United States Department of Labor
Employees' Compensation Appeals Board

M.N., Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Corpus Christi, TX, Employer**	**Docket No. 12-1029** **Issued: October 22, 2012**

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 16, 2012 appellant, through his attorney, filed a timely appeal from a February 14, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) that denied his claim. 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 sustained an injury in the performance of duty on June 7, 2011.

On appeal, appellant's attorney asserts that OWCP's decision is contrary to fact and law.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On July 7, 2011 appellant, then a 60-year-old letter carrier, filed a traumatic injury claim, alleging injury that day to his head, neck and back when his postal vehicle was rear-ended at a traffic light. The employing establishment controverted the claim. In an undated statement, Bryan McCarty, customer service supervisor, stated that he arrived at the accident scene shortly after it occurred. Appellant was legally stopped when his postal vehicle was bumped but the postal vehicle was not damaged. Mr. McCarty checked to ensure that appellant was not injured or needed medical attention. Appellant asked whether he could sue the other driver, who was cited for failure to control speed. Mr. McCarty again asked appellant if he was alright and whether he was able to drive the vehicle back to the station. After appellant returned to the station, he completed an incident report and clocked out for the day but did not return to work or make contact since that time.

By letter dated July 13, 2011, OWCP informed appellant of the evidence needed to support his claim and asked that he provide a detailed narrative report from his physician.

A police report dated July 7, 2011 noted that the accident occurred at 3:25 p.m. when appellant was rear-ended. The driver of the other vehicle stated that, after a traffic light turned green, she proceeded but did not notice that traffic had again stopped, when she struck the postal vehicle. The report indicated minimal damage to both vehicles. The other driver was charged with failure to control speed.

In an undated statement, appellant indicated that on June 7, 2011 when the light turned green traffic moved forward and then stopped. At that time, he was struck from behind. Both drivers moved their vehicles out of traffic and appellant observed that the other driver's front hood was pushed inward by the impact. Appellant did not remember hitting his head but stated that his hat had been knocked off. He began to feel light-headed and remembered discussing the accident with his supervisor and the police officer. Appellant stated that, while driving home from work, he had a severe headache and neck and upper back pain. He drove to a local emergency room for treatment.

A June 7, 2011 computerized tomography (CT) scan of the cervical spine found no acute trauma to the cervical spine or surrounding soft tissues. A CT scan of the head that day was negative for trauma. Dr. Daniel J. Wagner, Board-certified in emergency medicine, advised that appellant was seen in the emergency department and could return to work without restrictions on June 10, 2011.

In a June 8, 2011 report, Dr. Michael A. Mauger, a chiropractor, noted a history that appellant's vehicle was struck from behind. He provided findings of cervical, thoracic and lumbar spine muscle spasms with decreased range of motion. Dr. Mauger obtained x-rays of the cervical and lumbar spine, noting no evidence of fracture or dislocation. He diagnosed headaches, neck, middle back, lower back and shoulder injury and advised that the conditions were due to the work injury. On June 10, 2011 Dr. Mauger advised that appellant should be excused from work from June 10 until 19, 2011 to avoid aggravating his condition. He completed a Family and Medical Leave Act application on June 13, 2011 advising that appellant could not work until about July 7, 2011.

A July 5, 2011 magnetic resonance imaging (MRI) scan study of the lumbar spine demonstrated central disc protrusions and L2-3 and L4-5 and postlaminectomy findings at L5-S1. On July 6, 2011 Dr. Mauger advised that appellant should remain off work until July 20, 2011.

In a July 14, 2011 report, Dr. M.J. Pendleton, an internist, noted a history that appellant's postal vehicle was rear-ended on June 7, 2011. He reported daily headaches, blurred vision, a stiff neck, left shoulder and radiating low back pain since the accident. Physical examination demonstrated normal cervical, thoracic and lumbar ranges of motion and no abnormalities were noted. Dr. Pendleton diagnosed cervical disc disease and postconcussion syndrome and advised that appellant could not work. In a July 21, 2011 duty status report, he reiterated that appellant could not work. Dr. Pendleton stated that the postconcussion syndrome was due to the employment injury. In an August 9, 2011 duty status report, he indicated that both diagnoses were due to the work injury. In an August 9, 2011 attending physician's report, Dr. Pendleton diagnosed cervical sprain/strain and postconcussion syndrome and checked a box "yes" that the conditions were work related. In narrative reports dated August 9, 2011, he noted appellant's complaint of continued headaches and that his neck and back pain were worsening.

