

FACTUAL HISTORY

On July 21, 2011 appellant, then a 32-year-old transportation security officer, filed a claim for traumatic injury to his back while on duty. He felt pain in his low back when he was searching bags on July 10, 2011.

Appellant submitted chiropractor reports from Bernard T. Brannigan, D.C. dated July 18 through August 26, 2011, which documented his symptoms and progress from treatment. Dr. Brannigan diagnosed thoracic or lumbosacral neuritis or radiculitis and nonallopathic lesions of the thoracic lumbar and sacral regions. He did not state that x-rays had been taken of appellant's spine or that any diagnosis was made based upon x-ray evidence.

Appellant also submitted a July 14, 2011 medical report from Dr. Nancy Peplau, Board-certified in family medicine, who noted that appellant was suffering from back pain, and ordered that he should modify his activity as tolerated and to continue with chiropractic treatment as needed.

In a July 16, 2011 report, Lisa Larsson a nurse practitioner, noted that appellant was searching bags at work when he experienced pain in his lower back.

In an August 31, 2011 report, Dr. Edward F. Hassan, Board-certified in internal medicine, noted that appellant sustained a lower back strain on July 10, 2011 in the baggage room. He referred appellant to "physiatry with Dr. Maguire" and advised that he should walk daily.

In a September 8, 2011 medical report, Dr. Hassan noted that appellant's back pain had improved and that he could return to work on the condition that he not perform lifting over 10 pounds.

On October 5, 2011 OWCP advised appellant that when his claim was initially received it appeared to be a minor injury that resulted in minimal or no lost time from work; therefore, payment for a limited amount of services was administratively approved. As appellant's claim had not been formally considered it was reopened because his medical bills exceeded \$1,500.00. He was advised to submit additional evidence in support of his claim, including a medical report containing a diagnosis of his condition and medical rationale explaining the cause of the diagnosed condition.

In response, appellant submitted an October 3, 2011 medical note from Dr. Hassan who stated that appellant could return to work without restrictions.

By decision dated November 8, 2011, OWCP found that the July 10, 2011 incident occurred as alleged, but denied the claim as the medical evidence was insufficient to establish that appellant sustained an injury causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴

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. 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.⁵ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

Section 8101(2) provides that the term “physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.”⁷

ANALYSIS

Appellant has alleged that he sustained a back injury while searching bags on July 10, 2011. OWCP accepted that he searched bags that day. The Board finds that appellant submitted insufficient medical evidence to establish that he sustained an injury causally related to his duties on July 10, 2011.

Appellant was initially treated by Dr. Brannigan. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary.⁸ To be given any weight, the chiropractic report must state that x-rays support the finding of a spinal subluxation.⁹ Dr. Brannigan diagnosed thoracic or lumbosacral neuritis or radiculitis, nonallopathic lesions of the thoracic lumbar and sacral regions. The reports from Dr. Brannigan have no probative value as he did not

³ 5 U.S.C. §§ 8101-8193.

⁴ *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁶ *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁷ *Isabelle Mitchell*, 55 ECAB 623 (2004); *John E. Cannon*, 55 ECAB 585 (2004).

⁸ *Paul Foster*, 56 ECAB 208 (2004).

⁹ 20 C.F.R. § 10.311(c). *See also George E. Williams*, 44 ECAB 530 (1993).

diagnose any spinal subluxation based upon x-ray evidence. Thus, he is not a physician as defined under FECA.

Similarly, the July 16, 2011 report issued by Ms. Larsson, a nurse practitioner, also lacks probative value. The Board has held that the report from a nurse practitioner does not constitute competent medical evidence.¹⁰

Furthermore, Dr. Peplau's report did not contain a firm diagnosis of appellant's condition as she only stated appellant's diagnosis as "back pain." The Board has noted that pain is generally considered a symptom, not a firm medical diagnosis.¹¹

While Dr. Hassan did state a diagnosis of low back strain which he reported occurred while appellant was working in the baggage room on July 10, 2011, he merely related the history and not a rationalized medical opinion on causal relation. Dr. Hassan did not provide a history of appellant's actual duties in the baggage room on July 10, 2011. For example, he did not state whether appellant was bending, kneeling, lifting, nor did he explain the clinical basis for the diagnosis of low back strain. Neither the fact that a claimant's condition became apparent during a period of employment, nor the belief that the condition was caused, precipitated or aggravated by the employment is sufficient to establish causal relationship.¹² Dr. Hassan did not provide a rationalized medical opinion, based upon an accurate and detailed factual history of appellant's activities on July 10, 2011, explaining the causal relationship between the diagnosed low back strain and his work activities. Appellant 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 failed to establish that he sustained an injury causally related to his employment on July 10, 2011.

¹⁰ A.S., Docket No. 11-1510 (issued March 13, 2012).

¹¹ J.W., Docket No. 11-1475 (issued December 7, 2011); *Robert Broome*, 55 ECAB 339, 342 (2004).

¹² See *D.I.*, 59 ECAB 158 (2007); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 8, 2011 is affirmed.

Issued: May 11, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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