

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

J.O., Appellant

and

**DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Washington, DC, Employer**

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**Docket No. 18-0214
Issued: June 6, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 7, 2017 appellant filed a timely appeal from a July 6, 2017 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 has met his burden of proof to establish head, back, neck, shoulder, and side conditions causally related to the accepted May 16, 2017 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of OWCP's July 6, 2017 decision, appellant submitted new evidence to the record. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. Thus, the Board may not consider the new evidence on appeal. 20 C.F.R. § 501.2(c)(1).

On appeal appellant contends that the medical evidence of record establishes that his injuries were causally related to the May 16, 2017 employment incident.

FACTUAL HISTORY

On May 17, 2017 appellant, then a 57-year-old engineering technician, filed a traumatic injury claim (Form CA-1) alleging that on May 16, 2017 he experienced general soreness in his head, back, neck, shoulders, and sides as a result of a motor vehicle accident at work. He claimed that he was driving a truck which was pulling a trailer loaded with fence materials when it fishtailed and overturned. On the reverse side of the claim form the employing establishment noted that appellant stopped work on the date of injury and returned to work the next day on May 17, 2017.

In a May 16, 2017 medical report, Dr. Shannon Lovett, an emergency medicine specialist, indicated that appellant had been involved in a motor vehicle collision. She noted that various diagnostic tests were performed during his visit. Dr. Lovett diagnosed right flank pain and chronic neck pain.

By development letter dated June 1, 2017, OWCP notified appellant of the deficiencies in his claim and afforded him 30 days to submit additional medical and factual evidence. It also requested that the employing establishment submit treatment notes if appellant was treated at an employing establishment medical facility.

In a May 16, 2017 report, Dr. Nancy Budorick, a Board-certified radiologist, advised that a computerized tomography (CT) scan of the chest, abdomen, and pelvis revealed no sequela from trauma, retroperitoneal hemorrhage, or parenchymal infarction.

By decision dated July 6, 2017, OWCP denied appellant's traumatic injury claim as the medical evidence of record did not contain a medical diagnosis in connection with the accepted May 16, 2017 employment-related incident. It noted that the medical evidence of record only contained a diagnosis of pain which was a symptom and not a diagnosis of a medical condition.

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 specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.⁵

³ *Supra* note 1.

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

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

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 fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁷

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁸ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing causal relationship between the claimed condition and the identified factors.⁹ The belief of the claimant that a condition was caused or aggravated by the employment incident is insufficient to establish causal relationship.¹⁰

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.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury caused or aggravated by the accepted May 16, 2017 employment incident. Appellant failed to submit sufficient medical evidence to establish head, back, neck, shoulder, and side conditions causally related to the accepted employment incident.

Appellant submitted a May 16, 2017 report from Dr. Lovett who noted that appellant had been involved in a motor vehicle collision. Dr. Lovett indicated that various diagnostic tests were performed during his visit and diagnosed right flank pain and chronic neck pain. It is not possible to establish the cause of a medical condition if the physician has not provided a diagnosis, but only notes pain.¹² The Board has consistently held that pain is a symptom and not a compensable

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 *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁹ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹⁰ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² See *A.C.*, Docket No. 16-1587 (issued December 27, 2016).

medical diagnosis.¹³ Because Dr. Lovett failed to provide a medical diagnosis, her opinion is of no probative value to establish appellant's claim.

Appellant also submitted a May 16, 2017 report from Dr. Budorick who advised that a CT scan of the chest, abdomen, and pelvis revealed no sequela from trauma, retroperitoneal hemorrhage, or parenchymal infarction. She failed to provide a diagnosis causally related to the accepted May 16, 2017 work incident. Thus, the Board finds that Dr. Budorick's report is insufficient to establish appellant's claim.¹⁴

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish head, back, neck, shoulder, and side injuries causally related to the May 16, 2017 employment incident. Appellant, therefore, has not met his burden of proof.

On appeal appellant contends that the medical evidence of record establishes that his injuries were causally related to the May 16, 2017 employment incident. An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹⁵ Appellant's honest belief that his accepted employment incident caused an injury, however sincerely held, does not constitute medical evidence sufficient to establish the claim.¹⁶

For the reasons set forth above, the Board finds that the weight of the medical evidence of record does not establish that appellant sustained back, neck, shoulder, and side conditions causally related to the accepted May 16, 2017 work 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 failed to meet his burden of proof to establish head, back, neck, shoulder, and side conditions causally related to the May 16, 2017 employment incident.

¹³ *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

¹⁴ *Supra* note 10.

¹⁵ *D.D.*, 57 ECAB 734 (2006).

¹⁶ *See B.P.*, Docket No. 17-1572 (issued April 12, 2018).

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 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