United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 23-0967**
	)	**Issued: November 30, 2023**
DEPARTMENT OF THE NAVY, NAVAL FACILITIES ENGINEERING COMMAND, San Diego, 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
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On July 6, 2023 appellant filed a timely appeal from an April 10, 2023 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, following the April 10, 2023 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*.

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted January 9, 2023 employment incident.

FACTUAL HISTORY

On February 24, 2023 appellant, then a 58-year-old environmental engineer, filed a traumatic injury claim (Form CA-1) alleging that on January 9, 2023 he sustained a right shoulder injury when he tripped over a cone onto his right shoulder/arm as he was dragging a hose to a storm drain while in the performance of duty. He did not stop work.

In a development letter dated March 1, 2023, OWCP informed appellant of the deficiencies in his claim. It advised him of the type of medical and factual evidence necessary to establish his claim and afforded him 30 days to respond.

Appellant submitted a February 27, 2023 attending physician's report attached to an authorization for examination and/or treatment (Form CA-16) dated March 22, 2023, which noted that he was seen for right shoulder pain. The report was signed solely by a certified physician assistant. Appellant also submitted a chronological record of medical care dated January 26, 2023 noting treatment by a certified physician assistant and an emergency medical technician (EMT). An impression was noted of right shoulder pain and positive impingement of subscapular nerve/supraspinatus between acromial, and humeral head.

In an emergency department discharge sheet dated January 9, 2023, Dr. Ronald C. Fenton, an osteopath, examined appellant for a fall on that date. He noted that he had been evaluated for right shoulder pain and that x-rays did not reveal any fracture or dislocation of the shoulder, elbow, or humerus. Dr. Fenton diagnosed a superficial injury to the right shoulder/arm. It was further noted that "[appellant] likely have muscle and soft tissue injury/bruising."

By decision dated April 10, 2023, OWCP accepted that the January 9, 2023 employment incident had occurred, as alleged. However, it denied the claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted employment incident. Thus, OWCP concluded that appellant had not met the requirements 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,[3] 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

[3] *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.[4] 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.[5]

To determine if 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.[6] The second component is whether the employment incident caused a personal injury.[7]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on 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.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted January 9, 2023 employment incident.

In support of his claim, appellant submitted an emergency department discharge sheet dated January 9, 2023 from Dr. Fenton. However, this discharge sheet did not include a firm diagnosis of any condition. It stated that appellant had a fall on that date and reviewed x-rays, which did not demonstrate any fracture or dislocation of the shoulder, elbow, or humerus. The discharge sheet noted a superficial injury to the right shoulder/arm and related that he likely had muscle and soft tissue injury/bruising. It noted that appellant was seen for right shoulder pain. Under FECA, the assessment of pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.[9] The Board has also held that medical opinions that suggest that a condition is "likely" are speculative or equivocal in character.[10] The indication that appellant likely had muscle and soft tissue injury/bruising is speculative in nature and not a firm diagnosis. As such, the discharge sheet from Dr. Fenton is insufficient to establish a firm diagnosis of a medical condition in connection with the accepted January 9, 2023 employment incident.

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

[5] *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).

[6] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[9] *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, not a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[10] *See F.S.*, Docket No. 22-0070 (issued June 14, 2023).

The remainder of the evidence submitted by appellant consisted of a February 27, 2023 attending physician's report attached to a Form CA-16 dated March 22, 2023, signed solely by a certified physician assistant; and a chronological record of medical care dated January 26, 2023 noting treatment by a certified physician assistant and an EMT. The Board has held that medical reports signed solely by an EMT or physician 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]

As appellant has not submitted evidence of a diagnosed condition in connection with the accepted January 9, 2023 employment incident, the Board finds that he has not met his burden of proof.[12]

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 in connection with the accepted January 9, 2023 employment incident.

[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); *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA); *D.B.*, Docket No. 16-1219 (issued November 8, 2016) (an EMT is not considered a physician 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] The Board notes that the employing establishment issued a Form CA-16, dated March 22, 2023. 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).

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 30, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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