United States Department of Labor
Employees' Compensation Appeals Board

V.S., Appellant	)	
	)	
and	)	**Docket No. 22-0105**
	)	**Issued: July 18, 2022**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION, Fort Dix, NJ, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On October 30, 2021 appellant filed a timely appeal from a June 1, 2021 merit decision and an October 25, 2021 nonmerit 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]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the October 25, 2021 decision, appellant submitted additional evidence to the Board. 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*.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a medical condition causally related to the accepted April 16, 2021 employment incident; and (2) whether OWCP properly determined that he had abandoned his request for an oral hearing.

FACTUAL HISTORY

On April 19, 2021 appellant, then a 45-year-old maintenance worker supervisor, filed a traumatic injury claim (Form CA-1) alleging that at 8:00 a.m. on April 16, 2021 he sustained a left leg injury when stepping down after stacking 94-pound bags of cement while in the performance of duty. He indicated that he stepped on top of a cement bag to place another cement bag on top. When appellant placed a third bag of cement, he stepped back down on to the floor and immediately felt sharp pain over the top of his left leg, the back of his left leg, and the left side of his groin area. His whole leg started to go numb and, by 11:00 a.m., he could not feel anything. On the reverse side of the claim form appellant's supervisor, N.F., acknowledged that appellant was injured in the performance of duty. Appellant stopped work on April 19, 2021.[3]

In support of his claim, appellant submitted an April 16, 2021 work restriction note bearing an illegible signature, which diagnosed leg, hip, and groin pain status post injury and indicated that appellant was unable to work.

In a work restriction form dated April 19, 2021, Dr. Fotios Tjoumakaris, a Board-certified orthopedic surgeon, diagnosed left hip femoroacetabular impingement (FAI) and checked a box indicating that the injury was causally related to the April 16, 2021 employment incident. Dr. Tjoumakaris advised that appellant should perform sedentary-duty work and should not lift or push below waist level on the left side.

On April 23, 2021 the employing establishment offered appellant modified-duty work in line with the April 19, 2021 work restrictions. In an April 26, 2021 memorandum to OWCP, the employing establishment indicated that appellant had refused the job offer. The employing establishment requested an immediate suitability determination.

In an April 27, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant subsequently submitted a statement signed on April 26, 2021, indicating that he had accepted the employing establishment's job offer.

In response to OWCP's questionnaire, appellant submitted a statement dated May 3, 2021 relating his history of treatment. He indicated that he had not sustained any other injuries between

[3] OWCP assigned the present claim OWCP File No. xxxxxx038. Appellant has a prior accepted claim for a tom labrum in the left hip and lumbar strain under OWCP File No. xxxxxx576. OWCP has administratively combined these claims, with OWCP File No. xxxxxx038 designated as the master file.

the date of injury and the date he reported the injury and stated that he did not know whether his claimed injury was related to his previous injury.

By decision dated June 1, 2021, OWCP denied appellant's traumatic injury claim, finding that he had not submitted sufficient evidence to establish a medical diagnosis in connection with the accepted April 16, 2021 employment incident. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

OWCP continued to receive medical evidence.

On June 15, 2021 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a September 10, 2021 letter, OWCP's hearing representative notified appellant that his oral hearing was scheduled for October 14, 2021 at 10:00 a.m. Eastern Standard Time (EST). He was instructed to "call the toll-free number listed below and when prompted, enter the pass code (also listed below)." The hearing representative mailed the notice to appellant's last known address of record. Appellant did not appear for the hearing and no request for postponement of the hearing was made.

By decision dated October 25, 2021, OWCP determined that appellant had abandoned his request for an oral hearing, as he had received written notification of the hearing 30 days in advance, but failed to appear. It further noted that there was no indication in the record that appellant had contacted the Branch of Hearings and Review either prior to or subsequent to the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[4] 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,[5] 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.[6] 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.[7]

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

[4] *Supra* note 1.

[5] *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).

[6] *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).

[7] *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).

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 and place, and in the manner alleged. 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 the specific employment incident identified by the claimant.[10]

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

In a work restriction form dated April 19, 2021, Dr. Tjoumakaris diagnosed left hip FAI and checked a box indicating that the injury was causally related to the April 16, 2021 employment incident. The Board finds that evidence of record establishes a diagnosis of left hip FAI in connection with the April 16, 2021 employment incident.

The Board further finds, however, that the case is not in posture for decision with regard to whether the diagnosed medical conditions are causally related to the accepted April 16, 2021 employment incident. As the medical evidence of record establishes diagnosed medical conditions, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship.[11] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.[12]

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted April 16, 2021 employment incident. The Board further finds, however that the case is not in posture for decision with regard to whether the diagnosed medical condition is causally related to the accepted April 16, 2021 employment incident.

[8] *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).

[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] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] *See F.D.*, 21-1045 (issued December 22, 2021).

[12] In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2021 decision of the Office of Workers' Compensation Programs set aside, and the October 25, 2021 decision of the Office of Workers' Compensation Programs is set aside as moot. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 18, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board