

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

M.O., Appellant)	
)	
and)	Docket No. 19-1398
)	Issued: August 13, 2020
DEPARTMENT OF VETERANS AFFAIRS,)	
TEXAS CITY VETERANS ADMINISTRATION)	
CLINIC, Texas City, TX, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 12, 2019 appellant filed a timely appeal from a December 19, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees'

¹ Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated August 10, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 19-1398 (issued August 10, 2020). The Board's *Rules of Procedure* provides that an appeal in which a request for oral argument is denied by the Board will proceed to a decision based on the case record and the pleadings submitted. 20 C.F.R. § 501.5(b).

Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted November 5, 2018 employment incident.

FACTUAL HISTORY

On November 7, 2018 appellant, then a 41-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on November 5, 2018 he experienced bilateral knee pain, right ankle pain, and numbness in his legs and feet when he stood after sitting while in the performance of duty. The employing establishment checked the box marked “No” in response to whether appellant was injured in the performance of duty, and noted that appellant had not described a work-related injury. Appellant did not stop work.

OWCP received a November 5, 2018 authorization for examination and/or medical treatment (Form CA-16) executed by the employing establishment.

In a development letter dated November 16, 2018, OWCP advised appellant of the factual and medical deficiencies of his claim. It explained that it had not received medical evidence in support of appellant’s claim and therefore it was not possible to establish a diagnosed medical condition in relation to the claimed incident. OWCP informed him of the evidence necessary to establish his claim and provided a questionnaire for his completion. It afforded appellant 30 days to respond. In a November 16, 2018 letter, the employing establishment again controverted the claim and noted that there was no factual evidence to support that appellant sustained a medical condition on November 5, 2018, while in the performance of duty.

By decision dated December 19, 2018, OWCP accepted that the November 5, 2018 employment incident had occurred, as alleged, but found that the evidence of record did not establish a diagnosed medical condition in connection to the accepted employment incident and, thus, the requirements had 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

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence on appeal and to OWCP following the December 19, 2018 decision. 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 additional evidence for the first time on appeal. *Id.*

time limitation period 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 has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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.⁷ The second component is whether the employment incident caused a personal injury.⁸

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.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted November 5, 2018 employment incident.

In its November 16, 2018 development letter, OWCP noted that it had not received any medical evidence which establish a diagnosed condition resulting from the November 5, 2018 employment incident. It provided him 30 days to submit the requested medical evidence. It is appellant's burden of proof to obtain and submit medical documentation containing a firm diagnosis causally related to the accepted employment incident. As appellant has not submitted rationalized medical evidence establishing a diagnosed medical condition causally related to the

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *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 *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).

⁷ *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

accepted November 5, 2018 employment incident, he has not met his burden of proof to establish his claim.¹⁰

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 10.607.¹¹

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted November 5, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ See *J.T.*, Docket No. 18-1755 (issued April 4, 2019); *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

¹¹ The Board notes that the case record contains an authorization for examination and/or treatment (Form CA-16) dated November 5, 2018. A properly completed Form CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. 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. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).