United States Department of Labor
Employees' Compensation Appeals Board

O.R., Appellant	)	
and	)	
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Staten Island, NY, Employer	)	**Docket No. 17-1735** **Issued: January 2, 2018**

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 7, 2017 appellant filed a timely appeal from a July 18, 2017 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]

ISSUE

The issue is whether appellant met his burden of proof to establish a left leg injury in the performance of duty on May 9, 2017, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] With his request for an appeal, appellant submitted additional evidence. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board may not consider this additional evidence for the first time on appeal; 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On May 26, 2017 appellant, then a 35-year-old forestry technician, filed a traumatic injury claim (Form CA-1) alleging that on May 9, 2017, he felt a tear in the back of his left leg while participating in arduous work capacity test (WCT) exercises. He stopped work on May 22, 2017 and resigned from employment on July 19, 2017. Appellant's manager, T.L., indicated that appellant did not report an injury during or after the WCT and performed his job for 13 additional days before claiming an injury. He noted that appellant reported an injury when confronted with performance issues.

Appellant was treated in the emergency room on May 22, 2017 by Dr. Rodrigo I. Kong, Board-certified in emergency medicine. Dr. Kong provided emergency room discharge instructions which diagnosed hamstring injury and provided discharge instructions for leg cramps and muscle strain. Appellant also submitted a note from a physician assistant dated May 22, 2017, who advised that appellant could return to work in three days and required crutches until his condition improved.

By letter dated June 8, 2017,[3] OWCP advised appellant to submit additional information, including a response to a factual development questionnaire and submission of a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had caused or contributed to his claimed injury. It indicated that medical evidence must be submitted by a qualified physician.

On July 17, 2017 appellant submitted the completed development questionnaire, indicating that he was in the state of New York and participating in a pack test for wildland firefighters which consisted of wearing a 45-pound chest vest and hiking for three and a half miles. He indicated that at the end of the physical test he felt a tear on the back of his leg in the hamstring area. Appellant advised that the immediate effects were not noticeable, but after a few days he felt soreness, muscle spasms, and he began to apply ice and heat to the area. He noted that he sustained no other injuries and had no symptoms prior to this injury and explained that he did not report the injury sooner because it was not immediately apparent that the injury was severe and that it became more painful as time progressed. Appellant noted that he was required to participate and pass the annual arduous fit test for wildland firefighters. He indicated that he was cleared to participate in the activity and received a passing grade for the annual pack test. Appellant noted that the injury occurred on employing establishment premises at approximately 2:00 p.m.

On June 14, 2017 appellant was treated in the emergency room by Dr. Anthony Vassallo, Board-certified in emergency medicine. Dr. Vassallo submitted emergency department discharge instructions which diagnosed thigh sprain. Appellant was also provided discharge instructions for a general sprain.

In a letter dated June 19, 2017, T.L. indicated that on May 9, 2017 appellant participated in a WCT at the arduous performance level. The WCT was performed at the Gateway National

[3] OWCP later resent this letter to appellant's new address on June 21, 2017.

Recreation Area. T.L. indicated that appellant successfully completed the WCT. He advised that appellant had not indicated during or after the WCT that he was experiencing any pain or discomfort or that he had sustained any kind of injury as a result of the WCT. T.L. indicated that appellant completed a quarter-mile run and a quarter mile cool down walk immediately after the WCT. Appellant reported the injury on May 22, 2017 during a performance evaluation. He indicated that between the WCT and May 22, 2017 he operated a chainsaw and removed debris on two occasions. T.L. further advised that on May 19, 2017 appellant participated in a tire hose deployment exercise. Appellant did not indicate before, during, or after any of these work duties that he was injured or that he was experiencing any pain or discomfort. T.L. advised that appellant was hired as a forestry technician (wildland firefighter) and was required to complete the WCT in order to perform his position. He indicated that the WCT was the method for assessing wildland fire fitness levels and interagency policy required that the WCT be administered annually to all employees in wildland fire positions. T.L. noted that for the arduous physical fitness level, the employee was required to take the arduous pack test involving a 3-mile hike over flat terrain carrying 45 pounds of weight in 45 minutes or less. He reiterated that appellant did not report the injury for 13 days while discussing performance issues. T.L. noted the exact place and time the injury occurred could not be determined.[4]

By decision dated July 18, 2017, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the injury occurred, as alleged. It also found that the medical evidence of record was insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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 filed within the applicable time limitation of FECA, that an injury was sustained 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. 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.[6]

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. 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[7]

[4] With his submission, T.L. attached an April 7, 2017 medical determination letter from Dr. Olga Emgushov, a Board-certified internist, a noting that appellant was qualified to perform the essential functions and work conditions of arduous wildland firefighter duties.

[5] *Supra* note 1.

[6] *Gary J. Watling*, 52 ECAB 357 (2001).

[7] *T.H.*, 59 ECAB 388 (2008).

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[8] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[9]

Rationalized medical opinion evidence is generally 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 factors identified by the claimant.[10]

ANALYSIS

Appellant alleged that, on May 9, 2017, he felt a tear in the back of his left leg while participating in arduous fit test exercises at work. OWCP denied his claim finding that he had failed to establish that the claimed work incident occurred, as alleged. The evidence of record, however, supports that on May 9, 2017 appellant participated in a WCT in the arduous performance level at the Gateway National Recreation Area. The record documents that the WCT for wildland firefighters consisted of wearing a 45-pound chest vest and hiking for three and a half miles. There is no dispute that he was actually performing the WCT on May 9, 2017 when he alleges an injury. Appellant's manager, T.L., confirmed in a June 19, 2017 letter that appellant participated in the WCT on May 9, 2017 at the arduous performance level. Appellant was required to take the arduous pack test involving a 3-mile hike over flat terrain carrying 45 pounds of weight in 45 minutes or less. While he noted that he did not believe appellant was injured in the performance of duty, T.L. did not dispute that appellant was performing WCT on May 9, 2017 in a manner consistent with what appellant alleges. The Board thus finds that the factual evidence of record is sufficient to establish that appellant participated in a WCT on May 9, 2017, as alleged.

The Board further finds, however, that the medical evidence of record is insufficient to establish that the accepted May 9, 2017 work incident resulted in a left leg injury

Appellant was treated in the emergency room on May 22, 2017 by Dr. Kong who provided emergency room discharge instructions and diagnosed hamstring injury. He was also provided discharge instructions for leg cramps and muscle strain. Similarly, on June 14, 2017

[8] *R.T.*, Docket No. 08-0408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[9] *Betty J. Smith*, 54 ECAB 174 (2002).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

appellant was treated in the emergency room by Dr. Vassallo who diagnosed thigh sprain. Dr. Vassallo was provided discharge instructions for a general sprain. However, these reports are insufficient to establish the claim as the physicians did not provide a history of injury[11] or specifically address whether the accepted work incident had caused or aggravated a diagnosed medical condition.[12]

Appellant submitted a note from a physician assistant dated May 22, 2017, who returned appellant to work in three days and recommended crutches. The Board has held that treatment notes signed by physician assistants[13] have no probative value as these providers are not considered physicians under FECA.[14] Thus, this evidence is insufficient to meet appellant's burden of proof.

Consequently, the Board finds that appellant has failed to submit sufficient medical evidence to establish that the accepted May 9, 2017 work incident caused or aggravated a diagnosed medical condition.

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 left leg injury causally related to the accepted May 9, 2017 employment incident.

[11] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[12] *A.D.*, 58 ECAB 149 (2006) (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).

[13] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (reports of a physician assistant have no probative value as medical evidence).

[14] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: January 2, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board