United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 16-0432**
	)	**Issued: June 21, 2016**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Philadelphia, PA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 7, 2015 appellant filed a timely appeal of a November 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 to consider the merits of the case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish an injury causally related to the accepted May 13, 2015 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted new evidence with his appeal to the Board. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003). The Board is therefore precluded from reviewing this new evidence.

FACTUAL HISTORY

On May 15, 2015 appellant, then a 47-year-old electrician, filed a traumatic injury claim (Form CA-1) alleging that on May 13, 2015 he sustained injuries to his right shoulder, knee, ankle, wrist, and hand due to tripping and falling into a hole at the loading dock parking area of building 1 where he worked. He stopped work on May 14, 2015.

In support of his claim appellant submitted May 22 and June 5, 2015 reports from Brittany Rose Coleman, a certified physician assistant. In the May 22, 2015 report, Ms. Coleman noted that appellant was seen for right shoulder pain from a work injury sustained the prior week. A physical examination of the right shoulder revealed positive right rotator cuff impingement sign and decreased strength. In a separate May 22, 2015 document, Ms. Coleman diagnosed a complete rupture of the right rotator cuff. In a June 5, 2015 disability note, she reported that appellant was disabled from work until June 25, 2015 due to an employment-related shoulder injury.

A May 26, 2015 authorization for examination and treatment (Form CA-16), was completed by Ivy L. Hill, an employing establishment authorizing official. It noted an injury date of May 14, 2015[3] and a diagnosis of injured shoulder. Treatment for the effects of the diagnosed condition was authorized.

In a letter dated June 15, 2015 letter, OWCP informed appellant that payment of a limited amount of medical expenses had been authorized as it appeared that he had sustained a minor injury. As the medical bills have exceeded $1,500.00, it had reopened his claim for consideration. OWCP informed appellant that the evidence was insufficient to establish that the incident occurred as alleged. It also informed him that the medical evidence was also insufficient as physician assistants are not considered physicians under FECA and no medical report from a physician had been received. Appellant was advised as to the medical and factual evidence required to establish his claim and afforded him 30 days to provide this evidence.

In response to OWCP's request for additional information appellant submitted medical and factual evidence.

Appellant responded to OWCP's questions regarding the incident, provided the names of Victor Pavone and John T. Tomkins as the names of witnesses and related that appellant landed on his right side. He stated that he sustained right shoulder, wrist, knee, and ankle injuries.

In a statement dated May 13, 2015, Mr. Pavone related that he was walking with appellant that day when appellant tripped and fell into a hole. Due to the trip and fall, appellant landed on his right knee and shoulder and twisted his right ankle.

In a June 30, 2015 statement Mr. Tomkins, a plumbing shop foreman, related that on May 13, 2015 he witnessed appellant walk into a hole in the dock area and fall with his right arm buckling and shoulder slamming into the concrete parking lot.

[3] This appears to be the date appellant stopped work instead of the date the injury occurred.

A May 27, 2015 magnetic resonance imaging (MRI) scan revealed no rotator cuff tear and no gross labral tear. It did reveal glenohumeral joint osteoarthritis with extensive subcortical cystic changes, cartilage thinning and loss on posterior glenoid fossa, and deformity of the posterior glenoid rim probably related to remodeling or possibly to remote trauma.

In a June 25, 2015 attending physician's report (Form CA-20), Ms. Coleman noted that on May 15, 2015 appellant tripped in a concrete hole and then fell onto his right arm. The MRI scan revealed cystic changes, glenohumeral arthritis, and cartilage thinning. Ms. Coleman diagnosed glenoid shoulder trauma which she checked a box marked "yes" to the question of whether it was caused or aggravated by the employment incident. Next she indicated that appellant was totally disabled for the period May 22 to June 25, 2015.

By decision dated July 16, 2015, OWCP denied appellant's claim because he failed to establish a diagnosed medical condition causally related to the accepted May 13, 2015 employment incident.

Ms. Coleman, in a June 4, 2015 report, diagnosed shoulder region localized osteoarthrosis and right shoulder adhesive capsulitis.

In a July 31, 2015 Form CA-20, Dr. David Nazarian, a treating Board-certified orthopedic surgeon, noted an injury date of May 15, 2015 and diagnosed trauma to the posterior glenoid. He checked a box marked "yes" to the question of whether the diagnosed condition had been caused or aggravated by the identified employment activity. Dr. Nazarian also indicated that appellant was totally disabled from work for the period May 22 to June 25, 2015, but could return to work on June 25, 2015.

In a form dated July 30, 2015, appellant requested reconsideration. In support of his request he submitted a May 22, 2015 x-ray interpretation of the right shoulder.

By decision dated November 6, 2015, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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.[5] 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.[6]

[4] *Supra* note 1.

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

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

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.[7] 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.[8] 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.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[10] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.[11] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[12]

ANALYSIS

Appellant alleged that he sustained injuries to his right knee, ankle, wrist, hand, and shoulder due to a fall at work on May 13, 2015. OWCP accepted that the employment incident of May 13, 2015 occurred at the time, place, and in the manner alleged. The issue is whether appellant established that he sustained an injury as a result of the May 13, 2015 employment incident. The Board finds that he did not submit sufficient medical evidence from a physician establishing that a medical condition was diagnosed in connection with this incident.

Appellant submitted several reports from Ms. Coleman, a certified physician assistant. However, these reports have no weight or probative value regarding the issue of causal relationship as they have not been signed or approved by a physician. Physician assistants are not considered physicians under FECA.[13]

[7] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

[8] *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[9] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 5.

[10] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

[11] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

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

[13] 5 U.S.C. § 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 B.B.*, Docket No. 09-1858 (issued April 16, 2010); *J.M.*, 58 ECAB 303 (2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

Appellant also submitted a July 31, 2015 Form CA-20 by Dr. Nazarian diagnosing trauma to the posterior glenoid and an injury date of May 15, 2015.[14] He checked a box marked "yes" to the question of whether the diagnosed condition had been caused or aggravated by the identified employment activity. However, the Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[15] Thus, this report is insufficient to support appellant's claim.

The record contains a May 22, 2015 x-ray interpretation and May 27, 2015 MRI scan. As these are diagnostic tests, causal relationship was not addressed. They are thus insufficient to support appellant's claim that he sustained a medical condition causally related to the May 13, 2015 incident.[16]

The Board notes that the record does not verify that the issue of appellant's incurred medical expenses has been addressed. The record contains a May 26, 2016 CA-16 form noting a May 14, 2015 injury date and signed by Ms. Hill authorizing medical treatment. Ordinarily, where the employing establishment authorizes treatment of a job-related injury by providing the employee a properly executed CA-16 form,[17] OWCP is under contractual obligation to pay for the medical treatment.[18] Upon return of the case record, this matter should be addressed.

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 met his burden of proof to establish an injury causally related to the accepted May 13, 2015 employment incident.

[14] The Board notes that while Dr. Nazarian provided an incorrect date of injury, his description of appellant's employment incident corresponds with the history provided on his claim form.

[15] *Sedi L. Graham*, 57 ECAB 494 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005).

[16] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[17] *See Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (February 2012).

[18] 5 U.S.C. § 8103; 20 C.F.R. § 10.304. *See L.B.*, Docket No. 10-469 (issued June 2, 2010); *see also id.* at Chapter 3.300.3(a)(3) (February 2012).

ORDER

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

Issued: June 21, 2016
Washington, DC

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

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

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