United States Department of Labor
Employees' Compensation Appeals Board

G.L., Appellant	)	
and	)	**Docket No. 18-0102**
	)	**Issued: May 8, 2018**
DEPARTMENT OF THE NAVY, PEARL HARBOR NAVAL SHIPYARD, Pearl Harbor, HI, 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 October 11, 2017[1] 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[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.[3]

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from April 17, 2017, the date of OWCP's last decision was October 14, 2017, a Saturday; consequently, the period for filing the appeal ran to the next business day, Monday, October 16, 2017. *See* 20 C.F.R. § 501.3(f)(2). Since using October 17, 2017, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is October 11, 2017, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that appellant submitted additional evidence with his appeal to the Board. However, the Board's jurisdiction is limited to the evidence that was in the record at the time of OWCP's final decision. Thus, the Board is

ISSUE

The issue is whether appellant has met his burden of proof to establish bilateral knee injuries causally related to the accepted February 24, 2017 employment incident.

FACTUAL HISTORY

On March 3, 2017 appellant, then a 60-year-old police instructor, filed a traumatic injury claim (Form CA-1) alleging that, on February 24, 2017, he sustained bilateral knee injuries when demonstrating M4 rifle practical shooting positions to new recruits. He did not stop working.

Accompanying appellant's claim was a February 24, 2017 employing establishment medical referral note by Dr. Frederick Landro, an examining physician Board-certified in public health and general preventive medicine. He noted that appellant had injured himself on February 24, 2017 at work while demonstrating shooting positions. Dr. Landro recommended restricted activity until April 24, 2017.

By development letter dated March 15, 2017, OWCP informed appellant that the evidence of record was insufficient to establish his traumatic injury claim. It advised him of the type of medical and factual evidence needed and afforded him 30 days to submit the requested evidence.

In response to the March 15, 2017 letter, appellant submitted progress notes dated May 26, November 21, and December 19, 2016 and January 23 and March 16, 2017 from Frederick J. Puleo, a Board-certified acute care nurse practitioner. He provided physical examination findings and noted a history of bilateral knee pain. Mr. Puleo diagnosed bilateral knee pain and bilateral chondromalacia on November 21 and December 19, 2016 and March 16, 2017.

By decision dated April 17, 2017, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted February 24, 2017 employment incident.

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

precluded from reviewing this additional evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-0176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

[4] *Supra* note 1.

employment injury.[5] 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.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established.[7] 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.[8] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[10] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.[11] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish bilateral knee injuries causally related to the accepted February 24, 2017 employment incident.

In support of his claim, appellant submitted a February 24, 2017 medical referral note from Dr. Landro which referenced the February 24, 2017 accepted employment incident and recommended that appellant be placed on restricted duty until April 24, 2017. However, Dr. Landro's note is insufficient to establish the claim as it does not specifically address whether appellant's employment incident was sufficient to have caused or aggravated a diagnosed medical condition.[13] Lacking a firm diagnosis and medical rationale on the issue of causal relationship,

[5] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[6] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

[8] *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[9] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 5.

[10] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

[11] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[12] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[13] *D.G.*, Docket No. 17-0704 (issued January 24, 2018); *A.D.*, 58 ECAB 149 (2006); Docket No. 06-1183 (issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's

Dr. Landro's report is insufficient to establish that appellant sustained an employment-related injury.[14]

Appellant also submitted reports from Mr. Puleo, a Board-certified acute care nurse practitioner, dated May 26, November 21, and December 19, 2016 and January 23 and March 16, 2017. The Board has held that notes signed by nurse practitioners[15] lack probative value as these healthcare providers are not considered physicians under FECA.[16]

In a letter dated March 15, 2017, OWCP requested that appellant submit a comprehensive report from his treating physician which included a reasoned explanation as to how the accepted work incident had caused his claimed injury. It did not receive the necessary medical evidence.

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[17] Appellant's honest belief that his employment duties caused a medical injury, however sincerely held, does not constitute medical evidence sufficient to establish causal relationship.[18]

Because appellant has not submitted reasoned medical evidence explaining how a diagnosed medical condition was caused by his accepted employment incident, he has not met his burden of proof.[19]

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 bilateral knee injuries causally related to the accepted February 24, 2017 employment incident.

condition is of limited probative value on the issue of causal relationship).

[14] *See R.S.*, Docket No. 17-1139 (issued November 16, 2017).

[15] *M.E.*, Docket No. 17-1857 (issued February 2, 2018); *Paul Foster*, 56 ECAB 208 (2004) (where the Board found that a nurse practitioner is not considered a physician pursuant to FECA).

[16] *See 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); *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not considered a physician as defined 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).

[17] *D.D.*, 57 ECAB 734 (2006).

[18] *See J.S.*, Docket No. 17-0967 (issued August 23, 2017).

[19] *Supra* note 10.

ORDER

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

Issued: May 8, 2018
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