

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

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**E.M., Appellant**

**and**

**DEPARTMENT OF THE NAVY, NORFOLK  
NAVAL SHIPYARD, Portsmouth, VA, Employer**

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**Docket No. 21-0254  
Issued: July 15, 2021**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 15, 2020 appellant filed a timely appeal from a November 19, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted July 29, 2020 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the November 19, 2020 decision, OWCP received additional evidence. 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.*

## **FACTUAL HISTORY**

On August 12, 2020 appellant, then a 56-year-old engineering technician, filed a traumatic injury claim (Form CA-1) alleging that on July 29, 2020 he experienced left hip and acute lower back pain, and muscle spasm after a contractor traversing through the office with a handcart full of boxes ran into his leg and knocked him down, while in the performance of duty. He stopped work that day and returned on July 30, 2020.

X-rays of the left hip and femur taken on July 29, 2020 revealed no acute osseous abnormality. Additionally, a lumbosacral spine x-ray of even date demonstrated bilateral L5 pars defects, with mild anterolisthesis of L5-S1.

Appellant alleged, in an August 10, 2020 statement, that on July 29, 2020 while working in the office, a contractor ran into his left leg/side with a cabinet, throwing him onto the floor. He asserted that thereafter, he walked to his car with help from his coworker and went directly to a medical clinic.

In an August 10, 2020 workers' compensation injury report, Gloria A. Pombo, a physician assistant, indicated that appellant sustained a work-related injury on July 29, 2020. She diagnosed lower back pain and released him to work without restrictions.

In an August 21, 2020 development letter, OWCP informed appellant that additional medical evidence was needed in support of his claim. It afforded appellant 30 days to submit the requested evidence. No further evidence was submitted.

By decision dated September 30, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical diagnosis in connection with the accepted July 29, 2020 employment incident. It concluded therefore that the requirements had not been met to establish an injury as defined by FECA.

In an August 3, 2020 report, Katherine E. Hall, a nurse practitioner, noted that appellant presented with midlines lower back pain that radiated into the left buttock. She provided a history of injury including crawling into a tight space at work on July 26, 2020 when his left hip got caught between two pipes. Ms. Hall noted that although appellant initially experienced some pain in his left hip, he continued to work. She advised that on July 29, 2020 he was hit from the left side by someone moving a pallet full of cabinets and fell onto the ground. Ms. Hall conducted a physical examination and diagnosed low back pain without sciatica, a work-related condition, and a work-related injury.

In an August 10, 2020 report, Ms. Pombo noted that appellant experienced some pain when he had crawled into a tight space at work on July 26, 2020. She reported that on July 29, 2020 appellant was hit from the left side by someone moving a pallet full of cabinets and fell on the ground. Ms. Pombo indicated that appellant had a history of a back strain from many years prior, but experienced no recent flare up or issues. She conducted a physical examination and diagnosed midline low back pain without sciatica, a work-related condition, and a work-related injury.

On October 22, 2020 appellant requested reconsideration.

By decision dated November 19, 2020, OWCP denied modification of the September 30, 2020 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>7</sup>

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> 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 specific employment factors identified by the employee.<sup>9</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted July 29, 2020 employment incident.

In support of his claim, appellant submitted an August 3, 2020 report signed by Ms. Hall, a nurse practitioner, and August 10, 2020 reports signed by Ms. Pombo, a physician assistant. The Board has held that medical reports signed solely by a nurse practitioner or a physician assistant, however, are of no probative value, as such healthcare providers are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion.<sup>10</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>11</sup>

The remaining medical evidence of record consists of the July 29, 2020 x-rays of the left hip, femur, and lumbosacral spine. The Board has held that diagnostic tests, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>12</sup> Accordingly, the July 29, 2020 diagnostic reports are also insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition causally related to the accepted July 29, 2020 employment incident, the Board finds that he has not met his burden of proof.<sup>13</sup>

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 July 29, 2020 employment incident.

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<sup>10</sup> Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *see 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). *See also M.W.*, Docket No. 19-1667 (issued June 29, 2020) (physician assistants are not considered physicians under FECA); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners are not considered physicians under FECA).

<sup>11</sup> *See T.S.*, Docket No. 20-0343 (issued July 15, 2020); *K.W.*, 59 ECAB 271, 279 (2007).

<sup>12</sup> *D.D.*, Docket No. 20-0626 (issued September 14, 2020); *B.M.*, Docket. No. 19-1341 (issued August 12, 2020).

<sup>13</sup> *See C.T.*, Docket No. 20-0020 (issued April 29, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 19, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 15, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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