United States Department of Labor
Employees' Compensation Appeals Board

G.S., Appellant	)	
and	)	**Docket No. 13-1731**
	)	**Issued: December 3, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Camden, NJ, Employer	)	

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 16, 2013 appellant filed a timely appeal from a June 26, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury 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 met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on November 19, 2012.

FACTUAL HISTORY

On November 19, 2012 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date he was struck by a motor vehicle while

[1] 5 U.S.C. § 8101 *et seq.*

delivering mail and sustained a neck, temple, right arm, chest and leg injury. He notified his supervisor and sought medical treatment on that same date.

Appellant sought emergency medical treatment on November 19, 2012 with Dr. Jason Remick, Board-certified in emergency medicine. An OWCP Form CA-16, authorization for examination, dated November 19, 2012, indicated that appellant was authorized to visit Advanced Physical Therapy Center in Atco, NJ.

In a November 20, 2012 report, Dr. Daniel Klapa, a treating chiropractor, reported that appellant was crossing the street while delivering mail when a motor vehicle turned the corner and hit him. Appellant complained of pain in his neck, upper back, lower back, arms, hips and legs. He noted no history of prior symptoms similar to his current complaints. Dr. Klapa diagnosed lumbosacral neuritis or radiculitis, lumbar sprain/strain, cervical sprain/strain, thoracic sprain/strain, headache, pain in elbow joint, pain in lower leg knee joint and pain in hip. He opined that, based on appellant's history, test results, objective findings and subjective complaints, that his current condition resulted from the injury described. In an attending physician's report (Form CA-20) and duty status report (Form CA-17), Dr. Klapa also diagnosed multiple sprain/strain and possible nerve impingement. He reported that appellant could not return to work.

By letter dated November 30, 2012, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was asked to respond to the questions provided in the letter within 30 days.

In a November 19, 2012 diagnostic report, Dr. Eugene J. Klifto, a doctor of osteopathic medicine, reported that a computerized tomography (CT) scan of the cervical spine revealed masses in the right and left lobes of the thyroid gland, with calcification on the left. He further noted reversal of the cervical curve, side bending.

In a November 19, 2012 emergency room (ER) report, Dr. Remick reported that appellant was working as a mail carrier and was hit and thrown by a car, causing him to fall on his chest. X-rays of the chest and a CT scan of the head revealed no abnormalities. Dr. Remick diagnosed motor vehicle accident (MVA) involving a pedestrian and thyroid nodules.

In a December 4, 2012 Form CA-17, Dr. Klapa reported that appellant could return to work with restrictions on December 8, 2012.

By decision dated January 3, 2013, OWCP denied appellant's claim finding that the evidence did not establish that the incident occurred as alleged. It also noted that he failed to establish a diagnosed medical condition causally related to the alleged employment incident.

On January 8, 2013 appellant requested an oral hearing before the Branch of Hearings and Review.

In a January 8, 2013 narrative statement, appellant reported that he was struck by a motor vehicle when delivering mail on foot. He stated that there was a police report which was procured by the employing establishment describing the incident. Appellant further stated that

he was referred to a chiropractor after his treating physician refused to treat him because he did not take workers' compensation cases.

By letter dated January 9, 2013, Frank Nagle, a USPS Human Resources Specialist, reported that appellant was struck by a motor vehicle on November 19, 2012 when he was crossing the street as a pedestrian.

A hearing was held on April 12, 2013. In support of his claim, appellant submitted another narrative statement dated June 2, 2013 stating that the medical reports he submitted were all he could obtain from his treating hospital. He resubmitted medical reports previously of record.

By decision dated June 26, 2013, OWCP's hearing representative affirmed the January 3, 2013 decision, as modified, finding that appellant established that the November 19, 2012 incident occurred at the time, place and in the manner alleged. The hearing representative denied appellant's claim, however, finding that the medical evidence of record failed to provide a firm medical diagnosis which could be reasonably attributed to the accepted employment 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on 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 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] The opinion of the physician must be based on a complete factual and

[2] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

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

[4] *Elaine Pendleton*, *supra* note 2.

[5] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. 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.[6]

ANALYSIS

OWCP accepted that the November 19, 2012 incident occurred as alleged. It denied appellant's claim on the grounds that it lacked sufficient medical evidence to support that the alleged condition was medically related to the November 19, 2012 employment incident. The Board finds that he did not submit sufficient medical evidence to support that he sustained an injury causally related to the November 19, 2012 employment incident.[7]

In a November 19, 2012 diagnostic report, Dr. Klifto reported that a CT scan of the cervical spine revealed masses in the right and left lobes of the thyroid gland, with calcification on the left. He further noted reversal of the cervical curve, side bending. Dr. Klifto's diagnostic report fails to establish a firm medical diagnosis. While he provided imaging results from the diagnostic studies, his report failed to establish a diagnosis or mention an MVA which could be connected to the diagnostic findings. Thus, Dr. Klifto's report is of little probative value.[8]

