United States Department of Labor
Employees' Compensation Appeals Board

R.T., Appellant	)	
and	)	**Docket No. 22-0231**
	)	**Issued: July 22, 2022**
DEPARTMENT OF THE AIR FORCE, DAVIS-MONTHAN AIR FORCE BASE, Tucson, AZ, 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
JANICE B. ASKIN, Judge

JURISDICTION

On November 24, 2021 appellant filed a timely appeal from a November 4, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted March 5, 2020 employment incident.

FACTUAL HISTORY

On September 20, 2021 appellant, then a 67-year-old aircraft mechanic, filed a traumatic injury claim (Form CA-1) alleging that on March 5, 2020 he injured his middle lower back and

[1] 5 U.S.C. § 8101 *et seq*.

upper hip area when attempting to hook up a low trailer onto a warehouse tug pintle hook while in the performance of duty. He explained that the tongue from the low trailer slipped off the tug pintle hook, falling to the ground, and he felt discomfort in his middle lower back when he picked up the fallen tongue by himself.

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

Appellant's supervisor submitted a report dated March 6, 2020, which accorded with appellant's account of the March 5, 2020 employment incident. The report indicated that appellant returned to restricted duty for seven days and had been advised by a physician not to lift more than 15 pounds and no lifting whatsoever below the waist.

An x-ray scan of the lumbar spine dated March 6, 2020 interpreted by Dr. Tyson Steven Chadaz, a Board-certified diagnostic radiologist revealed mild dextroconvex scoliosis of the lumbar spine centered at L3, as well as mild multilevel degenerative disc disease and moderate facet hypertrophy of the lower lumbar spine.

A March 6, 2020 urgent care report from Michael A. Pischke, a physician assistant, related appellant's history of injury. Physical examination of the back demonstrated mild muscle spasms of the quadratus lumborum and pain in this area when bending or twisting. Mr. Pischke diagnosed lumbar pain and noted that appellant's back appeared within normal limits with degenerative changes.

Appellant submitted an incomplete response to OWCP's development questionnaire dated October 14, 2021.

By decision dated November 4, 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 March 5, 2020 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[2] 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,[3] 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

[2] *Id*.

[3] *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).

employment injury.[4] 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.[5]

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. The first component is whether 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 and can be established only by medical evidence.[6]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] 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.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted March 5, 2020 employment incident.

In support of his claim, appellant submitted a March 6, 2020 urgent care report from Mr. Pischke, 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

[4] *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).

[5] *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).

[6] *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).

[7] *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).

[8] *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).

to provide a medical opinion.[9] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[10]

The remaining medical evidence of record consists of the March 6, 2020 x-ray scan of the lumbar spine. The Board has held that diagnostic tests, standing alone, lack probative value.[11] Accordingly, the March 6, 2020 diagnostic report is also insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted March 5, 2020 employment incident, the Board finds that appellant has not met his burden of proof.[12]

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 in connection with the accepted March 5, 2020 employment incident.

[9] 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).

[10] *See T.S.*, Docket No. 20-0343 (issued July 15, 2020); *K.W.*, 59 ECAB 271, 279 (2007).

[11] *D.D.*, Docket No. 20-0626 (issued September 14, 2020); *B.M.*, Docket. No. 19-1341 (issued August 12, 2020).

[12] *See C.T.*, Docket No. 20-0020 (issued April 29, 2020).

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board