United States Department of Labor
Employees' Compensation Appeals Board

W.W., Appellant	)	
and	)	**Docket No. 13-2106**
	)	**Issued: April 28, 2014**
U.S. POSTAL SERVICE, GENERAL MAIL FACILITY, Brooklyn, NY, Employer	)	

Appearances:
Marcenia Y. Johnson, for the appellant
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 September 20, 2013 appellant, through his representative, filed a timely appeal from a March 25, 2013 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 case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on June 12, 2012.

FACTUAL HISTORY

On June 12, 2012 appellant, then a 55-year-old mail handler, filed a traumatic injury claim alleging that he was pushing a bulk mail container (BMC) that day when he felt a pull in his right hip muscle in the performance of duty. He stopped work on June 12, 2012.

[1] 5 U.S.C. § 8101 *et seq.*

An OWCP Form CA-16, authorization for examination, was issued by the employing establishment on June 12, 2012. Appellant was authorized to visit John F. Kennedy (JFK) medical facility in Jamaica, New York. In reports dated June 12, 2012, a physician's assistant at the airport medical offices at JFK diagnosed a lumbosacral sprain. Appellant could return to light duty on that date and was provided with light-duty restrictions. The physician's assistant noted appellant's history of injury which included that he was pushing a container and felt discomfort in his lower back. The box "yes" was checked in response to the form question as to whether the diagnosed condition was employment related. OWCP also received a June 13, 2012 duty status report, with an illegible signature, advising that appellant could return to light duties on June 14, 2012. It received additional duty status reports that diagnosed a lumbar strain with lumbar radiculopathy as well as sprain of the lumbar and cervical spine.

On June 14, 2012 appellant returned to work in a full-time modified mail handler position.

In an August 8, 2012 report, Dr. Mark Bursztyn, a Board-certified orthopedic surgeon, noted appellant's history of injury and treatment. He noted that he presented for right hip and bilateral shoulder pain. Appellant recalled pushing something heavy while working on June 12, 2012. Dr. Bursztyn advised that an x-ray of the right hip revealed no fracture although he was not aware of whether it showed any signs of arthritis. On examination, appellant's shoulders had some limited motion but no gross instability. The right hip had no bony tenderness. Dr. Bursztyn noted that appellant could flex to approximately 130 degrees, externally rotate to approximately 40 degrees and internally rotate to 30 degrees with pain localized to the groin and anterior thigh. He advised that there was no defect and appellant was neurovascularly intact distally. Dr. Bursztyn ordered a magnetic resonance imaging (MRI) scan of the right hip and of the shoulders. He found that appellant was presently able to work light duty and was partially disabled. Dr. Bursztyn recommended physical therapy for the shoulders.

In a report of August 15, 2012, Dr. Renato Battisi, a chiropractor, noted appellant's history of pushing a BMC on June 12, 2012. He diagnosed lumbosacral sprain/strain and lumbar radiculopathy. Dr. Battisi recommended x-rays and MRI scan studies.

In an August 24, 2012 letter, OWCP advised appellant that when his claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work. Appellant was advised that the employing establishment did not controvert continuation of pay (COP) or challenge the case. Payment of a limited amount of medical expenses was administratively approved. As the merits of the claim had not been formally considered, the claim was reopened because medical bills exceeded $1,500.00. OWCP advised appellant that additional factual and medical evidence was needed, noting that an opinion from a qualified physician was crucial to his claim. It explained that nurse practitioners and physician's assistants were not physicians as defined under FECA. Further, chiropractors were considered to be physicians only where a spinal subluxation was diagnosed based on x-ray.

In a report dated September 5, 2012, Dr. Nabil Farakh, an orthopedic surgeon and osteopath, noted a history of appellant pushing a heavy object at work on June 12, 2012. He diagnosed low back pain, radiculopathy of the right lower extremity and to rule out a disc injury. Dr. Farakh noted that x-rays of the lumbar spine taken on June 21, 2012 revealed no fracture or

dislocation. OWCP received physical therapy reports and copies of previously submitted records.

