

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
R.W., Appellant)	
)	
and)	Docket No. 19-0133
)	Issued: April 16, 2019
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Capitol Heights, MD,)	
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 23, 2018 appellant filed a timely appeal from a September 28, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 28, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to the accepted June 12, 2018 employment incident.

FACTUAL HISTORY

On August 14, 2018 appellant, then a 67-year-old general expeditor, filed a traumatic injury claim (Form CA-1) alleging that he injured his right thumb on June 12, 2018 when an all-purpose container shelf came down on his thumb while in the performance of duty. He resumed his full-time regular duties on June 13, 2018.

A June 12, 2018 return to work/school note from a hospital indicated that appellant was seen in the emergency department that day and that he would be able to return to work in three days. The note was signed by Tanya R. Pallia, a physician assistant.

In an August 29, 2018 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him to submit a narrative report from a physician, including diagnoses and a rationalized medical opinion on causal relationship. OWCP also requested additional information regarding the alleged June 12, 2018 employment incident, as well as similar disability or symptoms before the injury. It afforded appellant 30 days to submit the requested evidence. No additional evidence was received.

By decision dated September 28, 2018, OWCP denied appellant's claim finding that he had not submitted medical evidence containing a diagnosis in connection with the accepted June 12, 2018 employment incident. Therefore, appellant had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical 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

³ *Supra* note 1.

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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.⁷ 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.⁸ The second component is whether the employment incident caused a personal injury.⁹

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.¹⁰ Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.¹¹ 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 employee.¹² Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted June 12, 2018 employment incident.

In support of his claim appellant submitted a June 12, 2018 return to work/school note completed by a physician assistant at a hospital. This note does not constitute competent medical evidence because physician assistants are not considered “physician[s]” as defined under FECA.¹⁴ As such, this note is insufficient to meet appellant’s burden of proof to establish his claim.

⁷ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹¹ *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹² *L.D.*, *id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹³ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁴ *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).

In its August 29, 2018 development letter, OWCP advised appellant of the type of factual and medical evidence necessary to establish his claim and afforded him 30 days to submit the requested evidence. However, appellant did not submit additional evidence in support of his claim.

The Board finds that, because the evidence of record at the time of OWCP's September 28, 2018 decision was devoid of medical evidence containing a specific diagnosis in connection with the accepted June 12, 2018 employment incident, appellant has not met his burden of proof to establish his claim.

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 June 12, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2019
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