

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

C.R., Appellant)	
)	
and)	Docket No. 22-0734
)	Issued: March 3, 2023
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS AND BORDER PROTECTION,)	
U.S. BORDER PATROL, FRESNO YOSEMITE)	
INTERNATIONAL AIRPORT, Fresno, CA,)	
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 14, 2022 appellant filed a timely appeal from a February 11, 2022 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the February 11, 2022 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUE

The issue is whether appellant has established a medical condition causally related to the accepted July 17, 2021 employment incident.

FACTUAL HISTORY

On August 24, 2021 appellant, then a 37-year-old customs and border protection agent, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2021 he injured his right elbow when lifting baggage from airline baggage tubs for inspection while in the performance of duty. He explained that the ligaments in his right elbow hurt with certain movements. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured while in the performance of duty. Appellant did not stop work.

In support of his claim, appellant submitted a September 30, 2021 progress note from Jessica Couch, a physician assistant, relating that he had right elbow pain for almost three months. Ms. Couch indicated that he reported that it began hurting while lifting bags for several hours at work and the pain had progressively worsened. Her examination revealed tenderness of the medial epicondyle. Ms. Couch diagnosed right elbow pain and noted likely medial epicondylitis.

In a development letter dated December 23, 2021, OWCP informed appellant of the deficiencies of his claim. It explained the type of evidence needed. OWCP afforded appellant 30 days to respond.

Appellant subsequently submitted a December 14, 2021 work status report from Dr. Kanwal Kher, Board-certified in pediatric nephrology, who diagnosed medial epicondylitis of the right elbow and indicated that appellant could return to work that day with restrictions, including no lifting, pushing, or pulling over 10 pounds.

In a December 22, 2021 medical report, Dr. Kher related that on July 17, 2021 appellant was moving luggage at work for several days when he experienced pain in his right elbow. Appellant reported that his elbow was sore at first and he did not seek medical attention. He went to urgent care in late September 2021, but the pain persisted and worsened. Appellant denied outside causation of injury including sports, hobbies, accidents, or other employment. Dr. Kher's examination of the right elbow revealed tenderness to palpation at the medial epicondyle. He diagnosed medial epicondylitis of the right elbow and recommended physical therapy. In a work status report of even date, Dr. Kher diagnosed medial epicondylitis of the right elbow and indicated that appellant could return to work that day with restrictions, including no lifting, pushing, or pulling over 10 pounds.

In reports dated January 5 and 19, and February 9, 2022, Dr. Kher again related appellant's account of injury at work on July 17, 2021 described his improvement with physical therapy, and diagnosed medial epicondylitis of the right elbow. On January 5, 2022 his examination of appellant's right elbow revealed minimal tenderness to palpation at the medial epicondyle. Dr. Kher's January 19, 2022 examination of the right elbow revealed minimal tenderness to palpation at the lateral and medial epicondyle. His February 9, 2022 examination of the right elbow revealed no abnormalities and he noted that appellant had achieved full functional status.

Appellant also submitted corresponding work status reports in which Dr. Kher diagnosed medial epicondylitis of the right elbow. On January 5, 2022 Dr. Kher indicated that appellant could return to work that day with restrictions, including no lifting, pushing, or pulling over 15 pounds. In January 19 and February 9, 2022 work status reports, he released appellant to full-duty work.

By decision dated February 11, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that his medical condition was causally related to the accepted July 17, 2021 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 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,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 an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred at the time, place, and in the manner alleged.⁷ The second component is whether the employment incident caused a personal injury.⁸

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

³ *Supra* note 1.

⁴ *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *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).

nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted July 17, 2021 employment incident.

In reports dated December 22, 2021, and January 5 and 19, and February 9, 2022, Dr. Kher related that appellant experienced elbow pain while lifting baggage at work on July 17, 2021 and described the progression of the pain after that date. He diagnosed medial epicondylitis of the right elbow. Appellant also submitted work status reports dated December 14 and 22, 2021 and January 5 and 19, and February 9, 2022 in which Dr. Kher diagnosed medial epicondylitis of the right elbow. However, none of Dr. Kher's reports offered an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹¹ For this reason, Dr. Kher's opinion is insufficient to meet appellant's burden of proof.

In support of his claim, appellant submitted a September 30, 2021 report from a physician assistant. However, certain healthcare providers such as physician assistants are not considered "physician[s]" as defined under FECA.¹² Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹³

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted July 17, 2021 employment incident, the Board finds that appellant 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.

¹⁰ *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).

¹¹ *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² 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. § 8102(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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).

¹³ *Id.*

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted July 17, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2023
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