United States Department of Labor
Employees' Compensation Appeals Board

M.P., Appellant	)	
and	)	**Docket No. 11-420**
	)	**Issued: August 15, 2011**
DEPARTMENT OF COMMERCE, U.S. CENSUS BUREAU, Dallas, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 10, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated November 29, 2010 which denied appellant's claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained a neck, back and right shoulder injury in the performance of duty.

FACTUAL HISTORY

On April 16, 2010 appellant, then a 56-year-old clerk, filed a traumatic injury claim, alleging that on April 14, 2010 he sustained an injury to his left shin, leg, arm, shoulder and left foot when he was loading a pallet and the jack released onto his foot. Mark A. Warner, a witness

[1] 5 U.S.C. §§ 8101-8193.

to the incident, noted that appellant was moving a heavy pallet and his foot became caught under the pallet. Appellant stopped work on April 14, 2010 and returned on April 15, 2010.

Appellant was treated in the emergency room on April 16, 2010 by Dr. Ayman Abdulmagid, a Board-certified internist, who recommended physical therapy for the lumbar spine, left ankle, leg and thigh. Dr. Abdulmagid provided appellant with discharge instructions for a contusion and referred him to an orthopedist for follow up. An April 16, 2010 x-ray of the left foot revealed no abnormalities. Also submitted was a July 27, 2010 letter from appellant to OWCP requesting a medical travel refund request form and advising that he had been laid off from work.

By letter dated October 21, 2010, OWCP advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence, particularly requesting that he submit a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed injury.

Appellant submitted a July 12, 2010 letter to OWCP requesting reimbursement for travel expenses to obtain medical treatment. Also submitted was a November 3, 2010 report from Vincent DePasquale, a chiropractor, who treated appellant for an injury occurring on April 14, 2010. Dr. DePasquale noted that an accident occurred involving lifting a machine and he diagnosed foot contusion, lumbar sprain/strain, knee, leg sprain/strain and muscle spasm. He noted that appellant was treated with spinal manipulation, electrical muscle stimulation, intersegmental traction and massage therapy. Dr. DePasquale opined that appellant should reach maximum medical improvement in 10 to 18 weeks.

In a November 29, 2010 decision, OWCP denied appellant's claim on the grounds that medical evidence was insufficient to establish that his claimed conditions were caused by his employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in

[2] 5 U.S.C. §§ 8101-8193.

[3] *Gary J. Watling*, 52 ECAB 357 (2001).

conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[5]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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.[6] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

ANALYSIS

Appellant alleged that he sustained a left shin, leg, arm, shoulder and left foot injury when a loaded pallet jack was released onto his left foot on April 14, 2010. The Board notes that the evidence supports that the incident occurred on April 14, 2010 as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a left shin, leg, arm, shoulder and left foot injury causally related to the April 14, 2010 work incident. On October 21, 2010 OWCP advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician in which the physician explains why the April 14, 2010 work incident caused or aggravated his claimed condition.

Appellant submitted emergency room notes from April 16, 2010 from Dr. Abdulmagid who recommended physical therapy for the lumbar spine, left ankle, leg and thigh. Dr. Abdulmagid appellant with discharge instructions for a contusion. His report is insufficient to establish the claim as he did not provide a history of injury or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[8] Therefore this report is insufficient to establish appellant's claim.

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Id*.

[6] *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[8] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

Appellant was also treated by Dr. DePasquale, a chiropractor, on November 3, 2010 for an April 14, 2010 injury while lifting a machine and who diagnosed foot contusion, lumbar sprain/strain, knee, leg sprain/strain and muscle spasm. Section 8101(2) of FECA provides that chiropractors are considered physicians "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 regulation by the Secretary."[9]

Thus, where x-rays do not demonstrate a subluxation (a diagnosis of a subluxation based on x-rays has not been made), a chiropractor is not considered a "physician," and his or her reports cannot be considered as competent medical evidence under FECA.[10] Dr. DePasquale is not a physician as he did not diagnose a spinal subluxation demonstrated by x-ray. The Board has held that a chiropractor may only qualify as a physician in the diagnosis and treatment of spinal subluxation, his or her opinion is not considered competent medical evidence in evaluation of other disorders, including those of the extremities, although these disorders may originate in the spine.[11] Thus, Dr. DePasquale's opinion is not considered competent medical evidence under FECA and his opinion is of no probative medical value in establishing appellant's claim.

The remainder of the medical evidence, such as the April 16, 2010 x-ray report, is insufficient as it fails to address causal relationship between appellant's diagnosed condition and the April 14, 2010 work incident.

Consequently, the medical evidence is insufficient to establish that the April 14, 2010 incident caused or aggravated a diagnosed medical condition.

On appeal, appellant generally asserts that his condition is employment related and he notes difficulty in finding a doctor to treat him. As explained, he has not submitted sufficient medical evidence to establish that the April 14, 2010 incident caused an injury. Since the claim has not been accepted, OWCP is not obligated to provide for continuing medical treatment.

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 meet his burden of proof to establish that he sustained a left shin, leg, arm, shoulder and left foot injury causally related to his April 14, 2010 employment incident.

[9] 5 U.S.C. § 8101(2); *see also* 20 C.F.R. § 10.311.

[10] *See Susan M. Herman,* 35 ECAB 669 (1984).

[11] *Pamela K. Guesford*, 53 ECAB 726 (2002).

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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