United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
	)	
and	)	**Docket No. 18-1503**
	)	**Issued: May 2, 2019**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PATROL, San Clemente, CA, 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 August 1, 2018 appellant filed a timely appeal from a March 15, 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 August 21, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 24, 2016 appellant, then a 47-year-old supervisory border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on August 21, 2016 he developed low back pain after exercising in the gym while in the performance of duty. He did not stop work.

In Emergency Department Aftercare Instructions dated August 21, 2016, Dr. Dino N. Barhoum, a specialist in emergency medicine, diagnosed right flank and back pain.

On August 21, 2016 Dr. Ronald MacCormick, an emergency medicine specialist, noted an injury date of August 20, 2016 and diagnosed low back and acute abdomen pain.

An August 21, 2016 computerized tomography (CT) scan revealed no acute lumbar abnormality, L5-S1 severe degenerative disease changes, low density upper pole left kidney cyst, L5-S1 moderately severe bilateral foraminal stenosis, and several subacute 7th to 10th healing right rib fractures.

In an August 21, 2016 report, Dr. Barhoum reported that appellant was seen in the emergency room for complaints of left flank and back pain. Appellant related that the pain began while he was exercising using kettle balls. In addition to the pain, he experienced nausea and vomiting. Physical examination findings included pain on palpation of the lumbar spine and left hip, able to move extremities, 5/5 bilateral leg strength, and sensory intact to light touch. A review of a CT scan revealed no acute fracture, dislocation, spondylolisthesis, or scoliosis. Dr. Barhoum opined that there was an "unclear etiology, however, presumed musculoskeletal, since [appellant] was doing exercise with a kettlebell at the time." Additionally, he diagnosed hypertension presumed due to pain, and acute lumbar and flank pain.

By development letter dated March 9, 2017, OWCP noted that appellant's claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and the claim was administratively handled to allow a limited amount of medical payments. However, his claim was now being reopened as his medical bills have exceeded $1,500.00. OWCP informed appellant of the type of medical evidence needed to establish his claim and afforded him 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated April 12, 2017, OWCP denied appellant's claim, finding that the medical evidence failed to contain a definitive diagnosis, as pain is considered a symptom and not a diagnosis.

On July 17, 2017 appellant requested reconsideration. In support of his request he submitted two witness statements and resubmitted Dr. Barhoum's April 21, 2016 report.

By decision dated March 18, 2018, OWCP denied modification of its prior decision, finding that the evidence submitted was insufficient to establish a diagnosed medical condition causally related to the accepted August 21, 2016 employment incident. It concluded, therefore, that the requirements have not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,[2] 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.[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 determine if an employee has 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]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 incident.[7]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted August 21, 2016 employment incident.

On the date of injury, appellant sought emergency medical treatment. Dr. Barhoum noted an "unclear etiology, however, presumed musculoskeletal, since [appellant] was doing exercise with a kettlebell at the time." Moreover, he reported that a CT scan revealed no abnormality. Regarding causal relationship, Dr. Barhoum related that etiology of appellant's conditions were unknown. The Board has held that medical opinions that are speculative or equivocal in character

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

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

[4] *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).

[5] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

are of diminished probative value and as such these reports are insufficient to establish that appellant sustained a traumatic injury.[8]

The remaining medical evidence is also insufficient to establish appellant's claim. In his August 21, 2016 report, Dr. MacCormick, similarly noted low back and acute abdominal pain, but failed to establish a medical diagnosis in connection with the accepted August 21, 2016 employment incident because pain, as noted above, is a symptom and not a specific medical diagnosis.[9] Therefore, this report also lacks probative value.

The record also contains an August 21, 2016 CT scan. This scan did note diagnoses of L5-S1 severe degenerative disc changes, left kidney cyst, L5-S1 moderately severe bilateral foraminal stenosis, and several acute 7th to 10th healing right rib fractures. The Board has held, however, that diagnostic testing reports lack probative value as they do not provide an opinion regarding the cause of the diagnosed conditions.[10] Therefore, this August 21, 2016 diagnostic report is insufficient to establish causal relationship as it does not provide an opinion on causal relationship.

As the medical evidence of record fails to establish an injury causally related to the accepted August 21, 2016 employment incident, the Board finds that appellant 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 August 21, 2016 employment incident.

[8] *See D.R.*, Docket No. 17-0971 (issued October 5, 2017); *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004). *J.P.*, Docket No. 14-0087 (issued March 14, 2014).

[9] *See K.V.*, Docket No. 18-0723 (issued November 9, 2018); *C.F.*, Docket No 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

[10] *S.H.*, Docket No. 17-1447 (issued January 11, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 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