United States Department of Labor
Employees' Compensation Appeals Board

A.P., Appellant	)	
	)	**Docket No. 18-0238**
and	)	**Issued: July 20, 2018**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Warrendale, PA, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 13, 2017 appellant filed a timely appeal from a September 7, 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 has met his burden of proof to establish a traumatic injury causally related to an accepted July 25, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record provided to the Board includes evidence received after OWCP issued its September 7, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from considering this evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On July 25, 2017 appellant, then a 40-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, earlier that day, the forklift he was operating stopped short when its blades caught on a deck plate. This motion threw his head forward into a safety guard, causing a forehead laceration.[3] Immediately following the injury, paramedics transported appellant from the employing establishment to a hospital emergency room. The employing establishment indicated on the reverse side of the claim form that the incident occurred in the performance of duty and he had not incurred lost time from work. It was also noted that appellant was injured because he operated the forklift in an unsafe manner and did not use his safety belt.

Appellant provided a work release form and discharge instructions dated July 25, 2017 from a hospital emergency department where he received sutures for a laceration and evaluation for a neck strain. The work release form bears an illegible signature on a signature line designated for the nurse practitioner who treated appellant.

Appellant submitted a paramedic event report dated July 25, 2017 which related appellant's account of striking his head on the forklift safety guard. The paramedic observed a forehead laceration which was two centimeters long and one centimeter deep.

By development letter dated August 1, 2017, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional medical and factual evidence. It noted that a physician assistant was not considered a physician under FECA unless his or her report was countersigned by a physician. Appellant was also provided a list of questions for his physician's completion regarding how the alleged employment incident would cause the claimed injury.

In response, appellant submitted July 25, 2017 computerized tomography (CT) scan reports of the head and cervical spine interpreted by Dr. Raucheline Akindele, a Board-certified radiologist. Dr. Akindele found no abnormality of the brain or skull, and no evidence of cervical spine fracture.

The employing establishment submitted an August 1, 2017 statement which again contended that appellant had been injured as he had deliberately ignored safety procedures. It alleged that he intentionally misused the forklift's seatbelt and set the forklift blades at an improper height.

By decision dated September 7, 2017, OWCP denied appellant's traumatic injury claim, finding that the evidence submitted was insufficient to establish that the July 25, 2017 employment incident of having struck his head on a forklift safety guard caused an injury or medical condition. It found that the medical evidence of record did not explain how or why the accepted incident would have caused or contributed to the claimed forehead laceration or a cervical spine injury.

[3] Appellant provided the same account of events in a July 25, 2017 employing establishment accident report.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[5] 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.[6]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether fact of injury has been established. First, an employee has the burden of proof to demonstrate the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.[7] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish causal relationship between the employment incident and the alleged disability or condition for which compensation is claimed.[8] 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.[9]

ANALYSIS

The Board finds that appellant has established that he sustained a facial laceration as a result of the accepted July 25, 2017 employment incident when his head struck a forklift safety guard; however, he has not met his burden of proof to establish a neck or cervical condition causally related to the accepted employment incident.

The Board notes that, pursuant to OWCP procedures, where the condition reported is a minor one, such as a burn, laceration, insect sting or animal bite, which can be identified on visual inspection by a lay person, a case may be accepted without a medical report and no development of the case need be undertaken, if the injury was witnessed or reported promptly, and no dispute exists as to the occurrence of an injury; and no time was lost from work due to disability.[10]

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[4] *Supra* note 1.

[5] *E.P.*, Docket No. 17-1544 (issued April 10, 2018); *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[6] *J.D.*, Docket No. 18-0001 (issued March 27, 2018); *see Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[7] *See K.B.*, Docket No. 17-1363 (issued February 14, 2018); *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146, 147-48 (1999).

[8] *See K.B.*, *id*; *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[9] *D.J.*, Docket No. 17-0364 (issued April 13, 2018); *K.B.*, *id*; *Gary J. Watling*, *id*.

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011).

Board case precedent supports the application of this principle only when the claimed injury is sufficiently described in the evidence of record.[11] On July 25, 2017 a paramedic dispatched due to the accident observed and documented appellant's forehead laceration which was two centimeters long and one centimeter deep. Furthermore, no dispute existed as to the occurrence of an injury as the employing establishment indicated on the reverse side of the claim form that the incident occurred in the performance of duty. While the employing establishment initially controverted the claim alleging that the injury occurred due to appellant's own misconduct, no dispute existed as to occurrence of an injury.[12] The record also establishes that appellant did not incur lost time from work. The Board therefore finds that appellant sustained a facial laceration as a result of the accepted employment incident.

Appellant has not, however, submitted sufficient medical evidence to establish that he sustained a neck or cervical condition causally related to the accepted employment incident. Dr. Akindele, a Board-certified radiologist, opined on July 25, 2017 that CT scan studies of appellant's head and cervical spine were negative for fracture or other abnormalities. She however, did not address causation. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[13]

Appellant also provided a July 25, 2017 work release form and hospital discharge instructions from a healthcare provider with an illegible signature on a line designated for the signature of a nurse practitioner. Medical opinions, in general, can only be given by a qualified physician.[14] The Board has held that reports by a nurse practitioner are not considered medical evidence as nurse practitioners are not considered physicians under FECA.[15] Also, a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence.[16]

In order to establish causal relationship, a physician must provide an opinion that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale, and be based upon a complete and accurate medical and factual background of the claimant.[17] Appellant

[11] *See E.T.*, Docket No. 14-1087 (issued September 5, 2014).

[12] *Supra* note 10.

[13] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796, 801 (2003).

[14] *E.K.*, Docket No. 09-1827, n. 7 (issued April 21, 2010) (*citing Charley V.B. Harley*, 2 ECAB 208 (1949)); *see* 5 U.S.C. § 8101(2) (defines the term "physician" to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

[15] *See 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); 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). *S.J.*, Docket No. 17-0783, n. 2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

[16] *See P.C.*, Docket No. 17-0880 (issued October 13, 2017); *Thomas L. Agee*, 56 ECAB 465, 468 (2005); *Richard F. Williams*, 55 ECAB 343, n. 1 (2004).

[17] *See J.W.*, Docket No. 17-0870 (issued July 12, 2017).

has not submitted a medical report sufficient to establish a neck or cervical condition causally related to the July 25, 2017 employment incident.

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 established a facial laceration as a result of the accepted July 25, 2017 employment incident. Appellant has not, however, established a neck or cervical condition causally related to the accepted employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 7, 2017 is reversed in part and affirmed in part. This case is remanded to OWCP for further proceedings consistent with this opinion.

Issued: July 20, 2018
Washington, DC

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

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

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