

FACTUAL HISTORY

On July 10, 2017 appellant, then a 45-year-old rigger, filed a traumatic injury claim (Form CA-1) alleging that he injured his mid-back in the performance of duty on June 27, 2017. The injury reportedly occurred at 9:00 a.m. on Pier 12 while he was attempting to untie a line to a yard (“YD”) crane.³ The cause of injury was described as “trying to untie [yard] crane to move from Pier 12 ... felt I pulled a muscle in back.” V.C., an agency reviewer, signed the Form CA-1 on appellant’s behalf.⁴ She also acknowledged that he was in the performance of duty at the time, and that the injury was not the result of appellant’s willful misconduct. Additionally, V.C. indicated that her knowledge regarding the facts about the injury was in agreement with statements of the employee and/or witnesses. Appellant first received medical care on June 27, 2017 but, according to V.C., the medical reports did not show that appellant was disabled for work. Lastly, she challenged appellant’s entitlement to continuation of pay (COP), noting that the condition may not have been the result of a work-related incident. V.C. further noted that no supporting medical documentation had been provided.

On June 27, 2017 appellant received treatment at the employing establishment’s health clinic. Dr. Laura C. Kellogg, a Board-certified family practitioner, checked a box marked “Yes” indicating an occupational injury related to federal employment. She noted that appellant could return to his permanent job on July 1, 2017 and indicated, in the “remarks/diagnosis” portion of the report, “Back strain -- no work until Saturday July 1, 2017. Rest, ice, heat, [prescription] medications as directed.”⁵

In a June 30, 2017 report, Dr. Roderick R. MacKinnon, an attending Board-certified internist, noted that appellant had been under his care beginning June 30, 2017. He further advised that appellant would be able to return to work on July 10, 2017.

In a July 11, 2017 development letter, OWCP indicated that the documentation received to date had been reviewed, and noted that it was insufficient to support appellant’s claim. First, it explained that the evidence was insufficient to establish that appellant actually experienced the incident or employment factor alleged to have caused injury. Additionally, OWCP explained that no diagnosis of any condition resulting from his injury had been provided. Lastly, it noted that the record was devoid of a physician’s opinion as to how appellant’s injury resulted in the condition which had been diagnosed. OWCP requested that appellant submit additional evidence in support of his claim, including a physician’s opinion supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition. It also requested that, within 30 days, appellant complete and return an attached questionnaire, which posed various questions regarding the circumstances of the claimed June 27, 2017 employment incident, and whether appellant had any similar disability or symptoms before the alleged injury. OWCP also advised that the employing establishment was controverting the claim, asserting that the condition may not be related to appellant’s work duties and that he did

³ Appellant’s regular work hours were 7:00 a.m. to 3:30 p.m., Monday through Friday.

⁴ Appellant’s immediate supervisor was identified as R.S. However, V.C. signed the Form CA-1 on behalf of both appellant and his immediate supervisor.

⁵ On the same dispensary permit form report, appellant’s supervisor, R.S., listed the date of injury as June 27, 2017 and checked a box marked “Yes” indicating an occupational injury.

not have supporting medical documentation. It specifically requested that appellant respond to the employing establishment's remarks.

The record does not indicate that OWCP received a response to its July 11, 2017 development letter.

In an August 16, 2017 decision, OWCP denied appellant's claim for a June 27, 2017 employment-related back injury. It noted that appellant had established that he was a federal civilian employee who filed a timely claim, that the injury, accident, or employment factor occurred, and that a medical condition had been diagnosed in connection with the injury or event. OWCP further found, however, that appellant's claim for a June 27, 2017 employment injury was denied because he failed to establish that his claimed injury occurred in the performance of duty.⁶ It noted that appellant had not responded to its development letter.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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 was sustained 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.⁸ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁹

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.¹⁰ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.¹¹

⁶ OWCP noted that the evidence was insufficient to establish that the injury and/or medical condition arose during the course of employment and within the scope of compensable work factors. In addition, it also determined that appellant did not submit medical evidence establishing a medical condition causally related to the work injury or event.

