United States Department of Labor
Employees' Compensation Appeals Board

C.P., Appellant	)	
and	)	**Docket No. 13-831**
	)	**Issued: July 12, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Monroe Township, NJ, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 26, 2013 appellant, through his attorney, filed a timely appeal from a February 4, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) that denied his claim. 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.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an employment-related injury on April 18, 2012.

On appeal, appellant's attorney asserts that the February 4, 2013 decision is contrary to fact and law.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On April 18, 2012 appellant, then a 38-year-old custodian, filed a traumatic injury claim alleging that he was injured in his postal vehicle in the employee parking lot. He stopped work that day. Bridget M. Zelinsky, supervisor of customer services, asserted on the claim form that the injury occurred due to appellant's willful misconduct because, based on a police report, he was not wearing a seatbelt at the time of the accident. In an attached statement, appellant indicated that the postal vehicle lost its brakes as he was turning into the parking lot and he could not stop the truck which went towards a fence. He called a coworker who came out to help. Appellant stated that he was wearing a seatbelt at the time of the accident and that the police came and questioned him.

In a statement dated April 18, 2012, Ms. Zelinsky indicated that on that day appellant returned to the employing establishment from the hospital and became very agitated when questioned whether he was wearing a seatbelt. She stated that the responding policeman indicated that when questioned immediately after the accident, appellant stated that he was not wearing a seatbelt. After talking with Ms. Zelinsky, he left to pick up his son. Lew Petrone, of Three Star Auto Service, provided an April 18, 2012 statement in which he indicated that appellant had mentioned on April 17, 2012 that he could or should crash a postal vehicle if he was bringing it into the shop for required brake work. In an undated statement, Donna Petrone, a coworker, indicated that she saw appellant leave a bank, driving fast and without a seatbelt. She stated that later she saw the postal vehicle off the road at the employing establishment. Ms. Petrone saw a police officer arrive and she pulled up out of concern for the driver.

In an April 18, 2012 report from the emergency department of University Medical Center, Princeton, NJ, Dr. Daniel Farber, Board-certified in emergency medicine, diagnosed back strain, not otherwise specified; abdominal pain; and motor vehicle accident, unspecified.[2]

By letter dated May 2, 2012, OWCP informed appellant of the evidence needed to support his claim, to include a narrative report from his physician explaining how the reported work incident caused or aggravated a medical condition. In a May 17, 2012 response, appellant described the April 18, 2012 incident, stating that the brakes on the postal vehicle failed, which caused him to collide with the curb, injuring his head, neck and back. He indicated that he was wearing his seatbelt at the time of the accident and was taken by ambulance to the emergency room. Appellant reported that on April 20, 2012 he saw his family physician, Dr. M.S. Durrani, a Board-certified internist, who referred him to Dr. Joseph Grassi, a Board-certified physiatrist. He related that he had a magnetic resonance imaging (MRI) scan study of the lumbar spine on May 2, 2012 and this was reviewed by Dr. Grassi, who diagnosed a disc herniation at L5-S1.

An OWCP Form CA-16, authorization for examination, dated April 28, 2012, indicated that appellant was authorized to visit Orthopedic Associates in Phillipsburg, NJ. In a May 1, 2012 report, Dr. Durrani indicated that appellant was seen on April 20, 2012, status post a motor vehicle accident for continued pain in the neck and back. He advised that appellant was given medications and advised to rest. Dr. Durrani referred appellant to physical therapy and for an

[2] The 16-page report found in the case record does not include a history of injury or include physical examination findings.

MRI scan study and advised that he could not work. A May 2, 2012 MRI scan study of the lumbar spine demonstrated an eccentric herniation on the right at L5-S1.

