United States Department of Labor
Employees' Compensation Appeals Board

D.P., Appellant	)	
and	)	**Docket No. 23-0370**
	)	**Issued: July 11, 2023**
DEPARTMENT OF THE INTERIOR, U.S. PARK POLICE, Washington, DC, 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 January 19, 2023 appellant filed a timely appeal from a December 19, 2022 merit decision and a January 6, 2023 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]

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted November 5, 2022 employment incident; and

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the January 6, 2023 decision, OWCP received additional evidence. 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) whether OWCP properly denied his request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 6, 2022 appellant, then a 51-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on November 5, 2022 he experienced pain in his right wrist and elbow when he tripped during a search of a truck while in the performance of duty. He stopped work on November 6, 2022.

In a November 7, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, OWCP received an undated authorization for examination and/or treatment (Form CA-16). In Part B of the Form CA-16, an attending physician's report, an unidentified healthcare provider diagnosed a right elbow injury and checked a box marked "Yes" to indicate a belief that the condition was caused or aggravated by an employment activity. Appellant returned to full-duty work beginning on November 10, 2022.

In a November 8, 2022 visit note, Regina Kemper, a physician assistant, noted that appellant presented for a work-related injury sustained on November 5, 2022 when he slipped during field training with his K9, causing right elbow and wrist pain. She diagnosed a right elbow injury and provided an arm sling.

An x-ray report of appellant's right elbow dated November 8, 2022 noted an impression of mild-to-moderate degenerative changes and no evident fractures.

In a November 8, 2022 note, an unidentified healthcare provider indicated a date of injury of November 5, 2022, diagnosed a right elbow injury, and returned appellant to full-duty work beginning on November 10, 2022.

In a form dated November 8, 2022, appellant related that he was performing his duties as a K9 police officer when he tripped and fell during training and developed pain in his right elbow and wrist. He indicated that he has not had similar injuries before.

By decision dated December 19, 2022, OWCP accepted that the November 5, 2022 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis from a qualified physician in connection with the accepted November 5, 2022 employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

On January 4, 2023 appellant requested reconsideration of the December 19, 2022 decision and submitted a diagnosis addendum dated January 4, 2023, in which Ms. Kemper listed right elbow sprain.

By decision dated January 6, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

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 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. There are two components involved in establishing fact of injury. The first component is whether the employee 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.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] The opinion of the physician must be based upon a complete factual and medical background, 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.[9]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted November 5, 2022 employment incident.

In support of his claim, appellant submitted a November 8, 2022 visit note from Ms. Kemper, a physician assistant, diagnosing a right elbow injury related to a November 5, 2022 work incident. However, the Board has long held that certain healthcare providers such as physician assistants and nurse practitioners are not considered qualified "physician[s]" as defined under FECA and thus their findings, reports and/or opinions, unless cosigned by a qualified

[3] *Supra* note 1.

[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] *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

physician, will not suffice for purposes of establishing entitlement to FECA benefits.[10] Accordingly, these reports are insufficient to establish a medical diagnosis.[11]

In an undated attending physician's report, an unidentified healthcare provider diagnosed a right elbow injury and checked a box marked "Yes" to indicate that the condition was caused or aggravated by an employment activity. Similarly, in a November 8, 2022 note, an unidentified healthcare provider indicated a November 5, 2022 date of injury and diagnosed a right elbow injury. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.[12] Thus, these reports have no probative value and are insufficient to establish a medical diagnosis.

The remaining medical evidence of record includes a November 8, 2022 x-ray report. The Board has held that diagnostic tests, standing alone, lack probative value.[13] Therefore, this evidence is also insufficient to establish a medical diagnosis.

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted November 5, 2022 employment incident, the Board finds that he 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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.[14] OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.[15] One such limitation is that the request for reconsideration

[10] Section 8102(2) of FECA provides as follows: (2) 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (September 2020); *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 S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

[11] *R.H.*, Docket No. 21-1382 (issued March 7, 2022); *S.E.*, Docket No. 21-0666 (issued December 28, 2021).

[12] *See T.P.*, Docket No. 21-0868 (issued December 21, 2021); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[13] *E.W.*, Docket No. 20-0338 (issued October 9, 2020); *D.D.*, Docket No. 20-0626 (issued September 14, 2020); *B.M.*, Docket No. 19-1341 (issued August 12, 2020).

[14] This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application." 5 U.S.C. § 8128(a).

[15] 20 C.F.R. § 10.607.

must be received by OWCP within one year of the date of the decision for which review is sought.[16] A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.[17] When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.[18]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a relevant legal argument not previously considered by OWCP. Consequently, he was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of his reconsideration request, appellant submitted an addendum dated January 4, 2023 which listed right elbow sprain. The Board has held that evidence which merely duplicates, or is substantially similar to evidence already of record, has no evidentiary value and does not constitute a basis for reopening a case.[19] Thus, Ms. Kemper's January 4, 2023 addendum does not constitute relevant and pertinent new evidence not previously considered by OWCP. Appellant, therefore, was not entitled to a review of the merits of his claim based on the third above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.[20]

[16] *Id*. § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees Compensation System (iFECS). *Id*. at Chapter 2.1602.4b.

[17] 20 C.F.R. § 10.606(b)(3).

[18] *Id*. at § 10.608(a), (b).

[19] *M.F.*, Docket No. 21-1221 (issued March 28, 2022); *R.B.*, Docket No. 21-0035 (issued May 13, 2021); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *M.O.*, Docket No. 19-1677 (issued February 25, 2020); *Richard Yadron*, 57 ECAB 207 (2005); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

[20] *See D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted November 5, 2022 employment incident. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).[21]

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2022 and January 6, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 11, 2023
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

[21] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).