

**United States Department of Labor
Employees' Compensation Appeals Board**

C.H., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
East Saint Louis, IL, Employer

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**Docket No. 13-432
Issued: June 5, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 19, 2012 appellant filed a timely appeal of the December 5, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (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 back and neck injuries on October 18, 2012 while in the performance of duty.

FACTUAL HISTORY

On August 21, 2012 appellant, then a 41-year-old mail carrier, filed a traumatic injury claim alleging that on October 18, 2012 he hurt his back and neck as a result of a hit and run

¹ 5 U.S.C. § 8101 *et seq.*

motor vehicle accident that occurred as he was exiting the driveway. He stopped work on the date of injury.

An unsigned medical report dated December 1, 2009 which contained the typed name of Dr. Muhammad Jamil, Board-certified in cardiovascular disease, obtained a history that on November 26, 2009 appellant felt a pinch in his back when he reached with both hands to get papers out of a tub at work. Appellant was treated at a hospital emergency room and diagnosed as having back pain and arthritis. Following examination on December 1, 2009 he was diagnosed as having nonwork-related back pain.

An unsigned report dated October 18, 2012 from Memorial Hospital stated that appellant was treated for back muscle strain.

Unsigned reports dated October 22 and 24, 2012 which contained the typed name of Dr. Heather D. Gjorgjievski, an osteopath, stated that appellant had cervical and lumbar strains and that he could return to work with restrictions on October 22 and 24, 2012, respectively.

In an October 31, 2012 duty status report, Pamela L. Walsh, a nurse practitioner, advised that appellant had a spasm in the right upper extremity trapezius and pain in the right thoracic area due to an October 12, 2012 motor vehicle accident. She also reported on October 31, 2012 that he had cervical and lumbar strains. Ms. Walsh released appellant to return to work that day with restrictions.

By letter dated November 5, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit factual and medical evidence, including a medical report containing a diagnosis of his condition and rationale explaining how the condition was caused or aggravated by the work incident.

Reports dated November 12 and 28, 2012 which contained Dr. Gjorgjievski's typed name reiterated the diagnoses of cervical and lumbar strains and released appellant to return to work with restrictions on November 12 and 28, 2012, respectively.

A November 12, 2012 duty status report which contained an illegible signature stated that appellant had cervical and lumbar strains due to the October 18, 2012 motor vehicle accident.

A November 19, 2012 report which contained the typed name of Dr. Rudolph E. Catanzaro, a Board-certified surgeon, advised that appellant had cervical and lumbar strains. Appellant was released to return to work that day with restrictions.

Reports from appellant's physical therapists addressed the treatment of his cervical and lumbar strains and sprain of an unspecified site of the elbow and forearm on intermittent dates from November 14 through 30, 2012.

A November 30, 2012 report which contained the typed name of Marva Warmington, a nurse practitioner, stated that appellant had cervical and lumbar strains. Appellant was released to return to work that day with restrictions.

In a December 5, 2012 decision, OWCP accepted that the October 18, 2012 incident occurred as alleged. However, it denied appellant's claim, finding the medical evidence insufficient to establish that he sustained a medical condition causally related to the accepted employment incident. OWCP stated that his physician failed to discuss the nature of appellant's preexisting arthritic spine condition and how this underlying condition was affected by his employment.²

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence⁴ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that 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 fact of injury has been established.⁶ 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.⁷ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁸

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.⁹ 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.¹⁰ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the

² Following the issuance of OWCP's December 5, 2012 decision, OWCP received additional evidence. The Board may not consider evidence for the first time on appeal which was not before OWCP at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c)(1).

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁷ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁸ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹¹

ANALYSIS

The Board finds that appellant did not meet his burden of proof. OWCP accepted that the October 18, 2012 motor vehicle accident occurred, as alleged. In order for appellant to establish that he sustained an employment-related injury, he must submit a medical report from a physician with an accurate history of injury, a diagnosis of his condition and rationalized medical opinion that explains how his medical condition was caused by the accepted motor vehicle accident.¹²

The unsigned reports dated December 1, 2009 through November 30, 2012 which contained the typed names of Drs. Jamil, Gjorgjievski and Catanzaro, the unsigned October 18, 2012 report from Memorial Hospital and the November 12, 2012 duty status report which contained an illegible signature have no probative value in establishing that appellant sustained back and neck conditions due to the accepted October 18, 2012 employment incident. It is well established that medical evidence lacking proper identification is of no probative medical value.¹³

The October 31, 2012 reports of Ms. Walsh, a nurse practitioner, the November 30, 2012 report which contained the typed name of Ms. Warmington, a nurse practitioner, and the November 14 through 30, 2012 reports which contained the typed names of appellant's physical therapists have no probative value in establishing appellant's claim of injury. Neither a nurse practitioner¹⁴ nor a physical therapist¹⁵ is a physician as defined under FECA.

Appellant failed to submit probative rationalized medical evidence to establish that he sustained back and neck injuries causally related to the accepted October 18, 2012 employment incident. He did not meet his burden of proof.

Appellant may submit additional 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 that he sustained back and neck injuries on October 18, 2012 while in the performance of duty.

¹¹ *James Mack*, 43 ECAB 321 (1991).

¹² *Supra* notes 9 and 10.

¹³ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁴ *See* 5 U.S.C. § 8101(2); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

¹⁵ *L.D.*, 59 ECAB 648 (2008).

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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