United States Department of Labor
Employees' Compensation Appeals Board

R.R., Appellant	)	
and	)	**Docket No. 24-0892**
	)	**Issued: October 22, 2024**
DEPARTMENT OF VETERANS AFFAIRS, OVERTON BROOKS VA MEDICAL CENTER, Shreveport, LA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 5, 2024 appellant filed a timely appeal from an August 21, 2024 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 diagnosed medical condition in connection with the accepted June 10, 2024 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the August 21, 2024 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On June 17, 2024 appellant, then a 43-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on June 10, 2024 he sustained injuries to his lower back and upper shoulder while in the performance of duty. He noted that he bounced around a lot in his vehicle due to poor suspension. Appellant stopped work on June 12, 2024, and returned to work on June 17, 2024.

In form reports dated June 10 and 12, 2024, Leslie Provost, a nurse practitioner, indicated that she had evaluated appellant for a work-related injury and released him to light-duty work.

In a June 12, 2024 emergency department report, Kimberly Jean Porter, a physician assistant, diagnosed low back pain. She prescribed medication and recommended that appellant remain out of work until June 15, 2024.

In a June 17, 2024 form report, Ms. Provost released appellant to return to full-duty work and recommended that he follow up with his primary care physician.

In a June 18, 2024 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 afforded him 60 days to submit the necessary evidence.

In form reports dated July 17 and 22, 2024, Dr. Srimathi Tanga, a Board-certified family medicine specialist, noted that appellant was evaluated for a work-related injury. She released him to return to work with restrictions.

By decision dated August 21, 2024, OWCP accepted that the June 10, 2024 employment incident occurred, as alleged. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment incident. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] 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

[3] *Supra* note 1.

[4] *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).

employment injury.[5] 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 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 an injury.[7]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 incident identified by the claimant.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted June 10, 2024 employment incident.

In form reports dated July 17 and 22, 2024, Dr. Tanga noted that appellant was evaluated for a work-related injury and released him to return to work with restrictions. However, these reports do not contain a diagnosis. The Board has held that a medical report lacking a firm diagnosis is of no probative value.[10] Therefore, this evidence is insufficient to establish the claim.

Appellant also submitted notes by Ms. Provost, a nurse practitioner, and Ms. Porter, a physician assistant. The Board has held that health care providers such as nurses, physician assistants, and physical therapists are not considered physicians under FECA. Reports prepared by nurse practitioners and physician assistants do not qualify as probative medical evidence

[5] *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).

[6] *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).

[7] *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).

[8] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[10] *J.E.*, Docket No. 21-0810 (issued April 13, 2023); *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

supportive of a claim, unless countersigned by a physician.[11] As such, these reports are of no probative value in establishing appellant's claim.[12]

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted June 10, 2024 employment incident, the Board finds that appellant has not met his burden of proof.

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 diagnosed medical condition in connection with the accepted June 10, 2024 employment incident.

[11] Section 8102(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *M.M.*, Docket No. 23-0475 (issued July 27, 2023) (finding that a registered nurse and an advanced registered nurse practitioner are not considered physicians as defined under FECA); *B.L.*, Docket No. 22-1338 (issued January 20, 2023) (finding that nurse practitioners are not considered physicians as defined by FECA); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (physician assistants are not considered physicians under FECA); *C.J.*, Docket No. 15-1697 (issued February 5, 2016) (a physician assistant is not considered a physician as defined under FECA); *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).

[12] *See J.F.*, Docket No. 19-1694 (issued March 18, 2020); *A.A.*, Docket No. 19-0957 (issued October 22, 2019); *Jane A. White*, 34 ECAB 515, 518 (1983).

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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