

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

G.S., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Milwaukee, WI, Employer)

**Docket No. 18-0911
Issued: October 28, 2019**

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
JANICE B. ASKIN, Judge

JURISDICTION

On March 23, 2018 appellant filed a timely appeal from a January 5, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (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 July 17, 2017 employment incident.

¹ Appellant timely requested oral argument before the Board. By order dated February 25, 2019, the Board exercised its discretion and denied the request as the matter could be adequately addressed based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 18-0911 (issued February 25, 2019).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 18, 2017 appellant, then a 64-year-old insulator, filed a traumatic injury claim (Form CA-1) alleging that on July 7, 2017 he fell from a ladder and injured his ribs, right knee, and right arm while in the performance of duty. He did not stop work.

In a development letter dated July 26, 2017, OWCP informed appellant that additional evidence was needed to support his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

The record contains an authorization for examination and/or treatment (Form CA-16) dated July 12, 2017 executed by the employing establishment, which noted that appellant was authorized to receive treatment for the right side of body, including his right ribs and right knee.

In an attending physician's report dated July 12, 2017, Sandi Kindigoguzlu, a nurse practitioner, noted that appellant fell off a ladder and sustained a right rib contusion. She checked a box marked "yes" indicating that appellant's diagnosis was caused or aggravated by the employment activity described.

Work status reports dated July 12 and 19, 2017 by Dr. H.R. Weiner, a Board-certified internist, diagnosed right-sided rib pain and right rib contusion, and indicated that appellant sustained a work-related injury on July 7, 2017 and could return to work with restrictions.

Appellant also submitted July 12, 2017 x-rays.

Ms. Kindigoguzlu treated appellant again on July 19 and 26, 2017 for a right mid-rib injury, which occurred at work on July 7, 2017. Appellant reported falling off a ladder onto the ground. Findings of examination revealed normal gait, normal deep knee bends, range of motion without tenderness, vague tenderness to the right thoracic paraspinal muscles with spasms, intact sensory examination, and negative straight leg raises. Ms. Kindigoguzlu diagnosed work-related right rib pain and right rib contusion. She returned appellant to work with restrictions.

On August 9, 2017 John M. Serrano, a physician assistant, treated appellant for a right back and rib injury that occurred on July 7, 2017 while at work. Appellant reported working with insulation when he fell off a ladder. Mr. Serrano diagnosed right rib contusion and returned appellant to work with restrictions. In a work status report dated August 21, 2017, he diagnosed resolved right rib contusion and advised that appellant could resume his regular employment duties.

OWCP advised that appellant returned to work without restrictions on August 21, 2017.

By decision dated August 31, 2017, OWCP denied appellant's traumatic injury claim. It found that he had not submitted medical evidence sufficient to establish a diagnosed condition as a result of the accepted employment incident.

On September 7, 2017 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In support of his request, appellant submitted copies of medical reports previously of record.

OWCP also received a work status report dated July 26, 2017, by Dr. Weiner, noting a diagnosis of improving right rib contusion. Dr. Weiner returned appellant to work with restrictions.

In a narrative statement dated September 13, 2017, appellant asserted that the claims examiner incorrectly determined that he failed to submit medical evidence signed by a physician. He reported having been treated by Ms. Kindigoguzlu, a nurse practitioner, on July 12, 19, and 26, 2017, and indicated that these work status reports had been countersigned by Dr. Weiner.

By decision dated January 5, 2018, an OWCP hearing representative affirmed the August 31, 2017 decision, as modified. She found that appellant had established the medical component of fact of injury as he submitted work status notes cosigned by Dr. Weiner dated July 12 and 19, 2017 which diagnosed right rib contusion. However, the claim remained denied as appellant had not provided medical evidence establishing causal relationship.

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

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 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

³ *Id.*

⁴ *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).

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 *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).

⁷ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

occurred.⁸ The second component is whether the employment incident caused a personal injury.⁹ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.¹⁰

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.¹² Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted July 7, 2017 employment incident.

Work status reports dated July 12 and 19, 2017 by Dr. Weiner diagnosed rib pain on the right side and right rib contusion. Dr. Weiner noted that appellant was injured at work on July 7, 2017 and could return to work with restrictions. Similarly, a work status report dated July 26, 2017 by Dr. Weiner noted a diagnosis of right rib contusion and returned appellant to work with restrictions. However, in this report he did not explain how the diagnosed condition was causally related to the accepted July 7, 2017 employment incident. The Board has held that a mere conclusion without the necessary rationale as to whether a period of disability is due to an accepted employment condition is insufficient to meet a claimant's burden of proof.¹⁴ Therefore, his opinion is insufficient to establish the claim.¹⁵

⁸ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *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.P.*, Docket No. 19-0129 (issued April 26, 2019); *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹¹ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹³ *Id.*

¹⁴ *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

¹⁵ *D.H.*, Docket No. 17-1913 (issued December 13, 2018).

OWCP received x-rays dated July 12, 2017. The Board has held, however, that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and a diagnosed condition.¹⁶

Appellant was treated by Ms. Kindigoguzlu, a nurse practitioner, on July 12, 19, and 26, 2017 and Mr. Serrano, a physician assistant, on August 9 and 21, 2017. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.¹⁷ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁸ Thus, the above-noted reports from Ms. Kindigoguzlu and Mr. Serrano are insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed condition and the accepted July 7, 2017 employment incident, appellant has not established his claim for FECA benefits.¹⁹

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 established an injury causally related to the accepted July 7, 2017 employment incident.

¹⁶ See *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

¹⁷ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁸ *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 if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

¹⁹ The Board notes that the record contains a Form CA-16 signed by an employing establishment official. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *C.W.*, Docket No. 17-1293 (issued February 12, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c).

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board