In a November 19, 2012 ER report, Dr. Remick reported that appellant was working as a mail carrier and was hit and thrown by a car, causing him to fall on his chest. X-rays of the chest and a CT scan of the head revealed no abnormalities. A CT scan of the cervical spine revealed thyroid nodules. Dr. Remick diagnosed MVA involving a pedestrian and thyroid nodules. He did not provide any kind of diagnosis or detail regarding appellant's medical condition. X-rays of the chest and a CT scan of the head revealed no abnormalities to establish a diagnosed medical condition. Moreover, Dr. Remick did not establish that the thyroid nodules noted on appellant's cervical spine had any relation to the MVA that occurred on November 19, 2012. Thus, his medical report does not constitute probative medical evidence because he fails to provide a clear diagnosis and does not adequately explain the cause of appellant's injury.[9]

In a November 20, 2012 report, Dr. Klapa, a treating chiropractor, reported that appellant was delivering mail and was hit by a motor vehicle when crossing the street. Appellant complained of pain in his neck, upper back, lower back, arms, hips and legs. Dr. Klapa diagnosed lumbosacral neuritis or radiculitis, lumbar sprain/strain, cervical sprain/strain, thoracic sprain/strain, headache, pain in elbow joint, pain in lower leg knee joint and pain in hip. He

[6] *James Mack*, 43 ECAB 321 (1991).

[7] *See Robert Broome*, 55 ECAB 339 (2004).

[8] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[9] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

opined that, based on appellant's history, test results, objective findings and subjective complaints, his current condition was caused by the injury described.

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under 5 U.S.C. § 8101(2). A chiropractor is not considered a physician under FECA unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.[10] The evidence does not reflect that Dr. Klapa diagnosed subluxation based on the results of an x-ray.[11] Thus, his diagnoses of appellant's injuries and opinion that these conditions were related to the November 19, 2012 injury does not constitute probative medical evidence. Therefore, the Board finds that Dr. Klapa does not qualify as a physician under FECA and his reports do not constitute probative medical evidence to establish a firm medical diagnosis as a result of the November 19, 2012 employment incident.

Appellant's belief that his work caused his medical problem is not in question. That belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship. In the instant case, the record is without rationalized medical evidence establishing a diagnosed medical condition causally related to the accepted November 19, 2012 employment incident. Appellant has failed to establish his burden of proof.[12]

The Board notes that where, as in this case, an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim.[13] The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP.[14] Although OWCP adjudicated appellant's claim of injury, it did not address the issue of reimbursement pursuant to this Form CA-16. The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form.

The regulations provide that in unusual or emergency circumstances OWCP may approve payment for medical expenses incurred otherwise than as authorized in section 10.303. It may approve payment for medical expenses incurred even if a Form CA-16 authorizing medical treatment and expenses has not been issued and the claim is subsequently denied; payment in such situations must be determined on a case-by-case basis.[15] In this case, appellant was

[10] *See Kathryn Haggerty*, 45 ECAB 383 (1994).

[11] Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 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." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[12] *C.P.*, Docket No. 13-831 (issued July 12, 2013).

[13] *See Tracy P. Spillane*, 54 ECAB 608 (2003).

[14] *See* 20 C.F.R. § 10.300(c).

[15] *Id.* at § 10.304.

transported to the ER for examination immediately after the employment incident. The employing establishment provided him with a Form CA-16 within a week of the employment incident. In denying appellant's claim for a traumatic injury, OWCP did not consider whether emergency circumstances or unusual circumstances were present or whether this was a situation in which reimbursement of medical expenses was appropriate.[16] OWCP is required to exercise its discretion to determine whether medical care has been authorized or whether unauthorized medical care involved emergency or unusual circumstances and is therefore reimbursable regardless of whether the underlying claim for benefits has been accepted or denied.[17] The circumstances of the case warrant additional development of this issue. On return of the record, OWCP should issue a *de novo* decision on the issue of reimbursement of medical expenses.[18]

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 meet his burden of proof to establish that he sustained a traumatic injury on November 19, 2012 in the performance of duty. The case will be returned to OWCP for consideration of whether appellant's medical expenses related to his treatment from the November 19, 2012 incident should be reimbursed.

[16] *P.S.*, Docket No. 10-1560 (issued June 23, 2011).

[17] *Michael L. Malone*, 46 ECAB 957 (1995). *See Herbert J. Hazard*, 40 ECAB 973 (1989).

[18] *A.F.*, Docket No. 13-520 (issued May 17, 2013).

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2013 decision of the Office of Workers' Compensation Programs is affirmed, in part, and remanded in part for further development consistent with this decision of the Board.

Issued: December 3, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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