United States Department of Labor
Employees' Compensation Appeals Board

P.T., Appellant	)	
and	)	**Docket No. 21-0553**
	)	**Issued: July 6, 2023**
DEPARTMENT OF THE ARMY, McALESTER ARMY AMMUNITION PLANT, McAlester, OK, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 24, 2021 appellant filed a timely appeal from a January 25, 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]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, on appeal, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Boards 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*.

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted September 11, 2020 employment incident.

FACTUAL HISTORY

On December 12, 2020 appellant, then a 27-year-old explosives operator, filed a traumatic injury claim (Form CA-1) alleging that on September 11, 2020 he sustained a herniated disc from L1 to S1 and a fracture of the back at L5 when lifting unweighted boxes of pellets from the floor level to palletize them, approximately 192 times that shift, while in the performance of duty. On the reverse side of the claim form, the employing establishment contended that appellant was not injured in the performance of duty, noting that, while appellant reported that his back hurt, he did not indicate when or how he had injured his back. Appellant did not stop work.

In a mishap report dated September 11, 2020, the employing establishment reported that appellant was working overtime during the nightshift on September 11, 2020 after five consecutive days of work. Appellant reported to C.W., an employing establishment team lead that, during his September 11, 2020 operational shift, his back was hurting and he may have to go to the hospital. On Monday, September 14, 2020 he called-in to work to report that he went to the hospital after injuring discs in his back. Appellant's supervisor, J.M., was not available to take his statement, so appellant reported the incident to J.L., the night shift quarter manager.

In a December 22, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

In an undated response, appellant further described the September 11, 2020 employment incident. He related that on that date he was working overtime on the nightshift busting pellets into trays, dividing them into boxes until full, placing a lid on top, and then stacking six or seven boxes on top of each other to create rows. Appellant reported performing this task approximately 192 times that night. He explained that, during most of the process, he stayed in a bent position at the waist as everything was on floor level, causing him to lift the unknown weight from each box off the floor. Appellant noted that he could feel pain increasing throughout the night, but pushed through it, and his coworkers expressed concern because he was favoring one side and moving more slowly. He informed his team lead C.W., that he may need to go to the emergency room, but would wait and see if there was improvement. Appellant also notified his building supervisor, J.M., who informed appellant that he would not write a report, but if he called out on the following Monday, he would explain why appellant was unable to report for duty. He reported that, on his way home, the pain became unbearable causing him to seek emergency medical treatment.

In a mishap report dated September 14, 2020, C.W. reported that, on September 12, 2020 at approximately 4:00 a.m., appellant informed him that his back was hurting and he was considering going to the hospital. He told appellant that he needed to talk to his supervisor, J.M.,

so this incident could be recorded. C.W. then informed J.M. of the incident and noted that appellant never stated if he was injured at work.

In a September 28, 2020 statement, J.M., an employing establishment supervisor, reported that on the morning of September 12, 2020 appellant notified him that his back was bothering him from his 12-hour nightshift after volunteering to work at his building because he was shorthanded. Appellant reported that he was not going to see a physician and would try taking acetaminophen and a hot shower first. J.M. informed appellant that he would have to prepare an incident report if anything changed. He noted that appellant was on leave for two weeks following the incident and later found out that appellant had to go to the emergency room following his shift.

In a September 29, 2020 statement, D.C., a coworker, reported that appellant was not complaining of any pain when appellant arrived for his shift. He noted that it was not until their last run that appellant could not bend at the waist and he instructed appellant to sit down since he was unable to lid the boxes.

In a September 29, 2020 statement, T.M., a coworker, reported that on September 11, 2020 appellant complained of back pain after his first break, which continued to worsen. Appellant called him the following day and informed him that he went to the emergency room.

In a September 29, 2020 statement, M.N., a coworker, reported that on September 11, 2020 appellant complained of back pain, but stated that he would be "ok." The following day, appellant called and informed him that he went to the emergency room.

By letter dated January 12, 2021, the employing establishment responded to OWCP's development questionnaire. It concurred with appellant's statements pertaining to the September 11, 2020 employment incident and acknowledged that appellant was injured in the performance of duty.

By decision dated January 25, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical condition in connection with the accepted September 11, 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[3] 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,[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

[3] *Id.*

[4] *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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.[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 first must be determined whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[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 incident identified by the employee.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted September 11, 2020 employment incident.

In support of his claim, appellant submitted additional factual evidence; however, he did not submit any medical evidence.[10] As there is no medical evidence of record to establish a diagnosed medical condition in connection with the accepted September 11, 2020 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.

[5] *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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] *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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] *H.M.*, Docket No.22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *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] *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *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).

[10] *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *S.K.*, Docket No. 22-0592 (issued July 20, 2022).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted September 11, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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