

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

K.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Rockford, IL, Employer**

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**Docket No. 14-1206
Issued: September 8, 2014**

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 28, 2014 appellant filed a timely appeal from a February 12, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 has met his burden of proof in establishing that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On December 26, 2013 appellant, then a 61-year-old letter carrier, filed a traumatic injury claim alleging that on December 23, 2013 he sustained back pain as a result of a motor vehicle

¹ 5 U.S.C. § 8101 *et seq.*

accident when his postal truck was struck by another vehicle from behind. He did not stop work at that time.

In a December 23, 2013 report, Dr. Terry Strawser, a Board-certified family practitioner, diagnosed lower back pain, lumbago. He determined that appellant was fit for duty without any restrictions. Dr. Strawser found that appellant was having spasms and tenderness of the paraspinal muscles. He also reported that appellant had no similar problems in the past. The medical report included a narrative of the facts surrounding the accident as reported by appellant, indicating that there was a medium force motor vehicle accident to the rear bumper while appellant was in the driver's seat. Dr. Strawser stated that "the patient reports that it was the result of an injury, which was work related." He advised that lumbosacral spine x-rays did not reveal any abnormalities. In a December 23, 2013 duty status report (Form CA-17), Dr. Strawser also diagnosed appellant with lumbago and advised that he was able to return to work without restrictions.

In a December 30, 2013 report, Dr. Alpa Boshku, a Board-certified family practitioner and an associate of Dr. Strawser, diagnosed appellant with lower back pain, lumbago. He noted that appellant's pain worsened since his previous December 23, 2013 visit with Dr. Strawser and that he was experiencing spasm and tenderness of paraspinal muscles and tenderness of the lumbar muscles. Dr. Boshku repeated the same history of the injury contained in Dr. Strawser's December 23, 2013 report.

In a letter dated January 10, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish the claim. The letter further stated that the diagnosis of "pain" was not a valid diagnosis, but rather a symptom. In addition, OWCP advised that evidence containing a "physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition" was required. Appellant was also advised that he had 30 days to submit the requested documents.

Appellant submitted reports from Dr. Jason So, a Board-certified family practitioner. In a January 3, 2014 report, Dr. So diagnosed appellant with back pain and referred him to a physical therapy facility. The report made reference to the car accident and noted that appellant was suffering from lower back pain as a result. In a report dated January 15, 2014, Dr. So advised the employing establishment that appellant was unable to return to work. He asked that he be excused from work from January 12 through 19, 2014. In a CA-17 dated January 21, 2014, Dr. So advised that appellant should not return to work until January 31, 2014. He diagnosed lumbago.

By decision dated February 12, 2014, OWCP denied appellant's claim. It found that the December 23, 2013 incident occurred as alleged. However, OWCP denied the claim on the grounds that the medical evidence did not contain a medical diagnosis in connection with the event.

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 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 23, 2013 appellant was driving his vehicle when it was struck from behind by an automobile. 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 23, 2013 caused appellant’s lower back injury.

In his December 23, 2013 medical report, Dr. Strawser diagnosed appellant with lower back pain and lumbago. He indicated that appellant had no prior back problem. Dr. Strawser noted a history of how the injury occurred, stating that appellant’s vehicle was struck on the rear bumper while he was in the driver’s seat, and advised that he “reports that it was the result of an injury, which was work related.” Dr. Strawser appears to merely state the facts as reported to him by appellant. He fails to distinguish whether this was his medical opinion or the conclusion drawn by appellant as reported to him. A physician’s opinion regarding causal relationship that appears to be primarily based on appellant’s own representations rather than on objective medical findings is of limited probative value.⁷

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 *C.M.*, Docket No. 14-88 (issued April 18, 2014).

Even considering the history provided by Dr. Strawser as his own opinion regarding causal relationship, the report fails to provide adequate medical rationale explaining how the December 23, 2013 work incident caused or contributed to the diagnosed lumbago. Dr. Strawser did not explain how the work incident caused or contributed to appellant's diagnosed lumbago.⁸ The Board has also held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.⁹ Dr. Strawser's December 23, 2013 duty status report is also insufficient to establish the claim as it does not specifically address causal relationship.¹⁰

Dr. Boshku's December 30, 2013 report provided a history of the injury identical to the history found in Dr. Strawser's report. This report, like Dr. Strawser's report, fails to distinguish whether the history provided is the physician's own professional opinion or the conclusion drawn by appellant. However, even to the extent that the statement was Dr. Boshku's own opinion on causal relationship, it is of little probative value as he too did not provide medical rationale in support of his opinion. As a result, the report is insufficient to discharge appellant's burden of proof.

The January 3, 2014 report by Dr. So is also insufficient to discharge appellant's burden of proof. He mentions a rear-end collision and resulting back pain but he does not indicate if the collision and injury are employment related. Dr. So does not explain how the work incident caused or contributed to appellant's diagnosed lumbago. Likewise, his January 15, 2014 note excusing appellant from work and his January 21, 2014 duty status report also do not specifically address causal relationship.¹¹

Consequently, the medical evidence of record is insufficient to establish that the December 23, 2013 work incident caused or aggravated a diagnosed medical condition.¹²

On appeal, appellant argues that he had an on-the-job injury such that his sick leave should be reinstated and his medical bills paid. As explained, the medical evidence is

⁸ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁹ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

¹⁰ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

¹¹ See *id.*

¹² Although causal relationship generally requires rationalized medical opinion, OWCP procedures provide for acceptance of a claim without a medical report when the following criteria are satisfied: (1) the condition reported is a minor one which can be identified on visual inspection by a lay person (*e.g.*, burns, lacerations, insect stings, or animal bites); (2) the injury was witnessed or reported promptly and no dispute exists as to the fact of injury; and (3) no time was lost from work due to disability. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3 (January 2013); *Melissa A. Carter*, 45 ECAB 618 (1994). In the present case, the condition reported, lumbago, is not the clear-cut type of condition that can be identified on visual inspection by a lay person. Furthermore, appellant also missed time from work. Thus, rationalized medical evidence is required.

insufficient to establish that the December 23, 2013 work incident cause or contributed to an injury. Thus, any disability is not presently compensable.

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 10.607.¹³

CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on December 23, 2013.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹³ Appellant submitted new evidence to the Board on appeal and also to OWCP after issuance of the February 12, 2014 decision. However, the Board lacks jurisdiction to review evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).