United States Department of Labor
Employees' Compensation Appeals Board

K.C., Appellant	)	
and	)	**Docket No. 18-1330**
	)	**Issued: March 11, 2019**
DEPARTMENT OF AGRICULTURE, FOREST SERVICE-CASUAL FIREFIGHTERS, Sundance, WY, 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 June 22, 2018 appellant filed a timely appeal from an April 13, 2018 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 factors of his federal employment.

FACTUAL HISTORY

On June 24, 2017 appellant, then a 25-year-old forestry technician, filed an occupational disease claim (Form CA-2) alleging that he sustained tenderness, swelling, and pain in his right

[1] 5 U.S.C. § 8101 *et seq.*

big toe while in the performance of duty. He explained that the alleged injury occurred while he was engaged in "hiking and mop-up on Bonita fire." Appellant indicated that he first became aware of his claimed condition and related it to factors of his federal employment on June 23, 2017. He stopped work on June 24, 2017.

By development letter dated July 3, 2017, OWCP informed appellant of the type of factual and medical evidence needed to support his claim. By separate letter of the same date, it also requested additional factual information from the employing establishment. Both appellant and the employing establishment were afforded 30 days to respond.

In a response dated July 7, 2017, appellant indicated that, while fighting the Bonita fire, he had been working in steep terrain over the course of several days. He explained that he was assigned to "brush out" the area in preparation for a "burn out." Appellant indicated that over a period of several days, he had to climb up and down hills while removing brush, limbs, and small trees from the area. He explained that his toes were jammed against the toe of his boot, which caused an abrasion.

In emergency room notes dated June 24, 2017, Amy K. Montoya, a registered nurse, indicated that appellant was seen for complaints of redness, swelling, and drainage to the right great toe. Appellant was also seen on that date by Leora Ellen Shein, a certified family nurse practitioner, who explained that appellant was working as a firefighter in the mountains and "had to hike miles daily in heavy boots." Ms. Shein noted that he reported pain around the lateral side of the right toenail, and had a collection of pus around the nail. She diagnosed cellulitis of the right toe.

By decision dated August 10, 2017, OWCP accepted that the alleged employment factors occurred while in the performance of duty as alleged. However, it denied appellant's claim, finding that he had not submitted probative medical evidence establishing a diagnosis causally related to the accepted employment factors. OWCP explained that nurses and nurse practitioners are not considered qualified physicians under FECA, and their reports have no probative value unless they are countersigned by a physician.

On August 17, 2017 appellant requested a telephonic hearing before an OWCP hearing representative, which was held on February 8, 2018. During the hearing, he indicated that his standard firefighting shift was 16 hours a day. Appellant confirmed that for the period from June 18 to 28, 2017 he only had two days' rest, and worked 16 hours per day on the remaining days.

On March 2, 2018 OWCP received a response from the employing establishment concurring with appellant's allegations and confirming appellant's duties as a firefighter. It also received a position description.

On March 6, 2018 OWCP received the previously submitted June 24, 2017 nurses' notes countersigned by a physician with an illegible signature.

By decision dated April 13, 2018, OWCP's hearing representative affirmed the August 10, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 period, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3] 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.[4]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.[5]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted factors of his federal employment.

The evidence submitted by appellant included emergency room notes from July 24, 2017. The notes from a nurse practitioner diagnosed cellulitis of right toe. Certain healthcare providers such as nurses and nurse practitioners, however, are not considered "physician[s]" as defined under FECA.[6] Consequently, their medical findings and/or opinions will not suffice for purposes of

[2] *Id.*

[3] *See A.M.*, Docket No. 17-0741 (issued April 5, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *See A.M., id.; Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *P.S.*, Docket No. 18-1222 (issued January 8, 2019).

[6] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). 5 U.S.C. § 8102(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005).

establishing entitlement to FECA benefits.[7] If their findings and opinions are counter-signed by a physician, they can be considered probative evidence.[8] The nursing notes were in fact subsequently counter-signed by a physician; however, the physician's signature is illegible. The Board has held that a report that bears an illegible signature cannot be considered probative medical evidence because it lacks proper identification.[9] Thus, these reports remain of no probative value.

On appeal appellant contends that he should not be held financially responsible for injuries sustained on the job. However, as found above, there is no rationalized medical evidence of record explaining how appellant's employment duties caused or aggravated a medical condition.

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 factors of his federal employment.

[7] *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 only if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[8] *Id.*

[9] *See R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006); *Richard J. Charot*, 43 ECAB 357 (1991).

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2019
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