United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 23-0085**
	)	**Issued: May 9, 2023**
DEPARTMENT OF THE NAVY, MARINE CORPS, QUANTICO FIRE DEPARTMENT, Quantico, VA, 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
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On October 27, 2022 appellant filed a timely appeal from an October 14, 2022 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]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the October 14, 2022 decision, appellant submitted additional evidence to OWCP. However, 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*.

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted August 26, 2022 employment incident.

FACTUAL HISTORY

On September 2, 2022 appellant, then a 35-year-old firefighter, filed a traumatic injury claim (Form CA-1) alleging that on August 26, 2022 he sustained an injury when a patient punched him in "his face, left eye" while in the performance of duty. He did not stop work.

In support of his claim, appellant submitted a bill for a pair of new eyeglasses.

In a September 8, 2022 development letter, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In response, appellant submitted an August 8, 2022 statement further describing the circumstances of the August 26, 2022 employment incident and its aftermath. He indicated that, just after being transported to the hospital, a patient punched him in his face, lateral to his left eye. Appellant noted that the patient broke his pair of glasses, but he did not seek medical treatment.

By decision dated October 14, 2020, OWCP accepted that appellant had established the occurrence of the August 26, 2022 employment incident, as alleged. However, it denied his traumatic injury claim, finding that he had not submitted sufficient evidence to establish a diagnosed medical condition in connection with the accepted August 26, 2022 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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 and that the claim was filed within the applicable time limitation period 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]

[3] *See R.B.*, Docket No. 18-1327 (issued December 31, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[5] *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).

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7]

Rationalized medical opinion evidence is 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 incident.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition in connection with the accepted August 26, 2022 employment incident.

Appellant submitted a statement in which he further described the circumstances of the August 26, 2022 employment incident. He also submitted a bill for a pair of new eyeglasses. However, appellant has not submitted medical evidence containing a medical diagnosis made in connection with the accepted August 26, 2022 employment incident.[10]

As appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition in connection with the accepted August 26, 2022 employment incident, the Board finds that he 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 medical condition in connection with the accepted August 26, 2022 employment incident.

[6] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[9] *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[10] 5 U.S.C. § 8101(5); *David H. Dulebohn*, 41 ECAB 428 (1990) (eyeglasses and hearing aids would not be replaced, repaired, or otherwise compensated for, unless the damages or destruction is incident to a personal injury requiring medical services).

ORDER

IT IS HEREBY ORDERED THAT the October 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 9, 2023
Washington, DC

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

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

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