

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

V.P., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
HUNTER HOLMES MCGUIRE VA MEDICAL)
CENTER, Richmond, VA, Employer)

Docket No. 22-0373
Issued: July 18, 2022

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 10, 2022 appellant filed a timely appeal from a November 24, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ The Board notes that, following the November 24, 2021 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.*

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a rib contusion and/or concussion causally related to the accepted September 29, 2021 employment incident.

FACTUAL HISTORY

On October 13, 2021 appellant, then a 46-year-old hospital housekeeping management employee, filed a traumatic injury claim (Form CA-1) alleging that on September 29, 2021 he suffered a concussion as well as a bruised rib when he slipped and fell onto a floor wax stripping machine he was using while in the performance of duty. On the reverse side of the form, appellant's supervisor indicated that he was not injured in the performance of duty.

In a supplemental statement dated September 29, 2021, appellant explained that he was working the emergency room stripping the floor when he slipped on the stripper and struck his head on the buffer. The buffer kept spinning and struck him on the face and ribs.

In support of his claim, appellant submitted a hospital discharge report dated September 29, 2021 from Dr. Christopher Hughes, an osteopath specializing in emergency medicine. Dr. Hughes related that appellant was seen for right rib pain and a head injury. He diagnosed a rib contusion and mild brain injury (concussion). Appellant was also provided with a work excuse note, wherein Dr. Hughes noted that appellant was disabled from work due to injury and could return to work as of October 4, 2021.

A computerized tomography (CT) scan report of September 29, 2021 related that appellant's head and neck showed fluid collection, however it was unknown where the small amount of fluid was coming from.

In a development letter dated October 22, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and afforded him 30 days to respond.

In response, appellant submitted a statement from his colleague, G.L., who stated that on September 29, 2021 he and appellant were assigned to strip and wax the floor outside of the emergency department. As they were working, appellant turned to face G.L., lost his balance, and fell on the floor. G.L. notified others of appellant's fall.

By decision dated November 24, 2021, OWCP accepted that the September 29, 2021 employment incident occurred, as alleged, and that a medical condition had been diagnosed; however, it denied appellant's claim as the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury and/or a medical condition causally related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 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 whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established is that 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 and can be established only by medical evidence.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ 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.⁹

³ *Id.*

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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 rib contusion and/or concussion causally related to the accepted September 29, 2021 employment incident.

In a medical report dated September 29, 2021, Dr. Hughes provided appellant with a discharge report, discharge instructions, and a work excuse note for a rib contusion and concussion. He, however, did not provide a medical opinion regarding causal relationship. The Board has held that medical evidence that does not offer an opinion on causal relationship is of no probative value.¹⁰ This report from Dr. Hughes is therefore insufficient to establish causal relationship.

OWCP also received a CT scan report dated September 29, 2021. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship, as they do not provide an opinion as to whether the employment incident caused any of the diagnosed conditions.¹¹ Accordingly, this diagnostic study is insufficient to establish appellant's claim.

As there is no medical evidence of record establishing that appellant's rib contusion and/or concussion were causally related to the accepted employment incident, the Board finds that appellant 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a rib contusion and/or concussion were causally related to the accepted September 29, 2021 employment incident.

¹⁰ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ See *K.C.*, Docket No. 20-1325 (issued May 5, 2021); *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

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

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