In reports dated May 3, 2012, Dr. Grassi, of Orthopedic Associates, reported a history that on April 18, 2012 appellant was driving a postal vehicle and that, when the brakes failed, the vehicle jumped a curb and that appellant stated that he may have hit his head on the steering wheel and blacked out briefly but exited the vehicle on his own and the vehicle was not damaged. He further indicated that appellant stated that he had no previous back injuries or problems. Dr. Grassi noted pertinent physical findings of pain to palpation in the midline lower back and over the sacroiliac joints with muscle tightness and pain to palpation along the midline lumbar spine and with some decreased range of motion with pain. Seated straight leg raise was positive on the right, negative on the left. Dr. Grassi reviewed the MRI scan study, noting the right central herniation with foraminal encroachment at L5-S1 and possible L5 and S1 nerve root impingement. He diagnosed low back pain and disc herniation at L5-S1 and right lower extremity radicular pain. Dr. Grassi prescribed medication and physical therapy and advised that appellant should not work for the next three to four weeks.[3]

By letter dated May 21, 2012, the employing establishment controverted the claim.

In a June 14, 2012 decision, OWCP found that the April 18, 2012 incident occurred but denied the claim on the grounds that the medical evidence did not indicate that appellant suffered a medical condition causally related to the April 18, 2012 work incident.

On July 12, 2012 appellant, through his attorney, requested a hearing before an OWCP hearing representative. He submitted an April 18, 2012 ambulance report completed by Jeremy Colby and Susan Neilson, emergency medical technicians (EMTs). The report indicated that appellant reported a history that when the brakes failed on the postal vehicle he was driving at 25 to 35 miles per hour, the truck jumped a curb, he hit his head on the steering wheel and the airbag did not deploy. Appellant was complaining of back and neck pain and headaches. Tenderness in the thoracic and lumbar area was noted on examination. Appellant was immobilized and transported to the emergency department at University Medical Center. In reports dated May 29 and June 12, 2012, Dr. Grassi noted that appellant was improving. He reiterated his diagnoses, recommended continued physical therapy and advised that appellant would resume light-duty work on June 18, 2012.

At the hearing, held on November 13, 2012, appellant described the April 18, 2012 incident and his medical treatment. In December 10, 2012 correspondence, the employing establishment indicated that the brakes on the postal vehicle involved in the April 18, 2012 incident had been checked twice and both facilities indicated that the brakes would have stopped the vehicle.

In a December 12, 2012 report, Dr. Robert Friedman, a Board-certified orthopedic surgeon who is an associate of Dr. Grassi, described appellant's report that he lost control of his mail truck when the brakes failed and he went over a curb and into a ditch. Appellant reported the he had no prior back pain but now had radiating pain and indicated that he had returned to normal duties at work. Dr. Friedman provided physical examination findings, noting slight

[3] Appellant also submitted an illegible, unsigned medical report.

reduction in back range of motion with some spasm and tenderness and a negative straight leg raise examination. He reviewed the MRI scan study. Dr. Friedman noted that his records indicated that appellant was seen in July 2006 complaining of back pain after he slipped washing a car at his employer, a car dealer. An MRI scan study at that time demonstrated a small right paracentral disc herniation at L5-S1 and appellant was treated conservatively. Dr. Friedman reported that appellant was not seen from October 2006 until he returned three years later with a shoulder injury and not seen for a back condition until May 2012. He diagnosed lumbar disc herniation at L5-S1 with radiculitis. Regarding causation, Dr. Friedman stated that this was a significant issue and appellant had indicated that he had no previous back injury but there was good documentation that he had a previous MRI scan study showing a herniated disc. He indicated that in 2006 appellant had a significant injury that required treatment and had gotten to the point that an epidural was recommended but that appellant did not return for treatment of the 2006 back injury. Dr. Friedman opined that there was possible either some additional treatments he was not privy to or that appellant's back condition subsided enough that he could cope. Regarding appellant's current condition, he indicated that, since appellant had an established disc herniation from 2006, it was not clear whether this represented a significant new injury or exacerbation of an underlying old problem, noting that the recent MRI scan study seemed to suggest fairly similar findings to the one in 2006. Dr. Friedman stated that, at the very most, "we could say that this incident caused an aggravation of an underlying problem and was not a clear causal event," again noting that appellant had very similar findings in 2006.

By decision dated February 4, 2013, an OWCP hearing representative affirmed the June 14, 2012 decision. She noted that, as appellant had provided an incorrect medical history, he was not a credible historian and that Dr. Friedman's report was speculative regarding causation. The hearing representative concluded that none of the medical evidence indicated how the April 18, 2012 incident caused or changed appellant's back condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 timely filed within the applicable time limitation period 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 asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[4]

OWCP regulations at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[5] In order to determine whether an employee sustained an injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered in conjunction with one another. The first component is whether the employee actually

[4] *Roy L. Humphrey*, 57 ECAB 238 (2005).

