United States Department of Labor
Employees' Compensation Appeals Board

R.K., Appellant	)	
and	)	**Docket No. 17-0599**
	)	**Issued: June 23, 2017**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Yellowstone National Park, WY, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 23, 2017 appellant filed a timely appeal from an October 7, 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.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish an injury causally related to an accepted August 16, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted new evidence following the October 7, 2016 decision. However, since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

FACTUAL HISTORY

On August 23, 2016 appellant, then a 62-year-old visitor use assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 16, 2016 he strained tendons in his left hand, index finger, middle finger, and ring fingers as a result of squeezing a mule's lead rope really hard while riding on horseback. He did not stop work.

By letter dated August 31, 2016, OWCP advised appellant that no evidence was submitted to establish his claim. It requested that he respond to the attached questionnaire to establish that the August 16, 2016 incident occurred as alleged and provide additional medical evidence to establish that he sustained a diagnosed condition as a result of the alleged incident. Appellant was afforded 30 days to submit the requested information.

Appellant submitted a work restriction form dated September 21, 2016 from Dr. Richard N. Vinglas, a Board-certified orthopedic surgeon, who indicated that appellant was released to full duty on September 21, 2016.

OWCP denied appellant's claim in a decision dated October 7, 2016. It accepted that the August 16, 2016 employment incident occurred as alleged, but denied his claim because the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5]

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.[6] There are two components involved in establishing the 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.[7] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[8] An employee may establish that the employment incident

[3] 5 U.S.C. § 8101 *et seq*.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[8] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.[9]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[10] 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.[11] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[12]

ANALYSIS

Appellant alleged that he strained tendons in his left hand, index finger, middle finger, and ring fingers as a result of an August 16, 2016 work incident. OWCP accepted that the August 16, 2016 incident occurred as alleged, but denied his claim because of insufficient medical evidence to establish a medical diagnosis causally related to the accepted incident. The Board finds that appellant has not established that he sustained a traumatic injury on August 16, 2016.

Appellant submitted a work restriction form dated September 21, 2016 from Dr. Vinglas who indicated that appellant was released to full duty on September 21, 2016. He did not, however, provide any medical diagnosis or opinion on the cause of appellant's current symptoms. Accordingly, the Board finds that Dr. Vinglas's opinion lacks probative value because he failed to provide a firm medical diagnosis or any explanation as to the cause of appellant's alleged left hand injury.[13]

On appeal, appellant alleges that since OWCP's last decision he had secured the missing information regarding fact of injury and diagnosis and had submitted new medical reports. The Board's jurisdiction, however, is limited to evidence that was before OWCP at the time it issued its final decision. Accordingly, it may not consider this new evidence for the first time on appeal.[14] As noted above, to meet his burden of proof appellant must submit probative rationalized medical evidence to establish that the employment incident caused a personal injury.[15] Because appellant has not submitted such medical evidence, he has not met his burden of proof to establish his traumatic injury claim.

[9] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[10] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[12] *James Mack*, 43 ECAB 321 (1991).

[13] *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Michael E. Smith*, 50 ECAB 313 (1999).

[14] *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[15] *Supra* note 5.

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 a traumatic injury causally related to the accepted August 16, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2016 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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