⁷ See *supra* note 2.

⁸ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to an injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5 (q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

¹⁰ *Julie B. Hawkins*, 38 ECAB 393 (1987).

¹¹ *John J. Carlone*, 41 ECAB 354 (1989).

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 claimant, 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.¹²

ANALYSIS

On July 10, 2017 appellant filed a traumatic injury claim alleging a work-related injury to his mid-back on June 27, 2017. The incident reportedly occurred on premises at Pier 12 at 9:00 a.m. The Form CA-1 described the cause of injury as “trying to untie [yard] crane to move from Pier 12 ... felt I pulled a muscle in back.” The employing establishment did not question the circumstances of the claimed June 27, 2017 employment incident, nor did it dispute that appellant was in the performance of duty at the time of his alleged injury. However, it challenged entitlement to COP, noting that the condition may not be the result of a work-related incident because no supporting medical documentation had been provided.

In an August 16, 2017 decision, OWCP found that appellant established both components of fact of injury, but it denied his traumatic injury claim because he failed to establish that his injury occurred in the performance of duty.¹³ As noted, the employing establishment did not challenge whether appellant was in the performance of duty at the time of his alleged injury, and there is nothing in the record to suggest otherwise.

OWCP accepted that appellant established the factual component of fact of injury with respect to his claim for a mid-back injury on June 27, 2017.¹⁴ The Board finds that he established the occurrence of an employment incident on June 27, 2017 in the form of attempting to untie a yard crane. However, appellant’s claim for injury is denied because he failed to establish the medical component of fact of injury. He did not submit any medical evidence establishing that the employment incident caused a personal injury.¹⁵

In a June 27, 2017 dispensary permit report, Dr. Kellogg noted that appellant could return to his permanent job on July 1, 2017 and indicated, in the “remarks/diagnosis” portion of the report, “Back strain -- no work until Saturday July 1, 2017....” Although Dr. Kellogg diagnosed

¹² See *I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹³ FECA provides for the payment of compensation for the disability or death of an employee resulting from personal injury sustained “while in the performance of his duty.” 5 U.S.C. § 8102(a). In order to be covered, an injury must occur at a time when the employee may reasonably be said to be engaged in his master’s business, at a place when he may reasonably be expected to be in connection with his employment, and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁴ See *supra* note 10.

¹⁵ See *supra* note 11. The Board notes that its basis for denying appellant’s claimed June 27, 2017 employment injury differs from that of OWCP. The Board is denying appellant’s claim because he failed to establish the medical component of fact of injury, whereas OWCP denied his claim for failure to establish that the claimed injury occurred in the performance of duty. See *supra* note 8.

back strain, she did not relate this specific diagnosis to the employment factor established by appellant, *i.e.*, attempting to untie a crane and falling on June 27, 2017.¹⁶

In a June 30, 2017 report, Dr. MacKinnon noted that appellant had been under his care since June 30, 2017, and indicated that he could return to work on July 10, 2017. He did not describe the June 27, 2017 employment incident, but diagnosed a back strain.

OWCP previously advised appellant of the deficiencies in the above-noted evidence and afforded him an opportunity to submit additional medical evidence to support his claim for an employment-related back condition. However, appellant did not avail himself of that opportunity in a timely fashion. For these reasons, he has not met his burden of proof to establish an injury causally related to the accepted June 27, 2017 employment incident.

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 met his burden of proof to establish that he was in the performance of duty as alleged, but has not established an injury causally related to the accepted June 27, 2017 employment incident.

¹⁶ On the same report appellant's supervisor listed the date of injury as June 27, 2017. However, Dr. Kellogg did not list a date of injury or provide any description of the June 27, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2017 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: February 13, 2018
Washington, DC

Christopher J. Godfrey, 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