United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, West Sacramento, CA, Employer**	**Docket No. 12-1750** **Issued: March 5, 2013**

Appearances:
Appellant, pro se
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 August 16, 2012 appellant filed a timely appeal from the February 21, 2012 Office of Workers' Compensation Programs' (OWCP) decision, which 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 met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on August 18, 2011.

FACTUAL HISTORY

On August 18, 2011 appellant, then a 27-year-old mail handler, filed a traumatic injury claim alleging that, on that date, he was lifting a priority package and felt sharp pain in his neck

[1] 5 U.S.C. § 8101 *et seq.*

where he had a previous work injury. He stopped work on August 18, 2011. The employing establishment controverted the claim.[2]

OWCP received a July 12, 2011 cervical magnetic resonance imaging (MRI) scan read by Dr. Frank C. Nelson, a radiologist, which was normal.

In reports dated August 17, 2011, Dr. Rajpreet Dhesi, Board-certified in physical medicine and rehabilitation, noted that appellant had neck pain of questionable etiology, which was nonindustrial. He released appellant to regular activity. Dr. Dhesi advised that appellant could not identify any specific incidents which could have caused injury to his neck. He noted that the date of injury was July 5, 2011.

In an August 18, 2011 report of occupational injury or illness, Dr. John Richards, Board-certified in emergency medicine, noted that appellant was lifting a priority package on August 18, 2011 and felt pain in the neck. He diagnosed acute neck strain with findings of pain and tenderness to palpation. Dr. Richards advised that appellant could return to regular work on August 22, 2011. In an emergency room report of the same date, he listed the history which included that on July 5, 2011 appellant was lifting packages at work when he began to feel light headed and pain with difficulty holding his neck up. After appellant underwent physical therapy for two weeks, the numbness resolved and he now only experienced sharp pain in his neck, which worsened with extension of the neck and improved with Ibuprofen. Dr. Richards diagnosed chronic neck pain.

In an August 19, 2011 report, Dr. Dwight Bass, an occupational medicine specialist, diagnosed sprain of the neck. He released appellant to modified duty for three days. Dr. Bass noted that the date of injury was July 5, 2011.

In a letter dated August 23, 2011, the employing establishment controverted the claim. Rhonda C. Mann, a supervisor, explained that appellant had been released to full duty on August 17, 2011 with regard to his prior claim. She noted that he reported to work and, after approximately two hours, claimed that he injured himself.

By letter dated September 16, 2011, OWCP advised appellant that additional factual and medical evidence was needed. It explained that a physician's opinion was crucial to his claim. OWCP advised appellant that his physician should address whether appellant's strain was the result of a new injury on August 18, 2011.

OWCP received reports from Dr. Maurice Minervini, Board-certified in family medicine and an osteopath, who noted that the date of injury was August 18, 2011 and diagnosed sprain of the neck.[3] Dr. Minervini released appellant to work on September 21, 2011. OWCP also received reports from physical therapists, physician's assistants and a nurse.

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[2] The record reflects that, on July 5, 2011, appellant filed a claim for a traumatic injury. OWCP accepted the claim for sprain of neck, Claim No. xxxxxx912. Claim No. xxxxxx912 is not before the Board on the present appeal.

[3] It appears that he initially indicated that July 5, 2011 was the date of injury and subsequently corrected the date to August 18, 2011.

By decision dated October 21, 2011, OWCP denied appellant's claim on the grounds that the medical evidence did not establish an injury as alleged.

On October 20, 2011 OWCP received a September 20, 2011 statement from appellant, who explained that when he contacted the employing establishment on August 17, 2011 to let them know that he had been released to full duty, he stated that he still hurt and had not received the medical attention that he needed. Appellant did not believe that he was ready for full duty, despite what his physician indicated. He was told that he had to work without limitations if that is what the medical documentation stated. Appellant returned to work but, when he picked up a priority package, he felt unbearable pain in his neck. Although appellant returned to work on August 17, 2011, it was the night shift, and his injury occurred after midnight on August 18, 2011. He went to the emergency room, saw Dr. Richards and informed him about the prior injury.

On October 30, 2011 appellant requested a review of the written record.

By decision dated February 21, 2012, the hearing representative found that, while appellant established that he lifted a priority mail package on August 18, 2011, the medical evidence did not establish that the August 18, 2011 incident caused an injury.

