United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
and	)	**Docket No. 21-1205**
	)	**Issued: January 13, 2022**
DEPARTMENT OF HOMELAND SECURITY, U.S. SECRET SERVICE, Washington, DC, Employer	)	

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
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On August 4, 2021 appellant filed a timely appeal from a March 11, 2021 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.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted January 17, 2021 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the March 11, 2021 decision, appellant submitted additional evidence to OWCP. 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 January 20, 2021 appellant, then a 48-year-old law enforcement officer, filed a traumatic injury claim (Form CA-1) alleging that on January 17, 2021 he sustained trauma to the body, including soreness in the shoulders, neck, back, and hips and possible whiplash, due to a motor vehicle accident (MVA), which occurred while in the performance of duty. He reported that he was being transported in a government vehicle after the completion of a protective assignment when the vehicle he was traveling in was rear ended by another vehicle. On the reverse side of the claim form the employing establishment acknowledged that appellant was injured in the performance of duty and indicated that appellant's injury was caused by a third party. Appellant stopped work on January 17, 2021 and returned to work on January 20, 2021.

In a development letter dated January 28, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him as to the type of additional factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In support of his claim, appellant submitted a January 17, 2021 attending physician's report (Form CA-20) from Dr. Uthman Alamoudi, a Board-certified emergency medicine, who examined him on January 17, 2021. Dr. Alamoudi related that appellant was a backseat passenger in a car that was rear ended. He noted that appellant had been wearing a seatbelt and that no air bag had deployed. On examination, Dr. Alamoudi noted that appellant experienced mild neck pain on the right side. He diagnosed neck muscle strain. Dr. Alamoudi checked a box marked "No," indicating that he did not believe appellant's condition was caused or aggravated by an employment activity. He advised that appellant could resume work immediately. In a January 17, 2021 employing establishment medical clearance checklist, Dr. Alamoudi diagnosed motor vehicle collision, noting that appellant was injured in a motor vehicle collision.

In Part B, attending physician's report, of a January 17, 2021 authorization for examination and/or treatment (Form CA-16), Dr. Samantha Noll, an emergency medicine physician, related appellant's history of injury, including the fact that he was in a government vehicle at the time of the alleged injury. She marked boxes indicating "Yes" and "No" as to whether she believed the condition was caused or aggravated by the employment activity. Dr. Noll diagnosed mild neck pain and advised that appellant could return to work without restrictions.

OWCP also received a January 17, 2021 police report signed by an investigating police officer, which listed appellant as a backseat passenger in the car that was rear ended that morning. The report indicated that appellant sustained a possible injury and that all vehicle occupants were taken to the hospital as a precaution.

In an emergency medical service (EMS) conversion record of even date, an emergency medical technician (EMT) indicated that, on that date, appellant was transported to a hospital from the scene of the accident. The record related appellant's history of injury and indicated symptoms of neck injury and malaise. A second EMS report of even date repeated appellant's history of injury and noted symptoms of neck injury and malaise.

By decision dated March 11, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in

connection with the accepted January 17, 2021 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 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]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[9] 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 incident identified by the employee.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his diagnosed neck strain was causally related to the accepted January 17, 2021 employment incident.

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[3] *Supra* note 1.

[4] *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *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).

[10] *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).

Dr. Alamoudi diagnosed a neck muscle strain in the January 17, 2021 Form CA-20; however, he checked a box marked "No" indicating that he did not believe that the condition was caused or aggravated by the employment activity. The Board has held that evidence that negates causal relationship is of no probative value.[11] While this evidence is sufficient to establish a valid medical diagnosis, it is insufficient to establish causal relationship.

In a January 17, 2021 employing establishment medical clearance checklist, Dr. Alamoudi diagnosed motor vehicle collision noting that appellant was injured in a motor vehicle collision. However, he did not provide an opinion regarding causal relationship. 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.[12] Therefore, this report is insufficient to establish appellant's traumatic injury claim.

Appellant also submitted two January 17, 2021 EMS reports not signed by a physician. The Board has held that medical reports signed solely by an EMT, physician assistant, registered nurse, or medical assistant are of no probative value as such healthcare providers are not considered physicians as defined under FECA and are, therefore, not competent to provide medical opinions.[13] Consequently, their medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits.

OWCP also received a January 17, 2021 Form CA-16 wherein Dr. Noll related appellant's history of injury, including the fact that he was in a government vehicle at the time of the alleged injury. She diagnosed mild neck pain and advised that appellant could return to work without restrictions. Dr. Noll marked boxes indicating both "Yes" and "No" as to whether the injury was caused or aggravated by the employment activity. The Board has long held that medical opinions that are equivocal in nature are of diminished probative value.[14] Therefore, this report is also of no probative value and is insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing causal relationship between his diagnosed condition and the accepted January 17, 2021 employment incident, the Board finds that he 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.

[11] *T.W.*, Docket No. 19-0677 (issued August 16, 2019).

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

[13] 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); *D.B.*, Docket No. 16-1219 (issued November 8, 2016) (an EMT is not considered a physician under FECA); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners are not considered physicians under FECA); *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).

[14] *T.M.*, Docket No. 08-975 (issued February 6, 2009).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his diagnosed neck strain was causally related to the accepted January 17, 2021 employment incident.[15]

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2021 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: January 13, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[15] A completed Form CA-16 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. See 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).