United States Department of Labor
Employees' Compensation Appeals Board

N.S., Appellant	)	
and	)	**Docket No. 12-1768**
	)	**Issued: February 21, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Madison, WI, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 20, 2012 appellant filed a timely appeal from a March 26, 2012 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 claim.

ISSUE

The issue is whether appellant sustained a traumatic injury in the performance of duty on February14, 2012.

FACTUAL HISTORY

On February 15, 2012 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim alleging that on February 14, 2012 he slipped down concrete stairs while delivering mail.

[1] 5 U.S.C. § 8101 *et seq.*

He claimed injuries to the lower back and pelvis area. Appellant returned to work on February 16, 2012.

In a February 23, 2012 letter, OWCP requested additional evidence, including a medical report containing a diagnosis of appellant's condition and rationale explaining how the condition was causally related to the work incident. It noted chiropractors were only considered a physician under FECA if there is a diagnoses of spinal subluxation demonstrated by x-ray.

Appellant submitted reports from Dr. Peter J. Wilke, a chiropractor. A February 14, 2012 initial report noted no x-rays were obtained for the incident. In a February 15, 2012 report, Dr. Wilke noted the history of injury as a slip and fall down a stairwell on February 14, 2012 while delivering mail. He presented examination findings, which included subluxation of the fifth lumbar vertebra and subluxation of the sacrum, and provided an assessment of mild lumbar and sacral sprain/strain along with segmental dysfunction of the lumbar, sacral and pelvic/hip. Adjustment was administered to the lumbar region. Progress reports dated February 17, 20 and 24, 2012 were provided. Appellant was noted to have reached preinjury status with no residuals on February 24, 2012.

By decision dated March 26, 2012, OWCP denied appellant's claim on the grounds that the medical component of the fact of injury element had not been established.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing that 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.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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 of fact of injury 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

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

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

The Board finds that appellant did not meet his burden of proof. OWCP accepted that the February 14, 2012 slip and fall on stairs, occurred as alleged. In order for appellant to establish that he sustained an employment-related injury, he must submit a medical report from a physician with an accurate history of injury, a diagnosis of his condition and rationalized medical opinion that explains how his medical condition was caused by the accepted slip and fall.

Appellant submitted several reports from his chiropractor, Dr. Wilke. Section 8101(2) of FECA provides that 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 subluxation as demonstrated by x-ray to exist.[8] Dr. Wilke diagnosed mild lumbar and sacral sprain/strain and segmental dysfunction of the lumbar, sacral and pelvic/hip. Although he noted findings of subluxation, he did not base his finding on a review of x-rays. On February 14, 2012 Dr. Wilke noted that no x-rays were obtained. Since he did not diagnose a spinal subluxation based on an x-ray, he is not considered a physician under FECA. Dr. Wilke's opinion is of no probative value.[9] Thus, his reports do not establish the issue of causal relation. No other medical evidence was submitted.

Appellant has the burden to submit medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed and medical evidence establishing that the diagnosed condition is causally related to the implicated employment factors. The Board finds that he failed to submit any competent medical evidence pertaining to his claim of injury. On February 23, 2012 OWCP informed appellant of the deficiencies in the

[5] *Id.*

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

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

[8] 5 U.S.C. § 8101(2); *see also E.W.*, Docket No. 09-6 (issued February 17, 2009); *George E. Williams*, 44 ECAB 530 (1993).

[9] *T.B.*, Docket No. 12-244 (issued June 8, 2012).

evidence, but he did not submit any medical evidence to establish his claim. Appellant did not establish a *prima facie* claim for compensation.[10]

On appeal, appellant argued that the medical and factual evidence supports that he sustained an injury on February 14, 2012. As noted, while the record supports the incident occurred on February 14, 2012, the medical evidence of record is not sufficient to establish that the February 14, 2012 incident caused or aggravated a back condition.

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 establish that he sustained an injury on February 14, 2012 caused by his accepted employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2013
Washington, DC

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

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

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

[10] *See Donald W. Wenzel*, 56 ECAB 390 (2005).