United States Department of Labor
Employees' Compensation Appeals Board

A.R., Appellant	)	
and	)	**Docket No. 16-0076**
	)	**Issued: March 25, 2016**
DEPARTMENT OF THE AIR FORCE, AIR EDUCATION & TRAINING COMMAND, RANDOLPH AIR FORCE BASE, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 20, 2015 appellant filed a timely appeal from a June 30, 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.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish an injury causally related to a February 1, 2015 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the June 30, 2015 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal appellant contends that he is still injured from landing on his right knee at work and cannot go to the physician specialist because his insurance will not cover it.

FACTUAL HISTORY

On February 3, 2015 appellant, a 27-year-old aircraft attendant, filed a traumatic injury claim (Form CA-1) alleging that he injured his right knee on February 1, 2015. He stated that he was helping to push back a T-6 aircraft for tire roll over inspection when his right foot slipped and his right knee hit the ground.

Appellant submitted hospital records dated February 4, 2015 and reports dated February 9 through April 1, 2015 from a physician assistant who reported that appellant injured his right knee while lifting at work and diagnosed right knee pain. The submissions included a February 9, 2015 return to work form from a Dr. T. Sanchez who noted that appellant was unable to work that day and could work thereafter with restrictions of no prolonged walking or standing and no bending of the right knee. Also submitted were physical therapy records.

OWCP authorized an April 9, 2015 magnetic resonance imaging (MRI) scan of the right knee, which revealed mild lateral patellar subluxation and tilting with mild chondromalacia patellae.

In a May 12, 2015 letter, OWCP advised appellant that his claim had been received, it appeared to be a minor injury, and there was minimal or no lost time from work. Based on these criteria, and because the employing establishment did not controvert continuation of pay (COP) or challenge the case, payment of a limited amount of medical expenses was administratively approved. As the medical bills had exceeded $1,500.00, the case was reopened. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

Appellant submitted reports dated March 24 through May 21, 2015 from the physician assistant who had diagnosed patellar dislocation and dislocated patella. This included a May 14, 2015 physician assistant report, noting that appellant's injury occurred while pushing a T-6 aircraft on February 1, 2015.

In a June 10, 2015 duty status report (Form CA-17), Dr. Ira Floyd, an orthopedic surgeon, diagnosed right patellar subluxation. He checked a box marked "yes" to indicate that the history provided by appellant was consistent with the history provided on the employing establishment's side of the form report. In a separate report of the same date, Dr. Floyd released appellant to regular duty effective June 10, 2015. The employing establishment advised that appellant had returned to full-time, full-duty work on June 10, 2015.

By decision dated June 30, 2015, OWCP accepted that the February 1, 2015 incident occurred as alleged but denied appellant's claim finding that he failed to submit evidence containing a medical diagnosis in connection with the injury or events.

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 timely filed within the applicable time limitation period of FECA, that an injury[3] 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.[4]

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 actually experienced the employment incident at the time, place, and in the manner alleged. 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. An employee may establish that the employment incident occurred as alleged, but fail to show that his condition relates to the employment incident.[5]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.[6]

ANALYSIS

OWCP has accepted that the employment incident of February 1, 2015 occurred at the time, place, and in the manner alleged. The Board finds, however, that appellant did not meet his burden of proof to establish that he sustained an injury related to the February 1, 2015 employment incident. Appellant has not submitted medical evidence supporting that the February 1, 2015 work incident caused or contributed to a diagnosed medical condition.

In a June 10, 2015 duty status report (Form CA-17), Dr. Floyd diagnosed right patellar subluxation and checked a box "yes" to indicate that the history provided by appellant was consistent with the history provided on the employing establishment's side of the form report. The Board has held that a physician's opinion that consists of checking a box on a form report without more in the way of rationale, is of diminished probative value in establishing causal relationship.[7] Dr. Floyd failed to provide a rationalized opinion explaining how the

[3] OWCP regulations 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. 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).

[4] *See T.H.*, 59 ECAB 388 (2008). *See also Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Id. See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id. See Gary J. Watling*, 52 ECAB 278 (2001).

[7] *See Calvin E. King*, 51 ECAB 394 (2000).

February 1, 2015 work incident caused or contributed to a diagnosed medical condition. Thus, the Board finds that the reports from Dr. Floyd are insufficient to establish that appellant sustained an injury causally related to the February 1, 2015 employment incident.

Dr. Sanchez reported on a February 9, 2015 return to work form that appellant was unable to return to work that day and could work in the future with restrictions. However, he neither provided a history of injury, a diagnosis, findings on examination, nor addressed the issue of causal relationship. As such, his report is of diminished probative value and is insufficient to establish appellant's claim.[8]

The April 9, 2015 MRI scan of the right knee is of limited probative value as it does not specifically address whether the February 1, 2015 employment incident caused or contributed to the diagnosed conditions.[9]

Appellant also submitted evidence from a physician assistant and physical therapists. These documents do not constitute competent medical evidence because neither a physician assistant nor a physical therapist is a "physician" as defined under FECA.[10] As such, this evidence is also insufficient to meet appellant's burden of proof.

Consequently, the Board finds that appellant has not met his burden of proof as he has not submitted competent medical evidence addressing how the February 1, 2015 work incident caused or contributed to a diagnosed medical condition.

On appeal appellant contends that he is still injured from landing on his right knee at work and cannot go to the physician specialist because his insurance does not cover it. Based on the findings and reasons stated above, the Board finds that appellant has not met his burden of proof to establish a work injury and therefore his current arguments on appeal fail to address the relevant issue of the case.

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 in the performance of duty on February 1, 2015.

[8] *See T.G.*, Docket No. 13-76 (issued March 22, 2013); *Lee R. Haywood*, 48 ECAB 145 (1996).

[9] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (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).

[10] 5 U.S.C. § 8101(2); *Sean O'Connell*, 56 ECAB 195 (2004) (physician assistants); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2015 decision of the Office of Workers' Compensation Programs is affirmed

Issued: March 25, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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