By decision dated August 18, 2011, OWCP found that the June 7, 2011 employment incident occurred as alleged but that the medical evidence did not establish a medical condition caused by this event.

On August 25, 2011 appellant, through his attorney, requested a telephone hearing. He submitted a June 7, 2011 emergency room record, completed by Dr. Wagner and Dr. Robert P. Andelman, Board-certified in emergency medicine. Appellant reported a history that his vehicle was rear-ended that day with moderate force and a previous medical history of right knee replacement and bulging disc. He complained of light-headedness, headaches and neck pain. The only positive finding on physical examination was neck tenderness. A concussion without loss of consciousness and musculoskeletal strain were diagnosed. Appellant was discharged home and advised that he could return to work on June 10, 2011.

In reports dated July 26, August 30 and November 17, 2011, Dr. Pendleton reiterated his findings and conclusions.

At the December 13, 2011 hearing, appellant described the June 7, 2011 motor vehicle accident, stating that there was no damage to the postal vehicle but the car that hit him was damaged. He became disoriented after the accident and his supervisor told him to drive the vehicle back to the station. Upon his return, appellant was light-headed and developed a headache. He went to the emergency room and returned to work on October 12, 2011.

In a February 14, 2012 decision, an OWCP hearing representative affirmed the August 18, 2011 decision on the grounds that the medical opinion evidence did not establish that appellant's condition was caused by the June 7, 2011 incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[2]

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[3] To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[4]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[5] 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] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[7]

ANALYSIS

OWCP found that the June 7, 2011 motor vehicles accident occurred as alleged. The Board, however, finds that the medical evidence of record is insufficient to establish that appellant sustained an injury or medical condition caused by this incident.

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[2] *Gary J. Watling*, 52 ECAB 278 (2001).

[3] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

[4] *Gary J. Watling, supra* note 2.

[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 385 (1989).

[7] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

The June 7, 2011 CT scan studies of the head and cervical spine, June 8, 2011 x-rays and the July 5, 2011 MRI scan study did not include an opinion on the cause of any diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8]

Under section 8101(2) of FECA, 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 regulation by the Secretary.[9] As Dr. Mauger, an attending chiropractor, did not diagnose a subluxation as demonstrated by x-ray, he is not considered a physician under FECA and his reports are of no probative medical value

The June 7, 2011 emergency room report, completed by Dr. Wagner and Dr. Andelman, included diagnoses of concussion and musculoskeletal strain. The report, however, also included the negative CT scan studies described above and very minimal physical examination findings. Moreover, Dr. Wagner advised that appellant could return to work without restrictions on June 10, 2011. The report is therefore insufficient to establish that appellant's continued medical condition and disability were caused by the June 7, 2011 motor vehicle accident.

Dr. Pendleton diagnosed postconcussion syndrome and cervical disc disease and advised that appellant could not work. His initial report on July 14, 2011 listed only normal physical examination findings. Dr. Pendleton indicated by a check mark "yes," that appellant's diagnosed conditions were caused by the June 7, 2011 employment incident. The Board has held that a physician's opinion on causal relationship which consists only of checking "yes" to a form question is of little probative value and insufficient to establish causal relationship.[10] Dr. Pendleton's opinion regarding the conditions due to the June 7, 2011 incident were inconsistent on the duty status reports he provided and he provided no explanation in any of his reports as to how the collision on June 7, 2011 caused appellant's continued complaints.

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[11] Dr. Pendleton did not provide any explanation as to how the June 7, 2011 motor vehicle accident caused the diagnosed conditions. He did not discuss the CT and MRI scan findings in relationship to the June 7, 201 incident or provide any rationale as to why the June 7, 2011 incident caused continuing worsening symptoms. Dr. Pendleton's opinion is therefore insufficient to meet appellant's burden of proof.

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[8] *Willie M. Miller*, 53 ECAB 697 (2002).

[9] 5 U.S.C. § 8101(2); *see D.S.*, Docket No. 09-860 (issued November 2, 2009).

[10] *D.D.*, 57 ECAB 734 (2006).

[11] *Patricia J. Glenn*, 53 ECAB 159 (2001).

As appellant did not submit sufficient medical evidence to establish that he sustained a diagnosed condition caused by the June 7, 2011 employment incident, he did not meet his burden of proof.[12]

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 did not establish that he sustained an injury causally related to the June 7, 2011 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 2012
Washington, DC

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

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

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

[12] *Gary J. Watling, supra* note 2.