

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

<p>N.F., Appellant</p>)	
)	
and)	Docket No. 21-1145
)	Issued: January 25, 2023
DEPARTMENT OF THE INTERIOR, ISLE)	
ROYALE NATIONAL PARK SERVICE,)	
Houghton, MI, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 20, 2021 appellant filed a timely appeal from a June 21, 2021 merit decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act¹ (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 causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On July 30, 2019 appellant, then a 29-year-old maintenance worker, filed a traumatic injury claim (Form CA-1) alleging that on July 24, 2019 he sustained a left testicle injury due to vigorous

¹ 5 U.S.C. § 8101 *et seq.*

weed trimming, raking, and walking long distances in hot weather while in the performance of duty. On the reverse side of the claim form the employing establishment acknowledged that appellant was injured in the performance of duty. Appellant stopped work on July 25, 2019.

In support of his claim, appellant submitted a July 25, 2019 patient care record from Michele Devlin, an emergency medical technician (EMT), relating that appellant experienced a swollen and painful varicose vein in his left groin and testicle area after performing heavy physical labor. Ms. Devlin noted that appellant had been diagnosed with a varicose vein in his groin and testicle area in 2012 and that it tended to swell and become painful when engaged in heavy physical labor. She consulted with “Dr. Patton” who advised that appellant should rest, ice, elevate, and support the area until he could undergo an ultrasound.

On August 2, 2019 appellant underwent a testicular ultrasound, interpreted by Dr. Paul Lyle, a Board-certified diagnostic radiologist, which revealed a nearly one centimeter epididymal cyst on the right testicle, small epididymal cyst on the left testicle, small amount of free fluid about each testicle, and large varicocele on the left testicle. Dr. Lyle noted that the ultrasound revealed no change in comparison to appellant’s previous March 22, 2018 examination.

In an August 2, 2019 emergency room report, Dr. Tara Robinette, a Board-certified physician specializing in emergency medicine, related appellant’s history of pain and swelling in the left testicle starting one week prior to his emergency room visit. It had improved with ice and rest, but appellant subsequently began to experience pain in the right testicle radiating into his groin. Dr. Robinette noted that appellant had a known varicocele on the left side. An examination revealed no testicular swelling, lesions, tenderness, or hernia. Dr. Robinette explained that appellant’s urinalysis and ultrasound were “normal besides that varicocele that we see on the left side.” She diagnosed left testicular pain with unclear etiology and recommended that appellant limit his activity, wear supportive underwear, ice, and take acetaminophen.

On August 4, 2019 appellant underwent a computerized tomography (CT) scan of his abdomen and pelvis, which revealed no abnormalities.

In an emergency room report of even date, Dr. Dawn Nulf, a Board-certified physician specializing in emergency medicine, summarized appellant’s history and findings from his August 2, 2019 emergency room visit, and noted his history of left testicular varicocele. Appellant returned to the emergency room, reporting pain in his back, groin, testicles, and the right side of his abdomen, as well as orthostatic dizziness, fatigue, headaches, mild anorexia, diarrhea, nausea, urinary urgency, occasional paresthesia, and bilateral upper leg muscle soreness and sensation of weakness. An examination revealed voluntary abdominal guarding in the right lower quadrant, mild abdominal tenderness in the right upper quadrant, moderate abdominal tenderness in the right lower quadrant, minimal inguinal and proximal scrotal and glans tenderness, and mild bilateral tenderness of the medial proximate thighs. Dr. Nulf noted that appellant’s CT scan revealed moderate retained stomach contents and right transverse colon stool. She diagnosed right lower abdominal pain and right groin pain and advised appellant to take laxatives and increase his fiber intake.

OWCP also received an August 30, 2019 statement from appellant. Appellant reported that his groin pain began after working several days in extreme heat and humidity. After seeking

medical treatment from an employing establishment EMT, he rested and drank fluids, as advised, but his pain did not improve enough for him to return to work. When the pain worsened, appellant visited the emergency room twice within three days. Drs. Robinette and Nulf both related appellant's condition to dehydration with electrolyte imbalance due to work-related physical labor in extreme heat and humidity. Appellant also informed both physicians that he had severe abdominal pain spreading to his lower back and right side. However, neither physician documented the possible dehydration, nor spreading pain in their report.

In development letters dated September 16 and 20, 2019, OWCP advised appellant that, although he submitted a claim for a traumatic injury, he described conditions which occurred over a period longer than one workday or shift and, thus, his claim had been converted to an occupational disease claim. It advised him of the type of medical evidence necessary to establish his claim and requested a narrative medical report from appellant's treating physician, which contained a detailed description of findings and diagnoses, explaining how the reported work incident caused or aggravated his medical condition. OWCP afforded appellant 30 days to submit the necessary evidence.

On October 2, 2019 appellant responded to OWCP's development letter. His response letter reiterated his prior statement, but provided additional details. Appellant noted that his medical provider was unwilling to provide a diagnosis other than "pain." He further explained that, though he had discussed his work conditions with Dr. Nulf, she had since left the employment of the emergency department where appellant was treated and was, thus, unable to assist in the development of his case.

OWCP received a September 29, 2019 note by Dr. Robinette. Dr. Robinette related appellant's history of treatment, adding that Dr. Nulf diagnosed abdominal pain, groin pain, and possible constipation. She further explained that "pain" had always been an acceptable diagnosis within the provider group, and that no insurance company had ever denied a claim due to this terminology.

By decision dated June 21, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted factors of his federal employment. 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 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,² 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

² *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.³ 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.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁵

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁷ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted factors of his federal employment.

In support of his claim, appellant submitted an emergency room report dated August 2, 2019, wherein Dr. Robinette diagnosed left testicular pain. In an August 4, 2019 emergency room report, Dr. Nulf diagnosed right lower abdominal pain and right groin pain. In a September 29, 2019 note, Dr. Robinette related appellant's history of treatment, reporting that Dr. Nulf diagnosed abdominal pain, groin pain and possible constipation. She further explained that "pain" had always been an acceptable diagnosis within the provider group and that no insurance company had ever denied a claim due to this terminology. However, the Board has held that pain is a description of a symptom, not a diagnosis of a medical condition.⁹ It is appellant's burden of proof to obtain and submit medical documentation containing a firm diagnosis causally related to the accepted

³ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *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).

⁵ *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁸ *Id.*; *Victor J. Woodhams*, *supra* note 55.

⁹ *See K.S.*, Docket No. 19-1433 (issued April 26, 2021); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

employment incident.¹⁰ These reports are, therefore, insufficient to meet appellant's burden of proof.

Appellant also submitted a July 25, 2019 patient care record from an EMT. The Board has held that medical reports signed solely by an EMT, physician assistant, registered nurse, or medical assistant are of no probative value because these healthcare providers are not considered physicians as defined under FECA and are, therefore, not competent to provide medical opinions.¹¹ Consequently, their medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits.

The remaining medical evidence consisted of an August 2, 2019 testicular ultrasound and an August 4, 2019 CT scan of appellant's abdomen and pelvis. The Board has held, however, that diagnostic testing reports, standing alone, lack probative value as they do not address the relationship between the accepted employment factors and a diagnosed condition.¹² For this reason, this evidence is also insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence establishing a diagnosed medical condition causally related to the accepted factors of his federal employment, 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 a diagnosed medical condition causally related to the accepted factors of his federal employment.

¹⁰ *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹¹ 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).

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

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 25, 2023
Washington, DC

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

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

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