United States Department of Labor
Employees' Compensation Appeals Board

G.N., Appellant	)	
and	)	**Docket No. 19-0184**
	)	**Issued: May 29, 2019**
DEPARTMENT OF VETERANS AFFAIRS, SOUTHERN NEVADA HEALTHCARE SYSTEM, Las Vegas, NV, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 5, 2018 appellant filed a timely appeal from a September 19, 2018 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 has met his burden of proof to establish an injury causally related to the accepted July 30, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 30, 2018 appellant, then a 33-year-old health technician, filed a traumatic injury claim (Form CA-1) alleging that, on July 30, 2018, he sustained neck and right wrist injuries from being choked and grabbed by a patient while in the performance of duty. He did not stop work.

In a July 30, 2018 medical report, Dr. Tien Wang, a Board-certified emergency medicine specialist, indicated that appellant presented to the hospital Emergency Department complaining of left lateral neck pain. Appellant reported that an unruly patient choked his neck for one to two minutes. Dr. Wang diagnosed asphyxia and noted that he denied shortness of breath, presented with no signs of airway or vascular injury, and was medically cleared for discharge.

An Emergency Department discharge note dated July 30, 2018 from Maria Eavey, a registered nurse, showed appellant reported neck pain at a level 4 on a 10-point scale, with 10 representing the worst pain. Appellant was discharged home with no restrictions.

In an August 5, 2018 medical report, it was noted that an x-ray examination of appellant's right hand, read by Dr. Sean Gupton, a family practitioner, was performed on that date and revealed a fracture of his fifth metacarpal.

In a development letter dated August 14, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of medical and factual evidence needed, including a detailed description of the claimed July 30, 2018 employment incident, and a narrative report from his physician explaining how and why that event would cause the claimed neck and right wrist injury. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated September 19, 2018, OWCP accepted that the July 30, 2018 employment incident occurred as alleged, but denied appellant's traumatic injury claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA,[2] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

[2] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.[3] 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.[4]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[7] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted July 30, 2018 employment incident.

In support of his claim, appellant submitted an Emergency Department discharge note dated July 30, 2018 from Maria Eavey, a nurse. This note, however, is of no probative value because nurses and nurse practitioners are not considered physicians as defined under FECA.[9]

Appellant also submitted a report dated July 30, 2018 from Dr. Wang in which he noted appellant's chief complaint as neck pain and diagnosed asphyxia. The Board has consistently held

[3] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[5] *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[6] *R.E.*, *id*.

[7] *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[9] *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) (physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law); *R.C.*, Docket No. 17-1314 (issued November 3, 2017).

that pain is a symptom, rather than a compensable medical diagnosis.[10] Further, while Dr. Wang diagnosed asphyxia, he offered no opinion regarding a causal relationship between the incident and the diagnosed condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[11]

Similarly, the August 5, 2018 diagnostic test read by Dr. Gupton addressed appellant's metacarpal fracture, but failed to offer a medical opinion addressing whether the condition was caused or aggravated by the July 30, 2018 employment incident. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between the accepted employment incident and a diagnosed condition.[12] Moreover, reports that are unsigned or that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification.[13] This report, therefore, is insufficient to establish appellant's claim.

Because the medical reports of record do not adequately address how appellant's diagnosed conditions were caused by the accepted July 30, 2018 employment incident, the Board finds that they are insufficient to establish entitlement under FECA. Accordingly, appellant has not met his burden of proof to establish a traumatic injury claim.

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 July 30, 2018 employment incident.

[10] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[11] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] *See D.H.*, Docket No. 17-1146 (issued October 20, 2017); *S.G.*, Docket No. 17-1054 (issued September 14, 2017); *E.V.*, Docket No. 17-0417 (issued September 13, 2017).

[13] *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 29, 2019
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