

FACTUAL HISTORY

On November 1, 2016 appellant, then a 35-year-old park ranger, filed a traumatic injury claim (Form CA-1) alleging that on October 30, 2016, while attempting to assist a paramedic in restraining a patient who had suffered a seizure and possible head injury, the patient bit his right bicep. Appellant did not stop work.

By letter dated November 14, 2016, OWCP advised appellant to submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed injury. It noted that medical evidence must be submitted by a qualified physician under FECA. OWCP requested that the employing establishment submit any treatment notes if appellant was treated by an agency medical facility. No additional evidence was received.

In a December 19, 2016 decision, OWCP denied appellant's claim, finding that he had failed to submit medical evidence establishing that a medical condition was diagnosed in connection with the accepted work incident.

On January 19, 2017 appellant requested reconsideration. He submitted an authorization for examination (Form CA-16) dated October 30, 2016, signed by Michael Scheid, supervisory park ranger. Mr. Scheid noted that appellant sustained a human bite on the right bicep and authorized medical care or treatment for appellant as medically necessary for the effects of the injury. Part B of the authorization for examination, the attending physician's report, was prepared by a nurse practitioner who noted a history of a human bite on the right arm. She diagnosed human bite of the right upper extremity and noted by checking a box marked "yes" that appellant's condition was caused or aggravated by the employment activity described. The nurse provided a tetanus shot and Augmentin. She noted that appellant was able to resume regular work on October 31, 2016. The nurse recommended wound care, antibiotics and follow-up with workers' compensation in two days for a wound check.

Appellant submitted emergency room general discharge instructions and a return to work status report all dated October 30, 2016, prepared by a nurse practitioner, for a human bite. He was treated for multiple superficial human bites to the right upper arm. The nurse practitioner prescribed medication and recommended over-the-counter medications for pain. She recommended appellant return to work without restrictions on his next scheduled shift. The nurse instructed appellant to check the wound in two days, perform wound care as discussed, and follow up with workers' compensation in two days for further evaluation. On November 1, 2016 she advised that appellant was excused from work for that day only and then could return to work. Appellant also submitted a receipt from Walgreens dated October 31, 2016 as well as a Form CA-1 claim for a traumatic injury dated November 1, 2016, previously of record.

In a February 3, 2017 decision, OWCP denied appellant's December 23, 2016 request for reconsideration as it concluded that the evidence submitted on reconsideration was insufficient to warrant a merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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 filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.³

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 actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁴

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.⁵

ANALYSIS -- ISSUE 1

Appellant alleged that on October 30, 2016, while working as a park ranger, he attempted to assist a paramedic in restraining a patient who had suffered a seizure and possible head injury and was bitten by the patient in his right bicep. The Board notes that there is no dispute that the incident occurred on October 30, 2016 as alleged. The Board finds, however, that there is insufficient medical evidence to establish that appellant sustained a bite-related injury to the right bicep causally related to his employment duties.

In a November 14, 2016 letter, OWCP requested that appellant submit a comprehensive medical report from his treating physician addressing how the work incident had caused the claimed injury. However, no medical evidence was submitted prior to OWCP's decision of December 19, 2016. As noted, part of appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting such causal relationship between the employment incident and the diagnosed condition. The record contains no such medical evidence. Because appellant has not submitted

² *Supra* note 1.

³ *Gary J. Watling*, 52 ECAB 357 (2001).

⁴ *T.H.*, 59 ECAB 388 (2008).

⁵ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

a reasoned medical opinion explaining how and why his right bicep condition was employment related, he has not met his burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.⁶ The Board finds that appellant failed to submit such evidence, and OWCP therefore properly denied appellant's claim for compensation.

On appeal appellant disagrees with OWCP's decision denying his claim for compensation. He indicated that he did not know that he had to be treated by a medical doctor and noted he was treated in the emergency room by a nurse practitioner and he had no control over who was on staff at the hospital when he was injured. OWCP advised appellant in its November 14, 2016 letter that medical evidence must be from a qualified physician.⁷

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.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of FECA,⁸ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(3) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence which:

- “(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or
- “(ii) Advances a relevant legal argument not previously considered by OWCP; or
- “(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”⁹

⁶ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁷ See 5 U.S.C. § 8101(2) (this subsection defines a “physician” as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

⁸ *Id.* at § 8128(a).

