United States Department of Labor
Employees' Compensation Appeals Board

M.P., Appellant	)	
	)	**Docket No. 17-1634**
and	)	**Issued: November 24, 2017**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Zephyrhills, FL, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 24, 2017 appellant filed a timely appeal from a June 27, 2017 merit decision of the Office of Workers' Compensation Programs. 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 a left elbow injury causally related to the accepted May 19, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of OWCP's June 27, 2017 decision, appellant submitted new evidence. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time it issued its final decision. Thus, the Board may not consider the new evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On May 19, 2017 appellant, then a 28-year-old part-time flexible rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a left elbow strain at work when a long line vehicle tray became stuck.

In support of his claim, appellant submitted a May 19, 2017 Florida Workers' Compensation Form signed by Murilo Da Silveira, a nurse practitioner. Mr. Da Silveira listed the date of accident as May 19, 2017. He indicated that appellant sought treatment for a work-related injury/illness. Mr. Da Silveira advised that the injury/illness in question was the major contributing cause for the reported medical condition, recommended treatment, and determined functional limitations and restrictions. He further advised that appellant had not reached maximum medical improvement (MMI) and that an anticipated date of MMI could not be determined at that time.

In a May 19, 2017 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant's medical treatment.

OWCP, in a May 25, 2017 letter, advised appellant of the deficiencies in his claim and allowed him 30 days to submit additional evidence and respond to its questionnaire.

OWCP subsequently received two reports with the same illegible signature. A May 23, 2017 duty status report (Form CA-17) related a history that on May 19, 2017 appellant injured his left elbow while moving a table that got stuck. The report noted clinical findings and a diagnosis of left elbow pain. The report also noted that appellant was unable to perform his regular work. A May 23, 2017 attending physician's report portion of the Form CA-16 restated a history of the May 19, 2017 incident and diagnosis of left elbow pain. The report indicated with a checkmark in the box marked "yes" that the diagnosed condition was caused or aggravated by an employment activity. Appellant was found to be totally disabled from May 19, 2017 until a time to be determined.

Mr. Da Silveira, in a May 27, 2017 Florida Workers' Compensation form, reiterated his prior findings as set forth in his May 19, 2017 report. In a May 27, 2017 summary note, he provided a diagnosis of left elbow pain and referred appellant to physical therapy.

In a Florida Workers' Compensation form dated June 2, 2017, Jennifer Moore, a physician assistant, noted that appellant sought treatment for a May 19, 2017 work-related injury/illness. She related that the injury/illness in question was the major contributing cause for the reported medical condition, recommended treatment, and determined functional limitations and restrictions. Ms. Moore advised that an anticipated date of MMI could not be determined at that time.

Progress notes dated May 19 and 27 and June 2, 2017 that were signed by Mr. Da Silveira and Ms. Moore and cosigned by Dr. Paul K. Nanda, a family practitioner, related a history that around 3:30 p.m. on May 19, 2017 appellant was driving his postal truck when a side table on the truck slid from the side of the truck towards the passenger seat. While appellant slid the table back into place it suddenly became stuck which shocked him and caused sharp pain

in his arm that traveled to his elbow. The progress notes indicated his complaint of continuing left elbow pain which was aggravated by holding objects. The progress notes provided a history of appellant's medical, family, and social background, a review of his systems, and findings on examination. The progress notes indicated an assessment of left elbow pain and addressed appellant's treatment plan.

By decision dated June 27, 2017, OWCP denied appellant's traumatic injury claim as he did not submit medical evidence containing a medical diagnosis in connection with the accepted May 19, 2017 employment-related incident from a physician. As such, fact of injury had not been met. It noted that neither a nurse practitioner nor a physician assistant was a physician as defined under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 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.[4] 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.[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 or she actually experienced the employment incident at the time, place, and in the manner alleged.[7]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing causal relationship between the claimed condition and the

[3] *Supra* note 1.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[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] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

identified factors.[9] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury caused or aggravated by the accepted May 19, 2017 employment incident. Appellant failed to submit sufficient medical evidence to establish a left elbow injury causally related to the accepted May 19, 2017 employment incident.

Appellant submitted progress notes dated May 19 and 27 and June 2, 2017 from Dr. Nanda who related a history of the May 19, 2017 work incident. He reported findings on physical examination and diagnosed left elbow pain. It is not possible to establish the cause of a medical condition if the physician has not provided a diagnosis, but only notes pain.[11] The Board has consistently held that pain is a symptom and not a compensable medical diagnosis.[12] Because Dr. Nanda failed to provide a medical diagnosis, his opinion is of diminished probative value.

Appellant also submitted Florida State Workers' Compensation form reports dated May 19 and 27 and June 2, 2017 and a May 27, 2017 summary note from a nurse practitioner and a physician assistant, who diagnosed work-related left elbow pain that required further medical treatment and resulted in physical limitations and restrictions. These reports have no probative value because neither nurse practitioners nor physician assistants are considered physicians as defined under FECA.[13] Thus, this evidence will not suffice for purposes of establishing entitlement to compensation benefits under FECA.

Furthermore, the May 23, 2017 Form CA-17 report and May 23, 2017 attending physician's report with the same illegible signature have no probative medical value. The Board has held that reports bearing illegible signatures lack proper identification that a physician authored them and cannot be considered probative medical evidence.[14]

[9] *Lourdes Harris,* 45 ECAB 545 (1994); *see Walter D. Morehead,* 31 ECAB 188 (1979).

[10] *Kathryn Haggerty,* 45 ECAB 383, 389 (1994).

[11] *See A.C.*, Docket No. 16-1587 (issued December 27, 2016).

[12] *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

[13] 5 U.S.C. § 8101(2); *Sean O'Connell,* 56 ECAB 195 (2004) (reports by nurse practitioners and physician assistants are not considered medical evidence as these persons are not considered physicians under FECA). *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).

[14] *Thomas L. Agee,* 56 ECAB 465 (2005); *Richard F. Williams,* 55 ECAB 343 (2004).

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish a left elbow injury causally related to the accepted May 19, 2017 employment incident. As such, appellant has not met his burden of proof.

The Board notes that the employing establishment executed a Form CA-16 on May 19, 2017 authorizing medical treatment. The Board has held that where 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, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.[15] Although OWCP denied appellant's claim for an employment-related injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16.[16] Upon return of the case, it should further address this matter.

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 failed to meet his burden of proof to establish a left elbow injury causally related to the accepted May 19, 2017 employment incident.

[15] *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304.

[16] *L.D.*, Docket No. 16-1289 (issued December 8, 2016).

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 24, 2017
Washington, DC

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

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

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