United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 16-0498**
	)	**Issued: July 5, 2016**
DEPARTMENT OF THE INTERIOR, FISH & WILDLIFE SERVICE, Bald Knob, AZ, 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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 21, 2016 appellant filed a timely appeal from an August 13, 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 the case.[2]

ISSUE

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

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence with his request for appeal. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from considering the new evidence pursuant to 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On July 8, 2015 appellant, then a 64-year-old engineering equipment operator, filed a traumatic injury claim (Form CA-1), alleging that he injured his right shoulder when he stepped down and grabbed a handle with his right hand while exiting his work vehicle. He did not stop work.

By letter dated July 10, 2015, OWCP advised appellant of the type of evidence needed to establish his claim, specifically requesting that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors. It noted that medical evidence must be submitted by a qualified physician and a physician assistant is not considered a qualified physician under FECA. OWCP also requested that the employing establishment submit any medical notes from an agency medical facility who treated appellant.

The employing establishment submitted a Form CA-16 dated July 7, 2015 authorizing treatment for a right shoulder injury.

Appellant submitted a report from Lance Kemper, physician assistant, dated July 17, 2015, who treated appellant for right shoulder pain after he reported straining it at work. He reported the pain was improving, but he still had pain while running a track hoe for several hours. The physician assistant noted an x-ray of the right shoulder revealed no acute fracture or dislocation, but mild acromion clavicular degenerative joint disease. He diagnosed localized primary osteoarthritis of the right shoulder acromioclavicular joint, strain of muscle and tendon of rotator cuff and subacromial bursitis.

In a subsequent attending physician's report dated July 21, 2015, the physician assistant noted that appellant was treated for right shoulder pain which began on July 7, 2015. He noted that x-rays revealed no abnormalities and diagnosed right subacromial bursitis and right shoulder cuff strain. The physician assistant noted with a checkmark in a box marked "yes" that appellant's condition was caused or aggravated by an employment activity and began at work after strenuous labor. Appellant was not disabled from work.

In a decision dated August 13, 2015, OWCP denied appellant's claim for a traumatic injury, finding that he failed to submit medical evidence containing a diagnosis in connection with the injury or events.

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 filed within the applicable time limitation 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 is 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]

[3] *Gary J. Watling*, 52 ECAB 357 (2001).

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.[4]

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.[5]

ANALYSIS

It is not disputed that on July 7, 2015, when exiting his work vehicle, appellant grabbed the handle with his right hand and stepped down. However, appellant has not submitted medical evidence establishing that grabbing the handle while exiting the vehicle caused his right shoulder injury.

Appellant submitted a report from the physician assistant dated July 17, 2015, who treated appellant for right shoulder pain after straining it at work. The physician assistant diagnosed localized primary osteoarthritis of the right shoulder acromioclavicular joint, strain of muscle and tendon of rotator cuff and subacromial bursitis, and in a July 21, 2015 report noted with a checkmark in a box marked "yes" that appellant's condition was caused or aggravated by work activity. This evidence is of no probative medical value as the Board has held that physician assistants are not competent to render a medical opinion under FECA.[6] Thus, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.[7] Appellant failed to submit such evidence, and OWCP therefore properly denied appellant's claim for compensation.

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.

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

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

[6] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (reports of a physician assistant have no probative value as medical evidence); 5 U.S.C. § 8101(2) (defines the term "physician").

[7] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

The Board notes that the record contains a Form CA-16 dated July 7, 2015. If 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.[8] 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. Upon return of the case record to OWCP, it should further evaluate this aspect of the case.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his claimed conditions were causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[8] *See Tracy P. Spillane*, 54 ECAB 608 (2003).