United States Department of Labor
Employees' Compensation Appeals Board

A.G., Appellant	)	
and	)	**Docket No. 17-1093**
DEPARTMENT OF THE INTERIOR, U.S. GEOLOGICAL SURVEY, Albuquerque, NM, Employer	)	**Issued: June 5, 2018**

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 20, 2017 appellant filed a timely appeal from an April 17, 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 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 the accepted November 29, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record provided to the Board includes evidence received after OWCP issued its April 14, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On December 6, 2016 appellant, a 29-year-old hydrologist, filed a traumatic injury claim (Form CA-1) alleging that he sustained an unidentified injury which he attributed to a November 29, 2016 employment-related motor vehicle accident. He explained that he was driving when he saw a large cow standing in the road and then panicked, slammed the brakes, swerved, and rolled. Appellant visited the hospital as a precaution, but no injuries were found. He did not stop work.

On November 29, 2016 the employing establishment issued an authorization for examination and/or treatment (Form CA-16).

In a November 29, 2016 report from Dr. Terrence Callahan, an emergency medicine specialist from Eastern New Mexico Medical Center, he noted that appellant was involved in a motor vehicle collision. Dr. Callahan diagnosed "[d]river injured in collision with other and unspecified motor vehicles in traffic accident" and prescribed pain medication and a muscle relaxant.

In a December 16, 2016 development letter, OWCP advised appellant of the deficiencies in his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant subsequently submitted a document dated December 7, 2016 which indicated that he was traveling for work on November 28 through 30, 2016 "to surface water gages for maintenance." He indicated that at the time of the accident he was driving a government-owned vehicle, returning to the hotel in which he was staying.

The employing establishment submitted a statement dated December 22, 2016, confirming that appellant was driving a government-owned vehicle in the performance of duty at the time of his November 29, 2016 incident. It also attached a map of the location where the car accident occurred. Appellant was returning to the hotel where he was staying when the accident occurred.

By decision dated January 23, 2017, OWCP accepted that the November 29, 2016 incident occurred as alleged, but denied appellant's claim because he failed to submit evidence containing a medical diagnosis in connection with the injury or events. Thus, it concluded that he had not established the medical component of fact of injury.

Subsequently, appellant submitted a November 29, 2016 chest x-ray which showed no active cardiopulmonary disease and a November 29, 2016 hematology report. An x-ray of the cervical spine also dated November 29, 2016 revealed straightening of normal cervical lordotic curve, which may be spasm or positioning. Vertebral body heights and disc spaces were maintained, the odontoid was normal, and prevertebral soft tissues were normal.

In a November 29, 2016 report, Dr. Callahan reiterated his diagnosis of "[d]river injured in collision with other and unspecified motor vehicles in traffic accident" and noted that appellant stated that he was in a work truck on a dirt road when he came across a cow in the middle of a sharp turn, trying to avoid it, and rolled the truck. He reported that appellant denied pain and had no obvious injury or disability.

On April 11, 2017 appellant requested reconsideration.

Appellant submitted a narrative statement reiterating the factual history of his claim and a photograph of the motor vehicle accident. He also submitted additional emergency room treatment records from November 29, 2016.

In a November 29, 2016 report, Dr. Callahan noted that appellant "sustained an anterior aspect of left shoulder and posterior aspect of left shoulder, painful injury." Appellant stated that he was involved in a car accident and rolled his truck onto its side. He also stated that he was restrained and that he did not have any loss of consciousness. Appellant confirmed that he was able to get out of the vehicle and was able to walk around. He indicated that he had some pain to his left shoulder, but denied any other injuries.

By decision dated April 17, 2017, OWCP denied modification of its prior decision.

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, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.[4]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[5] The second component is whether the employment incident caused a personal injury.[6] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[7]

Causal relationship is a medical question which generally requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.[9] Additionally, the physician's opinion must

[3] *See supra* note 1.

[4] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[5] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[8] *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989

be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury related to the accepted November 29, 2016 employment incident.

Dr. Callahan, who treated appellant in the emergency room on November 29, 2016, noted that he was involved in a motor vehicle collision. He also asserted that appellant sustained a "painful injury" to the anterior and posterior aspects of the left shoulder. However, left shoulder pain is a symptom, not a medical diagnosis.[11] Accordingly, Dr. Callahan's finding of a left shoulder "painful injury" is insufficient to satisfy appellant's burden of proof with respect to the medical component of fact of injury.[12] There is no evidence of record that establishes a medical diagnosis in connection with the accepted employment incident. Consequently, appellant failed to establish an injury in the performance of duty on November 29, 2016.

On appeal appellant notes that he is only seeking reimbursement for the bills that resulted from the one hospital visit. On November 29, 2016 the employing establishment issued appellant a Form CA-16 authorizing medical treatment. OWCP did not address whether appellant is entitled to reimbursement of medical expenses pursuant to the Form CA-16.[13]

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 an injury causally related to the accepted November 29, 2016 employment incident. On return of the record, OWCP should consider the Form CA-16 issued in this case.

---

[10] *Id*.

[11] Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

[12] *Id.*; *see Deborah L. Beatty*, 54 ECAB 340, 341 (2003); *P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008)..

[13] The Board notes that a Form CA-16 authorization for examination and/or treatment was issued by the employing establishment on May 8, 2015. When the 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, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 2018
Washington, DC

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

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

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