are not considered physicians under FECA.[8] As

[4] *Gary J. Watling*, 52 ECAB 278 (2001).

[5] *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

[6] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[7] *Solomon Polen*, 51 ECAB 341 (2000).

[8] *L.B.*, Docket No. 13-1253 (issued September 18, 2013) (physician assistants, physical therapists, physical therapy assistants, and 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). *See* 5 U.S.C. § 8101(2) (defines the term physician as used in FECA). *See Lyle E. Dayberry*, 49 ECAB 369, 372 (1998) (regarding physicians assistants).

the February 18, 2016 report was not authored, reviewed, or signed by a physician, it does not constitute medical evidence.

Appellant also provided a March 17, 2016 duty status report that does not bear a legible signature. As its author is unknown, the report is not considered medical evidence for the purposes of this case.[9]

OWCP advised appellant by February 25, 2016 letter of the type of evidence needed to establish his claim, cautioning him that physician assistants were not considered physicians under FECA. As appellant did not submit medical evidence diagnosing an injury causally related to the accepted incident, OWCP properly denied the claim.[10]

On appeal appellant contends that the February 18, 2016 report is probative medical evidence because it was prepared under Dr. Badia's supervision. As explained above, the February 19 and March 17, 2016 reports are not found to be probative medical evidence as there is no indication they were authored or signed by a physician.

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 not established a right hand injury in the performance of duty as alleged.

[9] *Merton J. Sills*, 39 ECAB 572 (1983).

[10] *Deborah L. Beatty*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 30, 2016 is affirmed.

Issued: December 15, 2016
Washington, DC

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

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

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