

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

C.W., Appellant	)	
	)	
and	)	Docket No. 19-0468
	)	Issued: July 16, 2019
DEPARTMENT OF THE AIR FORCE, 482 <sup>nd</sup>	)	
AIRCRAFT MAINTENANCE SQUADRON,	)	
HOMESTEAD 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  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 28, 2018 appellant filed a timely appeal from a December 6, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the December 6, 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 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 April 10, 2018 employment incident.

## FACTUAL HISTORY

On April 30, 2018 appellant, then a 40-year-old integrated avionics technician, filed a traumatic injury claim (Form CA-1) alleging that on April 10, 2018 he injured his right mid-back and rib cage while in the performance of duty. He stated that he had stretched out to his left to put down boresight equipment when he felt a sharp pain on the right side of his mid-back/rib cage. Appellant further stated that the pain was extreme when trying to take a breath and when standing upright. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on April 10, 2018 and received medical treatment. It also advised that he returned to work on April 12, 2018.

On April 10, 2018 appellant was treated in a hospital emergency department and was discharged the following morning. The discharge instructions indicated that he was seen by Dr. Daniel R. Fields, an internist and emergency medicine specialist. Appellant complained of shortness of breath, back pain, and upper back rib pain. Dr. Fields diagnosed pleuritic chest pain. Appellant received prescriptions for pain medication and a muscle relaxant. He also received information on “nonspecific chest pain” and a note excusing him from work through April 12, 2018.<sup>3</sup>

In a May 4, 2018 development letter, OWCP advised appellant that additional evidence was required in support of his claim for compensation benefits. It explained that the medical evidence thus far only referenced pain, which was a symptom, not a valid medical diagnosis. OWCP requested that appellant submit a comprehensive narrative medical report from a qualified physician that included a diagnosis and an opinion, supported by medical rationale, addressing how the claimed employment incident caused or aggravated a medical condition. It afforded him 30 days to submit the requested medical evidence. Appellant did not respond.

By decision dated June 8, 2018, OWCP accepted that the April 10, 2018 employment incident occurred as alleged, but denied the claim because the medical evidence of record did not include a specific diagnosis in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In July 2018, OWCP received additional medical records from appellant’s April 10 and 11, 2018 emergency department visit. The emergency department treatment records indicated that appellant complained of back pain that started earlier in the evening on April 10, 2018 while at work. The pain was aching, located in his right flank, and worsened with movement and breathing. According to appellant, there were no prior episodes or additional medical history.

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<sup>3</sup> Appellant also provided billing statements from his April 10 and 11, 2018 emergency room visit. The billing records indicated that he had an electrocardiogram (ECG) performed on April 10, 2018.

Dr. Fields conducted a physical examination and found that appellant's cardiovascular system was operating at a regular rate and rhythm, and that there was no murmur or edema. He also found that appellant's back was nontender and had a normal range of motion, and that there was no tenderness in his chest wall. Additionally, the examination revealed that appellant's lungs were clear to auscultation, his respirations were nonlabored, and breath sounds were equal. Appellant refused a computerized tomography scan of his chest. His ECG results were "borderline," revealing a lower than normal heart rate (sinus bradycardia). Dr. Fields' final impression/diagnosis was back pain and pleuritic chest pain. He prescribed medication. Dr. Fields noted that appellant's condition had improved and he was stable. He excused appellant from work for one day and advised him to return to the emergency department as needed.

On November 29, 2018 appellant requested reconsideration. He submitted an updated final report from Dr. Fields and resubmitted some of the initial emergency department treatment records.

By decision dated December 6, 2018, OWCP denied modification of its prior decision finding that the medical evidence of record was insufficient to establish that a medical condition was diagnosed in connection with the accepted employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> Second, the employee must

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>9</sup> *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>10</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted April 10, 2018 employment incident.

Immediately following the April 10, 2018 employment incident, appellant presented to a hospital emergency department complaining of shortness of breath, back pain, and upper back rib pain. Dr. Fields treated appellant in the emergency department and released him early the following morning with a final impression/diagnosis of back pain and pleuritic chest pain. In its May 4, 2018 development letter, OWCP advised appellant that “pain” was a symptom, not a valid diagnosis. It properly afforded him the opportunity to submit a narrative report from a qualified physician that included a medical diagnosis and an opinion on causal relationship.

The Board finds that the April 10 and 11, 2018 emergency department treatment records, discharge instructions, and work excuse note do not include a valid medical diagnosis in connection with the accepted April 10, 2018 employment incident. As noted, Dr. Fields’ final impression/diagnosis was back pain and pleuritic chest pain. OWCP correctly found that pain is a symptom, not a specific medical diagnosis.<sup>14</sup> It is appellant’s burden of proof to obtain and submit medical documentation containing a firm diagnosis, and that diagnosis must have medical evidence upon which it stands.<sup>15</sup> The current record documents back and chest pain, which the Board has consistently held is not a compensable medical diagnosis.<sup>16</sup> Therefore, the April 10

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<sup>10</sup> *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008), *Bonnie A. Contreras*, *supra* note 8.

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

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

<sup>13</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>14</sup> *See E.M.*, Docket No. 18-1599 (issued March 7, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012) (findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination).

<sup>15</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019).

<sup>16</sup> *W.S.*, Docket No. 17-1261 (issued May 8, 2019).

and11, 2018 emergency department treatment records are insufficient to establish entitlement to FECA benefits.

As appellant has not submitted rationalized medical evidence establishing an injury causally related to the accepted April 10, 2018 employment incident, he has not met his burden of proof.

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 April 10, 2018 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 6, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2019  
Washington, DC

Christopher J. Godfrey, 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