[5] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[6]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[7] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[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

OWCP found that the April 18, 2012 employment incident occurred as alleged. The Board, however, finds that the medical evidence of record is insufficient to establish that appellant sustained an injury or medical condition caused by this incident.

The May 2, 2012 lumbar spine MRI scan did not include an opinion as to the cause of any diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10] The April 18, 2012 report from the EMTs is of no probative value as an EMT is not a physician as defined under FECA.[11]

In the April 18, 2012 emergency department report, Dr. Farber merely diagnosed back strain, not otherwise specified; abdominal pain; and motor vehicle accident, unspecified. He did not provide a complete history of injury, describe physical examination findings or explain a mechanism of injury. Dr. Farber's opinion is therefore not sufficient to establish that appellant sustained an employment-related injury on April 18, 2012.[12] Likewise, Dr. Durrani merely noted that appellant had been in a motor vehicle accident and had continued pain in the neck and back.

[6] *Tracey P. Spillane*, 54 ECAB 608 (2003).

[7] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[9] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[10] *Willie M. Miller*, 53 ECAB 697 (2002).

[11] *E.K.*, Docket No. 09-1827 (issued April 21, 2010). 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); *see L.D.*, 59 ECAB 648 (2008).

[12] *See T.H.*, 59 ECAB 388 (2008).

He, however, did not otherwise describe the incident or provide a firm diagnosis. Dr. Durrani's opinion too is insufficient to establish an employment-related injury.[13]

Dr. Grassi reported a history of injury that the brakes on appellant's postal vehicle failed and he jumped a curb. He diagnosed back pain and a herniated disc at L5-S1. Dr. Grassi, however, also reported that appellant had no previous back injury and as noted above, his associate, Dr. Friedman, indicated that appellant was seen in 2006 for a disc herniation at L5-S1 when he worked for a private employer. The opinion of a physician must be based on a complete factual and medical background.[14] Moreover, Dr. Grassi did not explain how the April 18, 2012 incident caused appellant's diagnosed condition. His opinion is also insufficient to meet appellant's burden of proof.[15]

In a December 12, 2012 report, Dr. Friedman noted the history of injury and provided physical examination findings. He reported that appellant stated that he had no previous history of back injury yet had been seen in their office in 2006 for a herniated disc. Dr. Friedman reviewed lumbar spine MRI scan studies done in 2006 and 2012 and advised that the 2012 study seemed to suggest similar findings to the one in 2006. He concluded that, at the very most, "we could say that [the April 18, 2012] incident caused an aggravation of an underlying problem and was not a clear causal event."

The Board has long held that an opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to the federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[16] Furthermore, medical opinions that are speculative or equivocal in character are of diminished probative value.[17] The opinion should be expressed in terms of a reasonable degree of medical certainty.[18] Dr. Friedman merely indicated that it was possible that the April 18, 2012 incident caused an aggravation of appellant's 2006 herniated disc. His report is therefore speculative in nature and insufficient to meet appellant's burden of proof.

As appellant did not submit sufficient medical evidence to establish that he sustained a diagnosed condition caused by the April 18, 2012 employment incident, he did not meet his burden of proof.

Lastly, the Board notes that where, as in this case, an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the CA-16 form creates a contractual obligation, which does

[13] *Id*.

[14] *Leslie C. Moore*, *supra* note 8.

[15] *T.H.*, *supra* note 12.

[16] *Patricia J. Glenn*, 53 ECAB 159 (2001).

[17] *D.D.*, 57 ECAB 734 (2006).

[18] *Ricky S. Storms*, 52 ECAB 349 (2001).

not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim.[19] The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP.[20] The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form.

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 did not meet his burden of proof to establish that he sustained an employment-related injury on April 18, 2012.

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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

[19] *See Tracy P. Spillane*, 54 ECAB 608 (2003).

[20] *See* 20 C.F.R. § 10.300(c).