United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 22-1099**
	)	**Issued: December 28, 2022**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, Imperial Beach, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On July 21, 2022 appellant filed a timely appeal from January 27 and July 6, 2022 merit decisions and a March 16, 2022 nonmerit 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted August 31, 2021 employment incident; and (2) whether OWCP properly denied appellant's request for review of the written record pursuant to 5 U.S.C. § 8124(b).

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On September 1, 2021 appellant, then a 50-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on August 31, 2021 he stretched or pulled his left groin muscle when he exited his service vehicle to pursue an individual on foot while in the performance of duty. He did not stop work.

In support of his claim, appellant submitted a September 2, 2021 authorization for examination and/or treatment (Form CA-16). In Part B of the Form CA-16, attending physician's report, John Rodriguez, a physician assistant, diagnosed a groin strain and noting August 31, 2021 as the date of injury. Mr. Rodriguez also checked a box marked "Yes" to indicate his belief that the condition was caused or aggravated by an employment activity. OWCP also received a work excuse note of even date from Mr. Rodriguez, holding appellant off work until September 7, 2021, and emergency room discharge/homecare instructions noting a complaint of left groin pain.

In a September 13, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, appellant submitted a September 2, 2021 report from Mr. Rodriguez noting an impression of acute left groin strain.

By decision dated October 18, 2021, OWCP accepted that the August 31, 2021 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis from a qualified physician in connection with the accepted August 31, 2021 employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

On November 17, 2021 appellant requested review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated January 27, 2022, OWCP's hearing representative affirmed the October 18, 2021 decision.

On February 25, 2022 appellant requested review of the written record by a representative of OWCP's Branch of Hearings and Review. Along with his request, he submitted a copy of the September 2, 2021 Form CA-16 countersigned by Dr. Andres Smith, a Board-certified emergency physician, again noting a diagnosis of groin sprain, an August 31, 2021 date of injury and indicating, by checking a box marked "Yes," his belief that the condition was caused or aggravated by his federal employment.

By decision dated March 16, 2022, OWCP denied appellant's request for a review of the written record. It found that he was not entitled to a review of the written record on the same issue and that the issue could be equally well addressed through a reconsideration request with the submission of new evidence.

On April 1, 2022 appellant requested reconsideration of the January 27, 2022 decision. In support of his request, he submitted a letter of even date, asserting that he was advised to request a signature from a physician at the hospital where he was treated, and that he had obtained the physician's signature and had submitted the necessary medical documentation.

By decision dated July 6, 2022, OWCP denied modification of its October 18, 2021 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,[3] 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 to the employment injury.[4] 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.[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. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[6]

ANALYSIS -- ISSUE 1

The Board finds that appellant has established a diagnosed medical condition in connection with the accepted August 21, 2021 employment incident.

In Part B of a September 2, 2021 Form CA-16, Dr. Smith diagnosed a groin sprain, noted an August 31, 2021 date of injury and checked a box marked "Yes" to indicate his belief that appellant's condition was caused or aggravated by an employment activity. Thus, the Board finds

[2] *Supra* note 1.

[3] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

that the evidence of record establishes a diagnosis of groin sprain in connection with the accepted August 31, 2021 employment incident.

The Board further finds, however, that the case is not in posture for decision with regard to whether the diagnosed medical condition is causally related to the accepted August 31, 2021 employment incident.

As the medical evidence of record establishes a diagnosed medical condition, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship.[7] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish an injury causally related to the accepted August 31, 2021 employment incident.[8]

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted August 31, 2021 employment incident. The Board further finds, however, that the case is not in posture for decision with regard to whether the diagnosed medical condition is causally related to the accepted August 31, 2021 employment incident.[9]

[7] *See F.D.*, Docket No. 21-1045 (issued December 22, 2021).

[8] In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

[9] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 27, March 16, and July 6, 2022 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 28, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board