United States Department of Labor
Employees' Compensation Appeals Board

T.O., Appellant	)	
and	)	**Docket No. 18-1012**
	)	**Issued: October 29, 2018**
DEPARTMENT OF THE AIR FORCE,	)	
96th CIVIL ENGINEER GROUP,	)	
ELGIN AIR FORCE BASE, FL, 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 April 16, 2018 appellant filed a timely appeal from an October 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 over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to the accepted September 12, 2017 employment incident.

FACTUAL HISTORY

On September 13, 2017 appellant, then a 29-year-old forestry technician, filed a traumatic injury claim (Form CA-1) alleging that he sustained a headache, abdominal pain, and ringing in

[1] 5 U.S.C. § 8101 *et seq.*

his right ear that arose while in the performance of duty on September 12, 2017. He claimed that while working to extinguish a wildfire, he was knocked off his feet due to a large, loud explosion to the west of his location. Appellant stopped work on September 12, 2017 and resumed his regular duties the following day.

In support of the claim, OWCP received a May 18, 2017 notification of personnel action (Form SF-50) and a civilian forestry technician position description.

By a September 19, 2017 claim development letter, OWCP advised appellant that he needed to submit medical evidence in support of his claim for FECA benefits. It specifically noted that no medical evidence had been received, and therefore, there was no diagnosis of a condition resulting from the alleged injury. OWCP afforded appellant at least 30 days to submit the requested information.[2]

OWCP subsequently received September 14, 2017 discharge instructions from Elgin Emergency Department. Cherly Athern, a certified physician assistant, treated appellant for a headache. Appellant was discharged that same day with instructions to take Tylenol or Motrin for pain and to follow-up with his primary care physician in two to three days.

By decision dated October 24, 2017, OWCP found that, although appellant established the factual component of fact of injury, he failed to establish a medical diagnosis in connection with the accepted September 12, 2017 employment incident. Consequently, it found that he failed to establish the "medical component" of fact of injury.

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 whether 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]

[2] Although properly addressed, OWCP's September 19, 2017 claim development letter was returned as undeliverable.

[3] *Id.*

[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).

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[7] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted September 12, 2017 employment incident.

Appellant submitted emergency room discharge instructions dated September 14, 2017 prepared by a physician assistant who diagnosed headache and recommended Tylenol or Motrin for pain. He was instructed to follow-up with his primary care physician. Under FECA, a physician assistant is not competent to render a medical opinion unless his or her findings have been countersigned by a qualified physician.[9] In this instance, there is no indication that Ms. Athern's September 14, 2017 diagnosis of a headache was countersigned by a qualified physician.[10] Accordingly, the physician assistant's discharge instructions are insufficient to satisfy appellant's burden of proof with respect to establishing the medical component of fact of injury.[11] Currently, there is no competent medical evidence of record that establishes a medical diagnosis in connection with the accepted employment incident. Consequently, appellant failed to establish that he sustained an injury causally related to the accepted September 12, 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 has not met his burden of proof to establish an injury causally related to the accepted September 12, 2017 employment incident.

[7] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[8] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[9] *Supra* note 8.

[10] The Elgin Emergency Department discharge instructions made no mention of a particular date of injury or cause of injury.

[11] *Supra* note 8; *see Deborah L. Beatty*, 54 ECAB 340, 341 (2003).

ORDER

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

Issued: October 29, 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