United States Department of Labor
Employees' Compensation Appeals Board

S.G., Appellant	)	
and	)	**Docket No. 23-0793**
	)	**Issued: October 31, 2023**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Mather, 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
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On May 16, 2023 appellant filed a timely appeal from a February 3, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted December 7, 2022 employment incident.

FACTUAL HISTORY

On December 20, 2022 appellant, then a 44-year-old air traffic controller, filed a traumatic injury claim (Form CA-1) alleging that on December 7, 2022 he injured his neck when he was a

[1] 5 U.S.C. § 8101 *et seq.*

passenger in a vehicle that was rear-ended while in the performance of duty. He stopped work on December 8, 2022 and returned to work on December 20, 2022.

In a December 23, 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 afforded him 30 days to submit the necessary evidence.

Thereafter, OWCP received a December 7, 2022 state traffic crash report describing the accident.

In a December 8, 2022 medical note, Melissa Rossi, a physician assistant, indicated that appellant related complaints of neck pain, which he attributed to a motor vehicle accident (MVA) at work on December 7, 2022. She performed a physical examination, which revealed tenderness in the bilateral cervical spine and trapezius muscles. Ms. Rossi diagnosed musculoskeletal pain and prescribed a muscle relaxer.

In a December 22, 2022 e-mail, a representative of the employing establishment's aerospace medicine division, indicated that appellant requested medication for neck pain on December 8, 2022.

In a December 27, 2022 response to OWCP's development questionnaire, appellant indicated that he was a passenger in a vehicle traveling to an official training when the vehicle he was riding in was rear-ended another vehicle, causing his head to jerk forward. He denied any prior injuries to his neck.

In an attending physician's report (Form CA-20) dated January 5, 2023, Dr. Anthony L. Jackson, an emergency medicine physician, noted a history that appellant was a passenger in a MVA on December 7, 2022. He diagnosed musculoskeletal pain due to the MVA.

By decision dated February 3, 2023, OWCP accepted that the December 7, 2022 employment incident occurred, as alleged. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment incident. Consequently, OWCP found that he had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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,[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 to the

[2] *Id*.

[3] *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.[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 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.[6]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] 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 the specific employment incident identified by the claimant.[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 December 7, 2022 employment incident.

In support of his claim, appellant submitted a January 5, 2023 Form CA-20 by Dr. Jackson, who diagnosed musculoskeletal pain due to the December 7, 2022 MVA. The Board has held that pain is a description of a symptom, not a clear diagnosis of a medical condition.[9] As such, Dr. Jackson's report is insufficient to meet appellant's burden of proof.

Appellant also submitted a December 8, 2022 note by Ms. Ross, a physician assistant. The Board has held that health care providers such as nurses, physician assistants, and physical

[4] *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).

[5] *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).

[6] *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).

[7] *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).

[8] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[9] *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

therapists are not considered physicians under FECA.[10] Thus, their opinions on causal relationship do not constitute rationalized medical opinions and are of no probative value.[11]

As the evidence of record is insufficient to establish a valid medical diagnosis from a qualified physician in connection with the accepted employment incident. Consequently, 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted December 7, 2022 employment incident.

[10] Section 8102(2) of FECA provides that the term 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.J.*, Docket No. 18-0593 (issued February 24, 2020) (physical therapists are not considered physicians under FECA); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (physician assistants 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).

[11] *See J.F.*, Docket No. 19-1694 (issued March 18, 2020); *A.A.*, Docket No. 19-0957 (issued October 22, 2019); *Jane A. White*, 34 ECAB 515, 518 (1983).

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 31, 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