⁹ 20 C.F.R. § 10.606(b)(3).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.¹⁰

ANALYSIS -- ISSUE 2

OWCP denied appellant's claim because he failed to submit medical evidence establishing that a medical condition was diagnosed in connection with the accepted work incident. Thereafter, it denied his reconsideration request, without conducting a merit review.

The issue presented is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In his request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. In an appeal request form dated December 23, 2016, he requested reconsideration of the December 19, 2016 decision. Appellant did not articulate any legal error by OWCP or set forth a new and relevant legal argument. The underlying issue in this case is whether he submitted sufficient evidence to establish the accepted work incident on October 30, 2016 caused or aggravated a diagnosed medical condition. That is a medical issue which must be addressed by relevant new medical evidence.¹¹ However, appellant did not submit any new and relevant medical evidence in support of his claim.

Appellant submitted a Form CA-1 claim for a traumatic injury dated November 1, 2016. However, this form is duplicative of evidence previously submitted and considered by OWCP in its earlier decision dated December 19, 2016. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹² Therefore, this report is insufficient to require OWCP to reopen the claim for a merit review.

With respect to relevant and pertinent new evidence not previously considered by OWCP, appellant submitted an authorization for examination (Form CA-16) dated October 30, 2016, authorizing medical care or treatment that was medically necessary for the effects of the injury. Part B of the authorization for examination form, the attending physician's report, was prepared by a nurse practitioner. Appellant submitted emergency room general discharge instructions for a human bite dated October 30, 2016, prepared by a nurse practitioner. Also submitted was an October 30, 2016 return to work status report and a November 1, 2016 work excuse note from a nurse practitioner. The Board has held that treatment notes signed by a nurse practitioner¹³ are not considered medical evidence as these providers are not considered

¹⁰ *Id.* at § 10.608(b).

¹¹ *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

¹² *See Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

¹³ *Supra* note 7. *See also Paul Foster*, 56 ECAB 208 (2004) (where the Board found that a nurse practitioner is not a "physician" pursuant to FECA).

physicians under FECA¹⁴ and their opinions have no probative value. Thus, her opinion is of no relevance to the issue of causal relationship and does not comprise a basis for reopening the case for a merit review.¹⁵

Appellant also submitted a drugstore receipt dated October 31, 2016. This evidence is not relevant as the underlying issue is whether appellant has established by medical evidence that the accepted work incident on October 30, 2016 caused or aggravated a diagnosed medical condition. Therefore, OWCP properly determined that this evidence of record did not warrant reopening the case for a merit review.

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

The Board notes however, that the record does not verify that the issue of appellant's incurred medical expenses has been addressed. The record contains an undated Form CA-16 noting an October 30, 2016 incident, signed by a supervisor authorizing medical treatment. Ordinarily, where the employing establishment authorizes treatment of a job-related injury by providing the employee a properly executed CA-16 form,¹⁶ OWCP is under contractual obligation to pay for the medical examination or treatment regardless of the action taken on the claim.¹⁷ The Board finds that upon return of the case record, this matter should be addressed.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a right bicep injury was causally related to the accepted October 20, 2016 employment incident. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹⁴ See *David P. Sawchuk*, 57 ECAB 316 (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), *supra* note 7 (defines the term "physician").

¹⁵ See *J.D.*, Docket No. 16-1752 (issued March 1, 2017).

¹⁶ See *Val D. Wynn*, 40 ECAB 666 (1989); see also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (February 2012).

¹⁷ 5 U.S.C. § 8103; 20 C.F.R. § 10.304. See *A.R.*, Docket No. 16-1416 (issued April 10, 2017); *L.B.*, Docket No. 10-469 (issued June 2, 2010); see also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (February 2012).

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2017 and December 19, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 25, 2017
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