

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

E.A., Appellant)	
)	
and)	Docket No. 24-0937
)	Issued: October 24, 2024
DEPARTMENT OF THE ARMY, VICKSBURG)	
DISTRICT, U.S. ARMY CORPS OF)	
ENGINEERS, Vicksburg, MS, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 24, 2024 appellant filed a timely appeal from May 22 and September 11, 2024 merit decisions 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted February 3, 2024 employment incident.

FACTUAL HISTORY

On February 29, 2024 appellant, then a 51-year-old deckhand, filed a traumatic injury claim (Form CA-1) alleging that on February 3, 2024 he injured his genitals while in the performance of duty. He noted that he fell while pulling a pin to attach a mat sinking unit to a barge. On the reverse side of the claim form, C.W., an employing establishment supervisor,

¹ 5 U.S.C. § 8101 *et seq.*

confirmed that appellant was in the performance of duty when the incident occurred and that his knowledge of the facts about the injury agreed with appellant's statements. Appellant stopped work on February 23, 2024.

In a March 5, 2024 note, Chris Johnson, an advanced practice registered nurse, noted that appellant related complaints of significant pain in his right groin and testicle and pain with hip flexion, due to an injury. He indicated that he had undergone an ultrasound of his testicles, which was normal. Mr. Johnson performed a physical examination and documented pain with hip flexion and tenderness in the inguinal area. He diagnosed right hip tendinitis and right testicular pain.

In a March 7, 2024 narrative report, Mr. Johnson indicated that appellant had been seen on February 28, 2024, at which time he complained of worsening right testicle pain and swelling, which he attributed to a work-related injury "about a month ago" when he "fell onto some type of metal pole." He noted that, as of March 7, 2024, he related constant pain in the right testicle, which interfered with his sleep. Mr. Johnson performed a physical examination and documented right lower quadrant tenderness and pain in the right testicle. He diagnosed right lower quadrant abdominal pain and right testicular pain.

In a March 22, 2024 development letter, OWCP informed appellant of the deficiencies of his claim and advised him of the type of factual and medical evidence needed. It afforded him 60 days to respond.

OWCP thereafter received a February 7, 2024 report, wherein Mr. Johnson noted that appellant related complaints of testicular pain and urinary frequency, which he attributed to a fall at work wherein he struck his right testicle on a metal pole. Mr. Johnson indicated that he also related complaints of pain down the right leg and a history of prostatitis. He performed a physical examination and noted that the right testicle was swollen and tender to palpation. Mr. Johnson diagnosed right testicular swelling, acute prostatitis, and right-sided sciatica.

In a follow-up report dated February 28, 2024, Mr. Johnson noted appellant's ongoing complaints of right testicle pain due to a fall at work. His physical examination revealed tenderness and mild swelling of the right testicle. Mr. Johnson diagnosed right testicular pain and testicular swelling and recommend an ultrasound of the testicles.

In a follow-up report dated March 14, 2024, Mr. Johnson noted that appellant had undergone computerized tomography (CT) scans of his abdomen and pelvis, which were normal. He diagnosed right testicular pain and released him to return to full-duty work without restrictions, effective March 25, 2024.

In a follow-up report and note dated March 20, 2024, Mr. Johnson recommended that appellant be seen by a urologist and remain out of work until cleared by urology.

In an April 11, 2024 report, Mr. Johnson noted that appellant related complaints of right inguinal pain. He indicated that he had been seen by urology on April 1, 2024, and had a normal testicular and penile examination. On physical examination, Mr. Johnson documented an abnormal gait, reduced right hip flexion and strength, and lower back pain. He diagnosed hip flexor tendinitis and lumbar pain and recommended that appellant remain out of work.

In a follow-up letter dated April 24, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the March 22, 2024 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

On April 24, 2024 OWCP referred appellant's case and a statement of accepted facts (SOAF) to Dr. Gwen Choi, a Board-certified urologist serving as an OWCP district medical adviser (DMA), for an opinion as to whether the medical record provided a diagnosis in connection with the claimed February 3, 2024 employment incident.

In an April 26, 2024 report, Dr. Choi opined that no diagnosis could be definitively linked to the accepted February 3, 2024 employment incident.

Appellant continued to submit reports by Mr. Johnson regarding that status of his right testicular pain and "work-related injury."

By decision dated May 22, 2024, OWCP accepted that the February 3, 2024 employment incident occurred, as alleged. However, it denied the claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence, including reports by Mr. Johnson dated April 1 and 25, 2024, who noted appellant's complaints and physical examination findings and diagnosed right hip flexor tendinitis, lumbar pain, right testicular swelling, right inguinal pain, and an impaired gait. Mr. Johnson opined that appellant was unable to work.

