United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 17-0232**
	)	**Issued: June 27, 2018**
DEPARTMENT OF THE INTERIOR, BIA-EMERGENCY FIREFIGHTERS, NAVAJO REGIONAL OFFICE, Fort Defiance, AZ, 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 November 10, 2016 appellant filed a timely appeal from an October 17, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] The record also contains a June 20, 2016 decision, which found that appellant abandoned his request for a hearing. As appellant did not appeal from the June 20, 2016 decision it is not presently before the Board.

[2] 5 U.S.C. § 8101 *et seq.*

[3] On appeal appellant submitted new evidence. The Board's jurisdiction, however, is limited to the evidence that was before OWCP at the time of its final decision. Thus the Board is precluded from reviewing this evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1); *see Steven S. Saleh*, 55 ECAB 169, n.1 (2003).

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On July 27, 2015 appellant, then a 29-year-old forestry technician (fire), filed an occupational disease claim (Form CA-2) alleging that he sustained headaches and vomiting while in the performance of duty. He explained that the alleged injury occurred while on a fire assignment. Appellant indicated that he first became aware of the injury and its relation to his work on July 26, 2015. He did not stop work.

By development letter dated August 5, 2015, OWCP informed appellant of the type of evidence needed to support his claim and afforded him 30 days to respond. It particularly requested that he have his physician provide an opinion, supported by a medical explanation, as to how work activities caused or aggravated his claimed condition.

OWCP subsequently received hospital treatment and discharge notes from July 26 to 27, 2015. The attending physician, Dr. Brian Horan, Board-certified in emergency medicine, diagnosed migraine headache.

By decision dated September 29, 2015, OWCP denied appellant's claim, finding that he had not submitted medical evidence containing a firm medical diagnosis in connection with the claimed work factors or events.

On October 21, 2015 appellant requested a telephonic hearing, which was scheduled for June 14, 2016.

In an August 21, 2015 statement, received November 6, 2015, appellant noted that he was a wild land firefighter "working on a hot shot fire crew and working on an uncontained wildfire anywhere in the United States." He explained that he worked in hot temperatures outside and in smoke-filled environments, and he was required to carry a heavy fire fighting pack during his shift under stress. Appellant also indicated that it was 102 degrees while he was cutting and hauling downhill. He explained that he was exposed to these elements while fighting fires. Appellant advised that he had no outside relevant exposure and explained that he only got headaches while on duty firefighting. He related that his present complaints would begin with a small headache and then worsen throughout the day, ending with vomiting. Appellant noted that he was sensitive to light and threw up about six times before he went to the hospital. Regarding prior conditions, he explained that he had headaches before, but they were not as bad as this migraine.

OWCP also received a copy of the previously submitted July 26 and 27, 2015 treatment notes from Dr. Horan. The prior reports included notes from physician assistants and a nurse.

By decision dated June 30, 2016, OWCP found that appellant failed to appear for his hearing and determined that he abandoned his hearing request. It noted that he failed to appear and did not make any contact either prior to, or subsequent to, the scheduled hearing to explain his failure to appear.

On September 28, 2016 appellant requested reconsideration of the September 29, 2015 decision.

By decision dated October 17, 2016, OWCP modified the prior decision. It found that appellant established that he was exposed to fire and smoke while fighting fires in 102 degree heat while wearing a heavy fire fighting pack. However, the claim remained denied as the medical evidence of record did not contain a physician's opinion on how exposure to fire and smoke caused migraine and vomiting.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 or specific condition for which compensation is claimed is causally related to the employment injury.[5] 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.[6]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.[7]

[4] *Supra* note 2.

[5] *See A.M.*, Docket No. 17-0741 (issued April 5, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *See A.M., id.*; *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *Id.*

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted factors of his federal employment.

The evidence submitted by appellant included hospital treatment and discharge notes from July 26 to 27, 2015. In those notes, the attending physician, Dr. Horan, diagnosed migraine headache. However, he did not provide any information or opinion that appellant's work activities as a forestry technician caused or aggravated a diagnosed condition. 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.[8] Dr. Horan's report is thus of limited probative value.

The Board notes that the record contains information from healthcare providers such as nurses, physician assistants, and physical therapists. However, these providers are not considered physicians as defined under FECA.[9] Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[10]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is causal relationship between the two.[11] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[12]

As there is no sufficiently rationalized medical evidence of record, explaining how appellant's employment duties caused or aggravated a medical condition, appellant has not met his burden of proof to establish that he sustained a medical condition causally related to factors of his employment.

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.

[8] *J.S.*, Docket No. 16-1386 (issued March 21, 2017); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[9] *See M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 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).

[10] *See M.M.*, Docket No. 16-1851 (issued January 19, 2018); *see also Joe T. Williams*, 44 ECAB 518, 521 (1993).

[11] *See Joe T. Williams*, *id.*

[12] *Id.*

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 27, 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