

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

C.R., Appellant

and

DEPARTMENT OF THE NAVY, NORFOLK
NAVAL AIRSTATION, Norfolk, VA, Employer

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**Docket No. 13-1317
Issued: September 19, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 16, 2013 appellant filed a timely appeal from the February 5 and April 16, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying his claims for compensation. 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.

ISSUE

The issue is whether appellant established entitlement to wage-loss compensation for the period October 24, 2012 to January 21, 2013.

FACTUAL HISTORY

On August 18, 2012 appellant, then a 42-year-old utility man, filed a traumatic injury claim alleging that, on August 8, 2012, while cleaning up a sewage waste spill, some of the

¹5 U.S.C. § 8101 *et seq.*

sewage got on his forearms and hands, causing a stinging, itching rash the next day that spread to his face.

Appellant submitted a September 28, 2012 report from Susan McKim, a physician's assistant, who noted that he had been working on a ship a month prior that "blew up." Ms. McKim diagnosed pruritus, chemical burn of multiple sites and hyperpigmentation of the skin.

Dr. Benjamin McInnes, a Board-certified urologist, reported on November 7, 2012 that he had examined appellant that day. He found no rashes, lesions or areas of discoloration present on appellant's skin.

On December 12, 2012 appellant filed a claim for compensation (Form CA-7) for the period October 29 to December 20, 2012.

In a December 17, 2012 decision, OWCP accepted appellant's claim for rash and other nonspecific skin eruption without medical evidence, as the employing establishment did not challenge the claim and the injury was visible to a layperson.

By letter dated December 17, 2012, OWCP requested that appellant submit additional information with regards to his claim for compensation for the period October 29 to December 20, 2012. Appellant was advised that the only evidence received in support of his claim for disability did not address whether he was unable to work during the dates claimed. He was informed that Ms. McKim's notes did not support a claim for compensation unless countersigned by a physician. The letter also requested a report from a treating physician regarding his condition, an explanation of how his workplace exposure caused or contributed to the condition that caused disability and a statement of the specific dates he was disabled for work. OWCP provided appellant 30 days to submit the requested documentation.

On January 23, 2013 appellant submitted a January 22, 2013 medical summary form from Ms. McKim, who diagnosed chemical burn with postinflammatory hyperpigmentation. It was noted on same by check mark that he was fit for duty. The form was not countersigned by a physician. On February 5, 2013 appellant resubmitted the same form, containing a countersignature from Dr. Peter Rullan, a Board-certified dermatologist.

By decision dated February 5, 2013, OWCP denied appellant's claim for disability compensation for the period October 29 to December 20, 2012. It found that the medical evidence was insufficient to establish a period of disability.

OWCP received a progress report from Dr. McInnes on February 8, 2013. Dr. McInnes noted that appellant was seen on that day for evaluation of a chemical injury to his genitals, which had resolved.

On February 11, 2013 appellant filed a claim for compensation Form CA-7 for leave without pay for the period October 24, 2012 to January 21, 2013.

By letter dated February 19, 2013, OWCP again advised appellant that additional medical evidence was needed to establish disability for the period claimed. Appellant was informed that

he should submit supporting medical documentation of disability within 30 days. He did not provide any additional medical evidence.

By decision dated April 16, 2013, OWCP denied appellant's claim for disability compensation from October 24, 2012 to January 21, 2013. It found that the record contained insufficient medical evidence in support of his claim.

LEGAL PRECEDENT

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.² Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.³ The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.⁴

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation. For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁵

A physician's assistant is not defined as a physician under FECA. Therefore, their reports do not qualify as probative medical evidence supportive of a claim for federal workers' compensation, unless such medical reports are countersigned by a physician.⁶

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he was disabled for the period October 24, 2012 to January 21, 2013 due to the accepted injury.

On December 17, 2012 OWCP accepted that appellant sustained employment-related rash and other nonspecific skin eruptions as a result of a traumatic injury in the course of his federal employment. Appellant filed two claims for disability from October 24, 2012 to January 21, 2013.

In support of his claims for disability compensation, appellant submitted a report from Dr. McInnes, pertaining to an evaluation on November 7, 2012. This evidence fails to support

²See *FereidoonKharabi*, 52 ECAB 291 (2001).

³*Id.*

⁴See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁵*Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁶See 5 U.S.C. § 8101(2); *Lyle E. Dayberry*, 49 ECAB 369 (1998).

appellant's claim. Dr. McInnes found that there were no rashes, lesions or areas of discoloration present on appellant's skin at the time of his inspection of appellant. For evidence to tend to meet an appellant's burden of proof, it must be based on a complete factual and medical background.⁷ Dr. McInnes' report failed to support the existence of any disabling dermatological condition. The report from him did not address whether appellant sustained a diagnosed, disabling condition during the period for which compensation is claimed. In the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed, the Board will not require OWCP to pay compensation.⁸

Additionally, appellant provided a medical summary form from Ms. McKim, on September 28, 2012. Ms. McKim diagnosed pruritus, chemical burn of multiple sites and hyperpigmentation of skin. A note of January 22, 2013, diagnosed chemical burn with postinflammatory hyperpigmentation. Neither report was countersigned by a physician. Appellant resubmitted the report from the January 22, 2013 visit again on February 5, 2013, with a countersignature from Dr. Rullan, Board-certified in dermatology. The Board notes that a physician's assistant is not a physician within the meaning of FECA; therefore, neither Ms. McKim's September 28, 2012 report nor the January 22, 2013 medical summary constitute probative medical evidence. Physicians' assistants are not recognized as physicians under FECA and their medical reports do not qualify as probative medical evidence supportive of a claim for federal workers' compensation.⁹ Neither the January 23, 2013 report nor the report submitted on December 6, 2012 were countersigned by a physician. These records do not constitute probative medical evidence in support of appellant's claim.

As noted appellant resubmitted a January 22, 2013 form report countersigned by Dr. Rullan, who did not address the specific dates of disability for which compensation is claimed. Dr. Rullan noted generally that appellant was fit for duty. This evidence is insufficient to establish appellant's disability for the dismissed period.

Appellant also submitted a progress note from Dr. McInness dated February 8, 2013. It was noted that his chemical injury to his genitals had resolved. Dr. McInness did not address the period of disability claimed or support that appellant had any disability due to the accepted skin injury.

The Board finds that appellant did not meet his burden of proof to establish a period of disability due to the accepted injury.

CONCLUSION

The Board finds that appellant did not establish that he was disabled from October 24 to January 21, 2012 due to his accepted skin conditions.

⁷See generally *C.S.*, Docket No. 08-2218 (issued August 7, 2009); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸*Supra* note 4.

⁹*Supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the April 16 and February 5, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 19, 2013
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board