United States Department of Labor
Employees' Compensation Appeals Board

M.A., Appellant	)	
and	)	**Docket No. 14-1071**
	)	**Issued: October 3, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 8, 2014 appellant filed a timely appeal from a February 18, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 has met his burden of proof in establishing that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On December 17, 2013 appellant, then a 41-year-old city carrier, filed a traumatic injury claim alleging that on December 14, 2013 he sustained a sprained right wrist as a result of a motor vehicle accident. He stopped work on December 14, 2013. A December 19, 2013 U.S.

[1] 5 U.S.C. § 8101 *et seq.*

Postal Service accident report stated that appellant was struck head-on by another driver who was driving in the wrong lane.

In a December 14, 2013 unsigned hospital report, appellant was diagnosed with multiple contusions and a sprain. Another December 14, 2013 emergency department note advised that appellant was unable to return to work for at least 24 hours.

A January 10, 2014 OWCP field nurse report acknowledged that appellant was involved in a motor vehicle accident and was currently being treated for multiple sprains and cervical radiculopathy.

In a letter dated January 10, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish the claim because the medical evidence did not contain a medical diagnosis or a physician's opinion as to how appellant's injury resulted in a diagnosed condition. Appellant was also advised that he had 30 days to submit the requested documents.

OWCP subsequently received a December 14, 2013 Georgia motor vehicle accident report which stated that appellant's mail truck was struck by another driver, driving in the wrong lane. The report advised that appellant was unconscious when police arrived on the scene, but later regained consciousness.

In December 14, 2013 emergency room treatment notes, a nurse stated that appellant's vehicle was hit head-on while delivering mail. Appellant was driving approximately 10 miles per hour when the accident occurred. A nurse advised that appellant complained of shoulder and chest pain and tenderness of his shoulder, right wrist and right elbow. Dr. Brent Morgan, Board-certified in emergency medicine and medical toxicology, cosigned the treatment notes and advised that x-rays were negative for fracture and dislocation. X-rays of the chest also failed to reveal any abnormalities. Appellant was diagnosed with a sprain, but Dr. Morgan did not specify which part of the body.

Appellant also submitted a December 17, 2013 chiropractor report from Airport Spinal Injury Clinic diagnosing lumbar sprain/strain, cervical strain/sprain, myospasm/myofascitis and shoulder strain/sprain. In a December 30, 2014 report, Dr. Anthony Dinatale, a chiropractor, advised that appellant would be totally incapacitated from December 30, 2013 to January 17, 2014. In a subsequent attending physician report (CA-20), he diagnosed lumbar strain, sprain of the right shoulder, myospasm and cervical radiculitis. Dr. Dinatale noted that appellant was involved in a motor vehicle accident and checked the box "yes" in response to whether the injury was caused by employment activity. He advised that appellant would be able to return to his regular duties on January 20, 2014.

In a January 24, 2014 claim for compensation (Form CA-7), appellant requested compensation for the period December 14, 2013 through January 17, 2014. He also submitted a copy of his December 19, 2013 ambulance bill.

By decision dated February 18, 2014, OWCP denied appellant's claim because the medical evidence was insufficient to establish that the employment incident caused or contributed to a diagnosed medical condition.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative and substantial evidence,[2] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[3] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was 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 fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[6]

ANALYSIS

On December 14, 2013 appellant was working when his truck was struck by a car driving in the wrong lane. The evidence supports that the claimed work incident occurred as alleged. Therefore, the Board finds that the first component of fact of injury is established. However, the medical evidence is insufficient to establish that the employment incident on December 14, 2013 caused an injury.

Although Dr. Morgan diagnosed a sprain in his December 14, 2013 hospital report, he did not identify which part of appellant's body was sprained.[7] Additionally, Dr. Morgan did not otherwise specifically address how the December 14, 2013 work incident caused appellant to sustain a medical condition. Thus, his opinion is insufficient to establish appellant's claim.

[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[3] *R.C.*, 59 ECAB 427 (2008).

[4] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *See R.G.*, Docket No. 14-113 (issued April 25, 2014) (a diagnosis of muscle strain was found to be vague as the physician did not identify what muscle or group of muscles were strained).

Appellant submitted numerous reports from Dr. Dinatale, a chiropractor. Medical opinion, in general, can only be given by a qualified physician.[8] Under FECA, a "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.[9] Chiropractors are considered "physicians" within the meaning of FECA only to the extent that there is a subluxation of the spine as demonstrated by x-ray.[10] Dr. Dinatale did not diagnose a spinal subluxation of the spine as demonstrated by an x-ray; therefore, he is not a physician within the meaning of FECA and his reports are not entitled to any probative medical weight.[11] As a result, the medical evidence is insufficient to discharge appellant's burden of proof.

The Board finds that appellant did not submit sufficient medical evidence from a physician which provided a firm diagnosis and a reasoned explanation as to how the accepted incident caused an injury. Appellant therefore failed to establish that he has a medical condition resulting from the December 14, 2013 employment incident.

Appellant may submit new evidence or argument as part of a formal 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.

The Board notes that appellant was transported by ambulance to an emergency room shortly after the December 14, 2013 incident occurred. Ordinarily, the employing establishment will authorize treatment of a job-related injury by providing the employee a properly executed Form CA-16 within four hours. *See* 20 C.F.R. § 10.300; *Val D. Wynn*, 40 ECAB 666 (1989); a Form CA-16, authorization of medical care was not issued in this case. However, under 5 U.S.C. § 8103, OWCP has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances. Upon return of the case record, OWCP shall determine whether appellant's ambulance transportation and initial medical care in the hospital emergency room should be authorized pursuant to 20 C.F.R. § 10.304, which provides that in cases involving emergencies or unusual circumstances, OWCP may authorize treatment in a manner other than as stated in this subpart. *See J.D.*, Docket No. 14-936 (issued August 8, 2014); *L.B.*, Docket No. 10-469 (issued June 2, 2010).

CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on December 14, 2013.

[8] *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

[9] 5 U.S.C. § 8101(2).

[10] *Id.*

[11] *Allen C. Hundley*, 53 ECAB 551 (2002); *Lyle E. Dayberry*, 9 ECAB 369 (1998).

ORDER

IT IS HEREBY ORDERED THAT the February 18, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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