# United States Department of Labor
# Employees' Compensation Appeals Board

| | | |
|---|---|---|
| **E.K., Appellant** | ) | |
| | ) | |
| **and** | ) | **Docket No. 18-0091** |
| | ) | **Issued: April 6, 2018** |
| **DEPARTMENT OF DEFENSE, DEFENSE AGENCIES, MITCHEL FIELD COMMISSARY, Garden City, NY, 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
ALEC J. KOROMILAS, Alternate Judge

### ***JURISDICTION***

On October 16, 2017 appellant filed a timely appeal from an August 24, 2017 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.

### ***ISSUE***

The issue is whether appellant has met his burden of proof to establish a left elbow condition causally related to the accepted April 20, 2017 employment incident.

### ***FACTUAL HISTORY***

On May 24, 2017 appellant, then a 54-year-old store associate, filed an occupational disease claim (Form CA-2) alleging that he injured his arm when placing milk crates on a pallet

[1] 5 U.S.C. § 8101 *et seq.*

and that he developed left arm tendinitis. He first became aware of his condition on April 20, 2017 and first attributed his condition to his federal employment on April 21, 2017. Appellant stopped work on April 20, 2017.

In support of his claim, appellant provided a note from R. Galeo, a physician assistant.

In a July 10, 2017 development letter, OWCP requested additional factual and medical evidence regarding appellant's claim. It informed appellant that a physician assistant could not provide medical evidence and noted that he should submit a rationalized medical report from a physician. Appellant was afforded 30 days to submit the necessary medical evidence.

Appellant provided an August 6, 2017 grievance statement in which he alleged that it was raining on April 20, 2017 when his manager dropped a pallet of milk from the forklift onto the flooded ground. He began to grab crates of milk from the flooded ground and place the wet crates back on the pallet. During this activity, appellant's elbow popped and his hand slipped off a wet crate. He continued to work despite his pain. Appellant woke during the night due to pain in his elbow and found that he had developed a golf ball-sized lump on his left elbow. He sought medical treatment at the emergency room and received a diagnosis of left elbow tendinitis.

Dr. Mario Constantino, a Board-certified internist, examined appellant on April 25 and May 31, 2017 and provided a series of ICD-10 codes as his diagnoses. These codes of E55.9, I10, and M25.522 correlate to the diagnoses of vitamin D deficiency, unspecified, essential hypertension, and pain in the left elbow, respectively.[2] On June 2, 2017 Dr. Joseph Mazzie, an osteopath, performed a left elbow sonogram which demonstrated underlying ulnar neuritis. Appellant provided additional notes from Christopher Dominique, a physician assistant, dated July 3, 2017.

By decision dated August 24, 2017, OWCP denied appellant's claim. It found that he did place milk crates on pallets as part of his duties as a store associate, but that the medical evidence submitted did not provide a well-reasoned medical opinion as to exactly how the claimed work incident of April 20, 2017 either directly caused or aggravated the diagnosed vitamin B deficiency.

## ***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 the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the

[2] ICD-10 M25.522; ICD10Data.com *available at* http://www.icd10data.com/ICD10CM/Codes/M00-M99/M20-M25/M25-/M25.522.

[3] *Supra* note 1.

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.[4]

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 or she 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.[5]

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.[6]

## ***ANALYSIS***

The Board finds that appellant has not met his burden of proof to establish a left elbow condition causally related to the accepted April 20, 2017 employment incident.

It is undisputed that on April 20, 2017 appellant was working as a store associate, and while loading milk crates onto a pallet, he felt a pop in his left elbow and alleged left elbow tendinitis resulted from his employment injury. However, the Board finds that he failed to submit sufficient medical evidence to establish that his diagnosed medical condition is causally related to the April 20, 2017 employment incident.

Appellant filed a Form CA-2 and described an employment incident on April 20, 2017 of lifting milk crates on that date. While he filed a claim for an occupational disease, in fact, his claim as made on the Form CA-2 was for a traumatic injury. OWCP defines 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."[7] Appellant filed an incorrect claim form as he attributed his injury to a series of events or incidents within a single workday or shift.[8] The Board finds that his claim for a traumatic

[4] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

[5] *A.D., id.*; *T.H.*, 59 ECAB 388 (2008).

[6] *A.D., id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] 20 C.F.R. § 10.5(ee).

[8] *See S.S.*, Docket No. 16-0675 (issued July 15, 2016); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7b(1) (June 2011).

injury, while made on the wrong form, was clear on its face and was properly developed as a traumatic injury by OWCP.

Appellant submitted notes from Dr. Constantino which included the diagnosis of elbow pain. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.[9] While Dr. Constantino also diagnosed a vitamin deficiency, as noted by OWCP, the Board finds that appellant has not alleged that he sustained a vitamin deficiency as a result of the April 20, 2017 incident. Therefore, Dr. Constantino's notes are insufficient to establish a diagnosed condition which could be causally related to the April 20, 2017 work incident.

Appellant submitted a June 2, 2017 report wherein Dr. Mazzie diagnosed left ulnar neuritis. Dr. Mazzie's medical opinion is insufficient to establish the claim as he did not provide a history of injury[10] or specifically address whether appellant's employment incident was sufficient to have caused or aggravated the diagnosed medical condition.[11]

The record also contains reports from physician assistants. However, the Board has held that reports by a physician assistant are not considered medical evidence as physician assistants are not considered physicians under FECA.[12]

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.[13] Appellant's honest belief that the April 20, 2017 employment incident caused his medical conditions, however sincerely held, does not constitute the medical evidence to establish causal relationship.[14] He failed to submit such evidence and therefore he has not met his burden of proof.

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.

---

[9] *Robert Broome*, 55 ECAB 339 (2004).

[10] *J.G.*, Docket No. 17-1217 (issued February 16, 2018); *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[11] *Id.*; *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[12] *See M.M.*, Docket No. 17-1641 (issued February 15, 2018); *David P. Sawchuk*, 57 ECAB 316, 320 n. 11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

[13] *See J.G., supra* note 10; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[14] *G.E.*, Docket No. 17-1719 (issued February 6, 2018).

## ***CONCLUSION***

The Board finds that appellant has not met his burden of proof to establish a left elbow condition causally related to the accepted April 20, 2017 employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the August 24, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 6, 2018
Washington, DC

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

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

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