In a May 23, 2024 report, Mr. Johnson noted that appellant related complaints of lumbar pain radiating into his right groin, down his right leg, and under his big toe and a recent onset of left radicular symptoms down his left lateral thigh, over the knee, and into the left foot, which he attributed to a work-related injury. He documented examination findings and recommended a magnetic resonance imaging (MRI) scan of the lumbar spine.

On June 14, 2024 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP thereafter received a May 22, 2024 attending physician's report (Form CA-20) by Mr. Johnson, who noted a history that appellant fell at work and landed on a metal pole, causing pain to his testicular area. Mr. Johnson diagnosed right testicular pain and swelling, right-sided sciatica, and an enlarged prostate. He opined that "falling on pole caused spine and nerve impaction injury." In a work capacity evaluation (Form OWCP-5c) of even date, Mr. Johnson indicated that appellant was unable to work, but estimated that he would be released to return to sedentary work with frequent changes of position in six weeks.

An MRI scan dated June 5, 2024 revealed midline disc protrusion with bilateral neural foraminal stenosis at L5-S1.

By decision dated September 11, 2024, an OWCP hearing representative affirmed the May 22, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 an injury.⁶

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ 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 specific employment incident identified by the employee.⁸

ANALYSIS

The Board finds that appellant has met his burden of proof to establish swelling of the right testicle causally related to the accepted February 3, 2024 employment incident.

² *Id.*

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).

⁷ *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).

⁸ *P.C.*, Docket No. 20-0855 (issued November 23, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

OWCP found that the February 3, 2024 employment incident, had occurred at the time and place and in the manner alleged. In reports dated February 7 and 28, 2024, Mr. Johnson noted a history of appellant's fall onto his testicle at work and documented swelling of the right testicle during physical examination. He diagnosed right testicular swelling. OWCP's procedures provide that if a 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, and is reported promptly, a case may be accepted without a medical report.⁹ The Board therefore finds that appellant has met his burden of proof to establish swelling of the right testicle.¹⁰ The case will, therefore, be remanded to OWCP for payment of medical expenses and any attendant disability.¹¹

The Board further finds, however, that appellant has not met his burden of proof to establish an additional medical condition as causally related to the accepted February 3, 2024 employment injury.

In his reports dated March 5 through May 23, 2024, Mr. Johnson, an advanced practice registered nurse, diagnosed right hip tendinitis, acute prostatitis, right sciatica and pain in the right testicle, lower abdominal quadrant, lumbar spine, and inguinal area. The Board has held that medical reports signed solely by a nurse, physician assistant, or physical therapist are of no probative value, as such healthcare providers are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion.¹² Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹³ Therefore, the reports of Mr. Johnson are of no probative value and are insufficient to meet appellant's burden of proof to establish an additional medical condition causally related to the accepted February 3, 2024 employment injury.

The remainder of the evidence of record consists of an MRI scan report. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6a (May 2023); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3c (May 2023). See also *R.H.*, Docket No. 20-1684 (issued August 27, 2021); *A.J.*, Docket No. 20-0484 (issued September 2, 2020) (the Board found appellant had met her burden of proof as the medical evidence established visible injuries in the form of ecchymosis and edema).

¹⁰ See *J.C.*, Docket No. 21-0406 (issued November 5, 2021); *R.H.*, *id.*; *A.J.*, *id.*; see also *W.R.*, Docket No. 20-1101 (issued January 26, 2021); *S.K.*, Docket No. 18-1411 (issued July 22, 2020).

¹¹ See *E.B.*, Docket No. 24-0471 (issued June 11, 2024); *J.N.*, Docket No. 24-0169 (issued April 26, 2024); *A.J.*, *id.*

¹² Section 8101(2) of FECA provides that 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 *supra* note 9 at Chapter 2.805.3a(1) (May 2023); *R.C.*, Docket No. 24-0253 (issued June 14, 2024) (an advanced practice nurse is not considered a physician as defined under FECA); *D.H.*, Docket No. 22-1050 (issued September 12, 2023) (nurses and nurse practitioners are not considered physicians 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).

¹³ *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id.*

as they do not address whether the accepted employment injury caused any of the additional diagnosed conditions.¹⁴

As the medical evidence of record is insufficient to establish an additional medical condition as causally related to the accepted February 3, 2024 employment injury, the Board finds that appellant has not met her 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 met his burden of proof to establish swelling of the right testicle causally related to the accepted February 3, 2024 employment incident. The Board further finds, however, that appellant has not met his burden of proof to establish an additional medical condition as causally related to the accepted February 3, 2024 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2024 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 24, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).