United States Department of Labor
Employees' Compensation Appeals Board

E.V., Appellant	)	
	)	
and	)	**Docket No. 12-343**
	)	**Issued: June 19, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Oyster Bay, NY, 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 December 5, 2011 appellant filed a timely appeal from a June 29, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for compensation and an October 20, 2011 nonmerit decision denying his request for review of the written record. 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 the case.[2]

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a back injury on May 2, 2011 causally related to his work; and (2) whether OWCP properly denied appellant's request for a review of the written record.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the June 29, 2011 OWCP decision, appellant submitted new evidence. However, the Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final merit decision. *See* 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence, together with a written request for reconsideration to OWCP, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

FACTUAL HISTORY

On May 12, 2011 appellant, then a 30-year-old letter carrier, filed a traumatic injury claim alleging that he sustained a back injury on May 2, 2011 while walking up steps on his route. In a supplemental statement of May 13, 2011, he explained that he felt a sharp pain in his low back when he was walking up stairs while delivering mail.

Appellant submitted a Form CA-16, dated May 2, 2011, signed by Dr. Vinod Gulati, Board-certified in internal medicine, who diagnosed a back sprain and indicated that his condition was caused by his employment activities by checking "yes" on the form. OWCP also received a Form CA-17 dated May 6, 2011, which noted appellant's restrictions. This form report noted physical findings including tenderness of the right sacroiliac area and bilateral leg pain.[3]

By letter dated May 26, 2011, OWCP informed appellant that further evidence was required to support his claim. It requested a medical report that contained a physician's opinion, supported by a medical rationale, explaining how the reported work incident caused or aggravated his medical condition.

Appellant submitted a May 26, 2011 medical report from Dr. Antony Adamo, a Board-certified neurologist, who noted that appellant had sustained a work-related injury on May 2, 2011 when he suddenly experienced low back pain radiating down the right posterolateral leg. Dr. Adamo noted that a magnetic resonance imaging scan of appellant's lumbar spine showed some mild degenerative changes, but no hernatiated disc. He diagnosed chronic lumbosacral radiculopathy.

In a May 31, 2011 report, Robert Gribbin, a physical therapist, diagnosed lumbosacral neuritis and lumbar disc displacement.

By decision dated June 29, 2011, OWCP accepted that the May 2, 2011 incident occurred as alleged, but denied the claim on the grounds that the medical evidence did not establish that appellant's back condition was causally related to the accepted incident.

Appellant disagreed with the decision and requested review of the written record on September 10, 2011. He submitted additional medical evidence to the record.

OWCP denied appellants request for a review of the written record in a decision dated October 20, 2011. It found that the request was untimely filed. Appellant was informed that his case had been considered in relation to the issues involved and that the issues could be addressed by requesting reconsideration before and submitting evidence not previously considered.

[3] The signature on this form report is illegible.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[4] has the burden to establish the essential elements of his 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, 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.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.[6] The employee must also submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 claimant.[8]

Section 8101(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. As nurses, physician's assistants, physical and occupational therapists are not physicians as defined by FECA, their opinions regarding diagnosis and causal relationship are of no probative medical value.[9]

ANALYSIS -- ISSUE 1

OWCP has accepted that the May 2, 2011 incident occurred as alleged. The Board finds that the medical evidence of record is not sufficient to establish that appellant's back condition was causally related to the employment incident.

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[4] 5 U.S.C. §§ 8101-8193.

[5] *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[7] *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[8] *Gary J. Watling*, 52 ECAB 278 (2001).

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

The medical evidence from Dr. Gulati and Dr. Adamo does not provide a rationalized medical opinion explaining how the diagnosed lumbosacral strain was caused by appellant walking on his postal route.

Dr. Gulati's CA-16 form provided a diagnosis of appellant's condition as back sprain but indicated with a check mark that his condition was aggravated by the work incident of May 2, 2011. He did not provide any narrative medical rationale explaining how the employment incident caused or aggravated the diagnosed back condition. Appellant must furnish an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. The Board has held that when a physician's opinion on causal relationship consists only of checking yes to a form question, that opinion is of diminished probative value and is insufficient to establish causal relationship.[10] Dr. Gulati's check mark on causal relationship is of little weight and is insufficient to discharge appellant's burden of proof.[11]

The report from Dr. Adamo diagnosed appellant with chronic lumbosacral radiculopathy and noted a history of the incident of May 2, 2011. He did not explain the basis of his diagnosis or how physiologically the incident of May 2, 2011 caused or contributed to the diagnosed condition. The Board has held that medical reports lacking a rationale on causal relationship are of reduced probative value.[12]

As noted the definition of "physician" does not include a physician's assistant, nurse or physical therapist. Therefore, the medical document signed only by Mr. Gribbin, a physical therapist, is not probative medical evidence on the issue of causal relationship.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that, before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.[13] Section 10.616(a) of the federal regulations implementing this section of FECA provide that a claimant, injured on or after July 4, 1966, who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by the postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.[14]

[10] *E.g.*, *Lillian M. Jones*, 34 ECAB 379 (1982).

[11] The Board notes that a CA-16 form was issued to Dr. Stinson. The Board has held that a properly completed authorization form from the employing establishment creates a contractual obligation to pay for the cost of the necessary medical treatment regardless of the actions taken on the claim. *See Robert F. Hamilton*, 41 ECAB 431 (1990); 20 C.F.R. § 10.300. On return of the record OWCP should further develop this aspect of the claim.

[12] *See Mary E. Marshall*, 56 ECAB 420 (2005).

[13] 5 U.S.C. § 8124(b)(1).

[14] *N.M.*, 59 ECAB 511(2008).

OWCP, in its broad discretionary authority in the administration of FECA has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and OWCP must exercise this discretionary authority in deciding whether to grant a hearing. Its procedures, which require OWCP to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of FECA and Board precedent.[15]

ANALYSIS -- ISSUE 2

Appellant requested a review of the written record before OWCP's Branch of Hearings and Review on September 10, 2011. As the request was submitted more than 30 days following issuance of the June 29, 2011 decision, it was untimely filed.

OWCP considered the matter in relation to the issue involved and found that additional evidence could be submitted with a request for reconsideration. It has administrative discretion in determining whether a hearing should be granted even though the request is untimely. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.[16] Because reconsideration exists as an alternative appeal right to address the issues raised by OWCP's June 29, 2011 decision, the Board finds that OWCP did not abuse its discretion in denying appellant's untimely request for a review of written record.

CONCLUSION

The Board finds that appellant failed to establish that his back condition was caused by his federal employment and that OWCP properly denied appellant's request for review of the written record as untimely.

[15] *Sandra F. Powell*, 45 ECAB 877 (1994).

[16] *Samuel R. Johnson*, 51 ECAB 612 (2000).

ORDER

IT IS HEREBY ORDERED THAT the October 20 and June 29, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 19, 2012
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