United States Department of Labor
Employees' Compensation Appeals Board

W.P., Appellant	)	
and	)	**Docket No. 19-0148**
	)	**Issued: May 16, 2019**
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, Corpus Christi, TX	)	
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 October 26, 2018 appellant filed a timely appeal from an October 3, 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 a diagnosed medical condition causally related to the accepted August 30, 2017 employment incident.

FACTUAL HISTORY

On November 3, 2017 appellant, then a 59-year-old customer logistics site specialist, filed a traumatic injury claim (Form CA-1) alleging that on August 30, 2017 he sustained a lower back

[1] 5 U.S.C. § 8101 *et seq.*

muscle strain when picking up debris from the floor while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that he stopped work on August 30, 2017 and returned to work on August 31, 2017.

In a development letter dated November 9, 2017, OWCP informed appellant that the evidence of record was insufficient to establish his claim and advised him of the medical evidence needed to establish his claim. It afforded him 30 days to submit the necessary evidence.

By decision dated December 13, 2017, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical diagnosis causally related to the accepted August 30, 2017 employment incident.

In a report dated August 30, 2017, received by OWCP on January 11, 2018 Angela M. Kastl, a nurse practitioner, examined appellant and noted a primary impression of back pain.

On January 22, 2018 appellant requested reconsideration of OWCP's December 13, 2017 decision.

Appellant submitted a discharge summary dated August 30, 2017, received by OWCP on January 22, 2018, from Dr. Steven Kastl, Board-certified in internal medicine, who indicated in the "diagnoses" section of the report that appellant suffered from back pain. In discharge instructions dated August 30, 2018, received by OWCP on January 22, 2018, Dr. Harold L. Schwab III, an osteopathic physician Board-certified in emergency medicine, indicated that appellant suffered from back pain.

By decision dated January 31, 2018, OWCP denied modification of its December 13, 2017 decision, finding that the medical evidence submitted did not contain a firm diagnosis causally related to the accepted August 30, 2017 employment incident.

On April 3 and July 6, 2018 appellant twice resubmitted the report and discharge instructions dated August 30, 2017 from Dr. Schwab and the nurse practitioner.

On July 6, 2018 appellant requested reconsideration.

By decision dated October 3, 2018, OWCP denied modification of its January 31, 2018 decision, finding that the record did not contain medical evidence in which a physician described a complete and accurate history of the injury, with a definitive diagnosis and unequivocal medical opinion outlining causal relationship between the claimed employment-related incident and a diagnosis, supported with medical rationale.

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

[2] *Id.*

time limitation period of FECA, 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 whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that a medical condition relates to the employment incident.[5]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[6] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.[7] The opinion of the physician must be based on a complete factual and medical background of the employee, 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.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted August 30, 2017 employment incident.

In a report dated August 30, 2017, Ms. Kastl, a nurse practitioner, examined appellant and noted a primary impression of back pain. The Board has held that medical reports signed solely by a nurse practitioner are of no probative value as a nurse practitioner is not considered a physician as defined under FECA and, therefore, is not competent to provide a medical opinion.[9]

[3] *L.C.*, Docket No. 18-1134 (issued January 17, 2019); *see T.H.*, 59 ECAB 388, 393 (2008).

[4] *L.C.*, *id.*; *see A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

[5] *Id.*

[6] *E.J.*, Docket No. 18-0207 (issued July 13, 2018); *A.D.*, 58 ECAB 149 (2006).

[7] *L.C.*, *supra* note 3; *see J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2008).

[8] *P.R.*, Docket No. 18-0737 (issued November 2, 2018).

[9] *K.C.*, Docket No. 18-1330 (issued March 11, 2019); *see 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).

Consequently, Ms. Kastl medical findings will not suffice for purposes of establishing entitlement to FECA benefits.[10]

In addition, appellant submitted a discharge summary dated August 30, 2017, from Dr. Kastl, and discharge instructions from Dr. Schwab who related that appellant suffered from back pain. Neither Dr. Kastl nor Dr. Schwab offered further diagnoses or opinion as to the cause of appellant's condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[11] Thus, the Board finds that the reports from Drs. Kastl and Schwab are insufficient to meet appellant's burden of proof.

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition causally related to the accepted August 30, 2017 employment incident. Appellant, therefore, 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 a diagnosed medical condition causally related to the accepted August 30, 2017 employment incident.

[10] 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); 20 C.F.R. § 10.5(t). *See also 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); *K.S.*, Docket No. 18-0954 (issued February 26, 2019); *K.W., id.*

[11] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2019
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