United States Department of Labor
Employees' Compensation Appeals Board

E.T., Appellant	)	
and	)	**Docket No. 15-0839**
	)	**Issued: July 6, 2015**
U.S. POSTAL SERVICE, POST OFFICE, West Haven, CT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 2, 2015 appellant filed a timely appeal from a February 2, 2015 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 sustained an injury on November 25, 2014 in the performance of duty.

FACTUAL HISTORY

On November 26, 2014 appellant, then a 64-year-old labor custodian, filed a traumatic injury claim alleging that on November 25, 2014 he injured his right side and right lower back

[1] 5 U.S.C. § 8101 *et seq.*

when a coworker put him in a headlock. He did not stop work. The employing establishment did not controvert the claim.

In a return to work slip dated November 26, 2014, a nurse practitioner indicated that appellant could resume work with restrictions of no lifting over 20 pounds for one week.

By letter dated December 16, 2014, OWCP requested that appellant submit a detailed report from his attending physician addressing the causal relationship between any diagnosed condition and the identified work incident. It advised him that reports from nurse practitioners and physician assistants did not constitute competent medical evidence under FECA.

In a duty status report dated December 16, 2014, Dr. Rachel E. Laff, a Board-certified internist, diagnosed a musculoskeletal strain and checked "yes" that the history of injury given by appellant corresponded to that on the form of him being put in a headlock. She opined that he could perform light duty pending completion of physical therapy. Dr. Laff provided work restrictions.

By decision dated February 2, 2015, OWCP denied appellant's claim after finding that the medical evidence was insufficient to show that he sustained a diagnosed condition as a result of the accepted November 25, 2014 employment incident. It found that the signature on the December 16, 2014 duty status report was illegible and thus it could not determine whether it constituted competent medical evidence. OWCP further found that the December 16, 2014 duty status report was insufficient to show that appellant sustained a specific diagnosed condition.

On appeal appellant argues that Dr. Laff cosigned the medical reports he submitted for consideration.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.[5] Second, the

[2] 5 U.S.C. § 8101 *et seq.*

[3] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[4] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[6] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[7]

ANALYSIS

Appellant alleged that he sustained an injury to his right side and lower back on November 25, 2014 when a coworker placed him in a headlock. OWCP accepted that the incident occurred at the time, place, and in the manner alleged. The issue is whether the medical evidence establishes that appellant sustained an injury as a result of this incident.

The Board finds that appellant has not established that the November 25, 2014 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.[8]

Appellant submitted a November 26, 2014 disability certificate from a nurse practitioner. However, a nurse or nurse practitioner is not considered a "physician" under FECA and thus cannot render a medical opinion.[9]

In a form report dated December 16, 2014, Dr. Laff diagnosed a musculoskeletal strain and checked "yes" that the history of injury obtained from appellant corresponded to that on the form of appellant having been placed in a headlock. The Board has held, however, that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form question on whether the claimant's condition was related to the history given is of little probative value. Without explanation or rationale for the conclusions reached, such report is insufficient to establish causal relationship.[10] Dr. Laff did not provide any rationale for her opinion and thus her form report is insufficient to meet appellant's burden of proof.

While OWCP determined that the signature on the December 16, 2014 report from Dr. Laff was illegible and thus was not competent medical evidence, it further found that the report itself did not adequately describe a diagnosed condition. Dr. Laff failed to explain the mechanism by which appellant being put in a headlock caused a musculoskeletal strain or specifically identify the area of the body that sustained the strain. There is also no indication in the record that the remaining treatment note submitted prior to OWCP's February 2, 2015 decision was cosigned by Dr. Laff.

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[6] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[7] *Id.*

[8] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[9] 5 U.S.C. § 8101(2); *Vincent Holmes*, 53 ECAB 468 (2002).

[10] *Cecelia M. Corley*, 56 ECAB 662 (2005); *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.[11] The record does not contain a physician's report in which the physician reviewed those factors of employment identified by him as causing his condition, take these factors into consideration, consider the findings upon examination, consider the medical history, explain how employment factors caused or aggravated any diagnosed condition, or present medical rationale in support of his opinion.[12] Appellant failed to submit such evidence and therefore failed to meet 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on November 25, 2014 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

[11] *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[12] *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).