United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 09-89**
	)	**Issued: May 14, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Paterson, NJ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 15, 2008 appellant filed a timely appeal of a July 14, 2008 decision of the Office of Workers' Compensation Programs that affirmed a March 4, 2008 decision denying his claim for compensation. Pursuant to 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 met his burden of proof in establishing that he sustained a traumatic injury on January 10, 2008 in the performance of duty.

FACTUAL HISTORY

On January 10, 2008 appellant, then a 53-year-old lead automotive technician, filed a traumatic injury claim alleging that he developed acute neck pain on that day when his work vehicle was struck in the rear by another vehicle while he was stopped at an intersection. He stopped work for several hours, when he was transported to a local emergency room and returned to work later that day. In support of his claim, appellant submitted discharge instructions dated

January 10, 2008 from Dr. David Adinaro, Board-certified in emergency medicine, who diagnosed acute neck pain and musculoskeletal pain after appellant had been in a motor vehicle collision.

In a January 29, 2008 letter, the Office advised appellant of the type of factual and medical evidence necessary to establish his claim and allowed him 30 days to submit such evidence. It requested that he submit medical evidence with a physician's opinion and firm diagnosis. In response to this request, appellant submitted a January 10, 2008 hospital report of Dr. Adinaro who noted appellant's complaint of pain on his head and neck and diagnosed acute neck pain.

In a March 4, 2008 decision, the Office denied appellant's claim for compensation finding that the medical evidence did not establish that he sustained an injury in connection with the accepted incident. Appellant requested a review of the written record on March 25, 2008.

Appellant submitted notes of Barbara Dolin, a registered nurse, dated January 10, 2008 addressing his complaint of pain in his head and neck. In medical reports of the same date, Dr. Adinaro assessed mild diffuse neck pain and mild posterior headache in addition to abrasions, blunt trauma, closed head injury, contusion and musculoskeletal pain. He noted that appellant's condition, acute neck pain, was a new problem and that the symptoms had resolved. Appellant was discharged to home in good condition on that same day. In a January 10, 2008 diagnostic report, Dr. Vidor Bernstien, a Board-certified radiologist, interpreted views of appellant's cervical spine. He found the vertebrae to be average in height with good preservation of interspaces. Dr. Bernstien also noted mild torticollis, convex right. Dr. Adinaro issued a discharge report noting that appellant's symptoms had resolved and he was discharged to self-care in good condition.

On July 14, 2008 an Office hearing representative affirmed the March 4, 2008 decision on the grounds that the medical evidence lacked sufficient diagnosis of the injury sustained on January 10, 2008.[1]

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while 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

[1] After filing this appeal, appellant clarified his position to state that he only wanted the Office to pay for his transportation by ambulance to the emergency room on the date of the incident. This issue was not reached or decided by the Office in the decision below and it is therefore not before the Board.

[2] 5 U.S.C. §§ 8101-8193.

and every compensation claim regardless of whether the claim is predicated on 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 must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[4]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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 factors identified by the employee.[5]

ANALYSIS

The record supports that appellant was driving while in the performance of duty when he was struck in the rear by another vehicle on January 10, 2008. However, he has not submitted sufficient medical evidence to establish that this employment incident caused a personal injury.

Appellant submitted the hospital notes of Dr. Adinaro. On January 10, 2008 Dr. Adinaro diagnosed abrasions, blunt trauma, closed head injury, contusion and musculoskeletal pain. However the hospital records provide no opinion as to the cause of appellant's condition. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[6] Dr. Adinaro advised that appellant's symptoms had resolved and he discharged appellant in good condition. He did not address whether or how the accepted motor vehicle collision caused a diagnosed medical condition. Dr. Adinaro's discharge instructions and hospital report, both dated January 10, 2008, diagnose acute neck pain. However, pain is a symptom, not recognized as a medical diagnosis, and is therefore not compensable.[7]

[3] *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *Id*.

[5] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[6] *See K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007); *A.F.*, 59 ECAB ___ (Docket No. 08-977, issued September 12, 2008).

[7] *See C.F.*, 60 ECAB ___ (Docket No. 08-1102, issued October 10, 2008).

Dr. Bernstien's radiology report is also insufficient. He interpreted x-rays of appellant's cervical spine but did not reference the January 10, 2008 incident or address whether that incident caused or aggravated a diagnosed condition. As noted, medical evidence without an opinion on causal relationship is insufficient. Moreover, the nurse's notes are of no probative value as nurses are not considered physicians under the Act, and therefore, they cannot provide a medical opinion.[8] Consequently, the medical evidence is insufficient to establish that appellant's employment incident caused a personal injury.

The Board notes that, on appeal, appellant wrote a letter dated October 6, 2008 and asserted that he only wants to have his ambulance bill paid. However, the issue of payment of emergency medical expenses was not decided by the Office and is therefore not before the Board.[9] Appellant must raise the issue of payment of his ambulance bill for consideration by the Office first. He would then have the right to appeal a decision on that issue, if necessary, to the Board.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a traumatic injury on January 10, 2008 in the performance of duty.

[8] Registered nurses and licensed practical nurses are not "physicians" as defined under the Act. Their opinions are of no probative value. *Roy L. Humphrey*, 57 ECAB 238 (2005); *see* 5 U.S.C. § 8101(2) (defining the term "physician"); *see also Charley V.B. Harley*, 2 ECAB 208 (1949) (the Board held that medical opinion, in general, can only be given by a qualified physician).

[9] There are provisions for payment of certain emergency expenses on a case by case basis even in doubtful claims which are later denied. 20 C.F.R. § 10.304; Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300(3)(a)(1)(3), (October 1990), providing for the use of Form CA-16; *Michael L. Malone*, 46 ECAB 957 (1995); *Herbert J. Hazard*, 40 ECAB 973 (1989); *Marjorie S. Geer*, 39 ECAB 1099 (1988).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated July 14 and March 4, 2008 are affirmed.

Issued: May 14, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board