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 and that an injury was sustained in the performance of duty.[4] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the 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.[6] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[7] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

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[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury,* Chapter 2.803.2a (June 1995).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *See id.*

ANALYSIS

Appellant alleged that he was lifting a priority package and felt sharp pain in his neck where he had a previous work injury at work. There is no dispute that he was lifting a priority package on August 18, 2011. The Board finds that the first component of fact of injury, the claimed incident -- appellant was lifting a priority package, occurred as alleged.

However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical reports of record do not establish that the lifting of a priority package caused a personal injury on August 18, 2011. The Board notes this is especially important in light of the prior injury on July 5, 2011. The medical evidence contains no firm diagnosis, no rationale[9] and no explanation of the mechanism of injury regarding a specific employment incident on August 18, 2011.

In reports dated August 18, 2011, Dr. Richards noted that appellant was lifting a priority package on August 18, 2011 and felt a horrible pain in the neck. He diagnosed acute neck strain with findings of pain and tenderness to palpation and advised that appellant could return to regular work on August 22, 2011. Dr. Richards further noted that prior history which included that on July 5, 2011 appellant was lifting packages at his work when he began to feel light headed and felt pain and difficulty holding his neck up. He indicated that, after appellant underwent physical therapy for two weeks, the numbness resolved and he now only experienced sharp pain in his neck, which worsened with extension of the neck and improved with Ibuprofen. However, other than a diagnosis of neck strain, Dr. Richards did not specifically address causal relationship by explaining how lifting a package at work on August 18, 2011, caused or aggravated the diagnosed neck strain. Without any reasoning to support the conclusion, this report is insufficient to meet appellant's burden of proof.[10]

Appellant provided reports from Drs. Bass and Minervini. In an August 19, 2011 report, Dr. Bass diagnosed sprain of the neck and noted that the date of injury was July 5, 2011. Dr. Minervini also diagnosed sprain of the neck. The Board notes that the date of injury was August 18, 2011. Although Dr. Minervini subsequently changed the date of injury to August 18, 2011, neither doctor provided a specific opinion addressing whether any diagnosed condition was caused or aggravated by the lifting incident on August 18, 2011.

In reports dated August 17, 2011, Dr. Dhesi noted that appellant had neck pain of questionable etiology, which was nonindustrial and released him to regular activity. He advised that appellant could not specify any specific incidents, which could have caused him to have injured his neck. Thus, Dr. Dhesi provides no support for a work injury on August 18, 2011.

Appellant also submitted several diagnostic reports. However, these reports do not address the crucial issue of the causal relationship between his neck condition and the August 18, 2011 work incident.

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[9] *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).

[10] *See id.*

OWCP also received nurses notes, and reports from physician's assistants, and physical therapists. However, health care providers such as nurses, acupuncturists, physician's assistants, and physical therapists are not physicians under FECA. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[11]

The Board notes that this report does not contain a rationalized opinion and is insufficient to establish causal relationship. Causal relationship is a medical issue,[12] and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[13] The physician's opinion 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.[14]

Other medical records submitted by appellant do not contain a physician's opinion addressing causal relationship. OWCP procedures recognize that, in clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[15]

Because the medical reports submitted by appellant do not address how the August 18, 2011 lifting incident caused or aggravated a neck injury,[16] these reports are of limited probative value[17] and are insufficient to establish that the August 18, 2011 employment incident caused or aggravated a specific injury.

On appeal, appellant argues that his current medical condition was the same injury that was accepted in his prior claim. The Board notes that, in the instant case, he is alleging a new injury that occurred when he was lifting a priority package on August 18, 2011. If appellant is alleging that his prior condition was aggravated on August 18, 2011 he is not precluded from pursuing that matter through the other claim. However, as noted above, the medical evidence in the present claim is insufficient to establish that the August 18, 2011 employment incident caused or aggravated a specific injury.

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[11] *Jane A. White,* 34 ECAB 515, 518 (1983).

[12] *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

[13] *Duane B. Harris*, 49 ECAB 170, 173 (1997).

[14] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

[15] *G.G.*, 58 ECAB 389 (2007). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (July 2000).

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

[17] *See Linda I Sprague*, 48 ECAB 386, 389-90 (1997).

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 has not met his burden of proof in establishing that he sustained an injury in the performance of duty on August 18, 2011.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2013
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