

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

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<b>J.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-1083</b>
	)	<b>Issued: March 10, 2021</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>U.S. SECRET SERVICE, Washington, DC,</b>	)	
<b>Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 29, 2019 appellant filed a timely appeal from a January 4, 2019 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>

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

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. 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.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish bilateral eye conditions causally related to the accepted November 20, 2008 employment incident.

## FACTUAL HISTORY

On January 6, 2009 appellant, then a 54-year-old telecommunications manager, filed a traumatic injury claim (Form CA-1) alleging that on November 20, 2008 he injured both eyes while in the performance of duty. He explained that particles fell into his eyes when he removed a ceiling tile in order to pull a cable through his office, causing inflammation and an infection.

An April 21, 2016 medical report by Dr. Frank Bender, Board-certified in physical medicine and rehabilitation, evaluated appellant for permanent impairments of his neck, back, knees, and shoulder related to a separate employment injury in a different OWCP case file. Dr. Bender did not identify the date of injury.

On July 21, 2017 appellant filed a claim for a schedule award (Form CA-7). On the reverse side of the claim form the employing establishment indicated that appellant had retired on August 5, 2016.

In a development letter dated September 24, 2017, OWCP informed appellant that, when his claim was initially received, it appeared to be a minor injury that resulted in minimal or no lost time from work and; therefore, payment of a limited amount of medical expenses was administratively approved without formally considering the merits of his claim. It reopened the claim for consideration and requested additional medical evidence from appellant. OWCP afforded him 30 days to submit the requested evidence.

In a letter dated December 12, 2017, appellant related that the doctor he saw in 2008 had destroyed his medical records after seven years. He noted that his right eye never healed after the November 20, 2008 employment incident and stated that his optometrist indicated that this was due to a trauma that caused scar tissue. Appellant indicated that he wanted to be examined by an ophthalmologist to verify his condition and be evaluated for a schedule award. He requested the name of an ophthalmologist that conducted schedule award evaluations and additionally asked if he could use the existing OWCP file number for an eye examination and evaluation.

By decision dated December 26, 2017, 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 November 20, 2008 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant subsequently submitted a report dated July 11, 2018 from Dr. Paul Kowalski, a Board-certified ophthalmologist. Dr. Kowalski noted that appellant had been evaluated on January 17 and 23, February 22, and July 11, 2018. He conducted bilateral eye examinations, including confrontation visual fields testing, a slit lamp examination, and a posterior segment examination, and he additionally measured intraocular pressure (applanation). Dr. Kowalski stated, "general memo: eye infection eye injury" and indicated that appellant was experiencing

unstable bilateral intraocular pressure. He diagnosed right eye glaucoma secondary to eye trauma, bilateral dry eye syndrome of the lacrimal glands, bilateral age-related nuclear cataracts, bilateral age-related cortical cataracts, and left eye low-tension glaucoma. Dr. Kowalski opined that the traumatic angle recession in appellant's right eye was consistent with the work-related injury that he described. He additionally discussed the possibility of sleep apnea as related to appellant's left eye low-tension glaucoma. Dr. Kowalski related that, on April 19, 2018, appellant underwent right eye selective laser trabeculoplasty and on May 3, 2018 he underwent left eye selective laser trabeculoplasty. He additionally prescribed medication.

In an undated letter, appellant indicated that Dr. Kowalski's medical records explained that his injury was related to the November 20, 2008 employment incident. He indicated that, according to Dr. Kowalski, his condition would continue to deteriorate if his eye pressure could not be controlled. Appellant related that he was going to need additional surgeries and medications as described in Dr. Kowalski's medical reports, and he stated that he would like to move forward with a schedule award. He additionally asked if he could use the case file number for medication and medical examinations.

On October 22, 2018 appellant requested reconsideration. In an accompanying letter dated July 12, 2018, he indicated that Dr. Kowalski's medical report established that he sustained an injury when ceiling debris fell into his eye while at work on November 20, 2008.

By decision dated January 4, 2019, OWCP modified its December 26, 2017 decision, finding that the evidence of the record established a medical diagnosis in connection with his accepted November 20, 2008 employment incident. However, it continued to deny appellant's claim, finding that the evidence of record was insufficient to establish causal relationship between appellant's diagnosed bilateral eye conditions and the accepted November 20, 2008 employment incident.

### **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

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

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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>

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.<sup>7</sup> 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.<sup>8</sup> Second, the employee must submit evidence, in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>9</sup>

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.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish bilateral eye conditions causally related to the November 20, 2008 accepted employment incident.

In support of his claim, appellant submitted a July 11, 2018 report from Dr. Kowalski. Dr. Kowalski conducted bilateral eye examinations during evaluations from January through July 2018 and indicated that appellant was experiencing unstable bilateral intraocular pressure. He diagnosed right eye glaucoma secondary to eye trauma, bilateral dry eye syndrome of the lacrimal glands, age-related bilateral nuclear cataracts, bilateral age-related cortical cataracts, and left eye low-tension glaucoma. Dr. Kowalski opined that the traumatic angle recession in appellant's right eye was consistent with the work-related injury that he described. He related that on April 19, 2018 appellant underwent right eye selective laser trabeculoplasty and on May 3, 2018 he underwent left eye selective laser trabeculoplasty. While he stated that appellant's right eye traumatic angle was consistent with the work-related injury that he described, Dr. Kowalski did not describe the history of appellant's November 20, 2008 employment incident. As previously noted, the opinion of the physician must be based on a complete factual and medical background.<sup>11</sup>

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<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *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); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

<sup>8</sup> *D.R.*, Docket No. 20-1104 (issued January 29, 2021); *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>9</sup> *Id.*; *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005).

<sup>10</sup> *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

<sup>11</sup> *Id.*

Additionally, he does not explain how appellant's accepted November 20, 2008 employment incident physiologically caused his diagnosed conditions. The Board has held that medical opinion evidence should offer a medically-sound explanation of how the specific employment incident or work factors physiologically caused the injury.<sup>12</sup> As such, these medical reports are insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing that his bilateral eye conditions are causally related to his accepted November 20, 2008 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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 bilateral eye conditions causally related to the accepted November 20, 2008 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 4, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> See *H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).