

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

P.S., Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Glenville, WV, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 17-0598
Issued: June 23, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 23, 2017 appellant filed a timely appeal from a November 21, 2016 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

ISSUE

The issue is whether appellant met his burden of proof to establish an injury causally related to an accepted October 3, 2016 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted additional evidence with his appeal. However, the Board's *Rules of Procedure* provide that the Board is precluded from reviewing evidence that was not part of the record at the time OWCP issued its final decision on November 21, 2016. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On October 6, 2016 appellant, then a 49-year-old lieutenant, filed a traumatic injury claim (Form CA-1) alleging that on October 3, 2016 he experienced sharp pain in his upper back and numbness in his right arm when he lifted an inmate's body who was attempting suicide to loosen the shirt tied around his neck and the inmate's body suddenly dropped. He did not stop work.

By letter dated October 17, 2016, OWCP advised appellant that no evidence was submitted in support of his claim. It requested that he respond to the attached questionnaire to establish that the October 3, 2016 incident occurred as alleged and provide additional medical evidence to establish a diagnosed condition as a result of the alleged incident. Appellant was afforded 30 days to submit the requested information.

Appellant submitted hospital emergency room records dated October 23, 2016 from Brenda Amico, a registered nurse, and K. Riley, a licensed nurse practitioner. Ms. Amico related appellant's complaints of middle back pain with numbness and tingling to his left hand that began two weeks ago. She indicated that appellant was excused from work for the period October 23 through 26, 2016. Appellant was discharged with diagnosis of back and thoracic pain.

In a November 1, 2016 attending physician's report (Form CA-20), Dr. Kara Siford, a family practitioner, noted a date of injury of October 3, 2016. She related that appellant's left arm was supporting an inmate who was attempting suicide by strangulation and when the towel was released, the inmate's full body weight impacted appellant's arm, straining his upper back and left arm. Dr. Siford diagnosed spasm of back muscles. She checked a box marked "yes" indicating that appellant's condition was caused or aggravated by the described employment activity. Dr. Siford explained the mechanism of injury as "while at work as above in history of injury." She advised that appellant could return to work.

On November 11, 2016 OWCP received a thoracic spine diagnostic examination report dated October 23, 2016 by Dr. Garrett Stover, a Board-certified diagnostic radiologist. Dr. Stover observed mild degenerative changes and no acute injury.

OWCP denied appellant's claim in a decision dated November 21, 2016. It accepted that the October 3, 2016 employment incident occurred as alleged, but denied the claim because the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁴ including that he or she sustained an injury in the performance of duty and that any

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.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.⁶ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.⁷ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁸ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.⁹

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.¹⁰ 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 factors identified by the employee.¹¹ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician’s opinion.¹²

ANALYSIS

Appellant alleged that he strained his back and left arm injury as a result of an October 3, 2016 work incident. OWCP accepted that the October 3, 2016 incident occurred as alleged, but denied his claim because the medical evidence of record was insufficient to establish a medical diagnosis causally related to the accepted incident. The Board finds that appellant has not established that he sustained an injury causally related to the October 3, 2016 incident.

In a November 1, 2016 attending physician’s report, Dr. Siford indicated that on October 3, 2016 appellant strained his upper back and left arm when an inmate’s full body weight struck his arm while he was lifting the body. She diagnosed spasm of back muscles. Dr. Siford checked a box marked “yes” indicating that appellant’s condition was caused or

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁷ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁸ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁰ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹² *James Mack*, 43 ECAB 321 (1991).

aggravated by the described employment activity. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹³ Accordingly, Dr. Siford's report is insufficient to establish appellant's claim.

On November 11, 2016 OWCP received a thoracic spine diagnostic examination report dated October 23, 2016 by Dr. Stover, who noted mild degenerative changes and no acute injury. Although Dr. Stover provided a medical diagnosis, he did not provide any opinion on the cause of appellant's thoracic spine condition. The Board has held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁴

The emergency room records dated October 23, 2016 by Ms. Amico, a registered nurse, and Ms. Riley, a licensed nurse practitioner, also fail to establish appellant's claim because registered nurses and nurse practitioners are not considered physicians as defined under FECA and their medical opinions regarding diagnosis and causal relationship are of no probative value.¹⁵

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹⁶ Appellant's honest belief that the October 3, 2016 employment incident caused injury is not in question, but that belief, however sincerely held, does not constitute the medical evidence to establish causal relationship.¹⁷

On appeal appellant alleges that his physician mistakenly did not sign the claim form, but had now properly filled out a new form. He resubmits the October 23, 2016 diagnostic examination report and hospital records. As noted above, to meet his burden of proof appellant must submit probative rationalized medical evidence to establish that the employment incident caused a personal injury.¹⁸ As appellant has not provided such medical evidence, the Board finds that he has not met his burden of proof to establish his claim.

¹³ *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁴ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁵ *L.D.*, 59 ECAB 648 (2008); a nurse practitioner is not considered a physician under FECA; *see also Paul Foster*, 56 ECAB 208 (2004); *R.R.*, Docket No. 16-1901 (issued April 17, 2017); a nurse is not considered a physician under FECA. 5 U.S.C. § 8101(2); 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.

¹⁶ *D.D.*, 57 ECAB 734 (2006).

¹⁷ *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

¹⁸ *Supra* note 11.

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 an injury causally related to the accepted October 3, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2016 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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