By decision dated September 28, 2012, OWCP denied appellant's claim. It found that the medical evidence did not establish that his back condition was related to the June 12, 2012 incident of pushing mail containers at work.

OWCP received additional duty status reports, physical therapy records and copies of previously submitted material.

On October 25, 2012 appellant requested a hearing, which was held on February 5, 2013. At the hearing, he explained that he initially believed that he sustained a right hip injury, but his physicians explained that his pain in his right leg was due to a lumbar spine injury and not a hip injury.

An October 24, 2012 lumbosacral x-ray, read by Dr. Robert Lautin a Board-certified diagnostic radiologist, revealed mild anterior wedging at L2, L3 and L4, which was chronic and probably developmental with mild disc changes from L1-2 to L5-S1.

In a December 2, 2012 report, Dr. Dening Zhu, a Board-certified internist, provided light-duty work restrictions and continued physical therapy.

In a February 22, 2013 statement, appellant reviewed his history of injury, noting that the BMC that he pushed on June 12, 2012 weighed over a thousand pounds. He immediately reported his injury to management and it sent him to a medical office that day. Appellant was subsequently placed on light duty and used sick leave as he was feeling discomfort in his lower back and leg. He submitted an undated report from a healthcare provider with an illegible signature, who noted that the reported work incident caused discomfort in his lower back.

By decision dated March 25, 2013, OWCP's hearing representative affirmed the September 28, 2012 decision.

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[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

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

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

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[5] 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.[6]

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.[7] 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. 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.[8]

Section 8101(2) of FECA[9] provides that the term physician, as used therein, 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.[10] Without a diagnosis of a subluxation from x-ray, a chiropractor is not a physician under FECA and his or her opinion on causal relationship does not constitute competent medical evidence.[11]

ANALYSIS

OWCP accepted that appellant pushed BMC on June 12, 2012 when he felt a pull in his right hip muscle. The Board finds, however that the medical evidence is insufficient to establish that the employment incident caused an injury. The medical reports of record do not provide sufficient explanation of how pushing a BMC on June 12, 2012 caused a personal injury. The medical evidence contains no firm diagnosis or rationale concerning the mechanism of injury.

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

[6] *Id*.

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

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

[9] 5 U.S.C. § 8101(2).

[10] *See* 20 C.F.R. § 10.311.

[11] *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

In an August 8, 2012 report, Dr. Bursztyn noted appellant's history of injury and treatment. He advised that he recalled pushing something heavy while working on June 12, 2012. Dr. Bursztyn reviewed diagnostic reports and ordered an MRI scan of the right hip to rule out internal derangement. He determined that appellant was partially disabled and recommended light and physical therapy for the shoulders. However, the Board notes that Dr. Bursztyn reported findings but did not specifically address causal relationship.[12] Dr. Bursztyn did not set forth a factual history or background concering appellant's lumbar condition. He did not adequately address how pushing a BMC caused or contributed to a diagnosed medical condition. The September 5, 2012 report from Dr. Farakh contained a diagnosis and the December 2, 2012 report from Dr. Zhu contained light-duty work restrictions. Neither physician specifically offered an opinion as to the cause of appellant's 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.[13]

The August 15, 2012 report from Dr. Battisi, a chiropractor, diagnosed lumbosacral sprain/strain and lumbar radiculopathy. 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 a subluxation as demonstrated by x-ray to exist.[14] Dr. Battisi did not state that he obtained x-rays or diagnose a spinal subluxation.[15] In the absence of a diagnosis of subluxation based on x-rays, he is not a physician under FECA and his report is of no probative medical value.

Appellant also submitted reports from physician assistants and physical therapists. However, a lay individual such as a physician's assistant, nurse or physical therapist is not competent to render a medical opinion under FECA.[16] The record also contains reports from healthcare providers whose signatures are illegible. The Board has held that medical reports lacking proper identification do not constitute probative medical evidence.[17] Thus, these documents are of no probative medical value and insufficient to establish appellant's claim.

For these reasons, the Board finds that appellant has not established that the June 12, 2012 employment incident caused or aggravated his claimed back condition.

On appeal, appellant argued that he was not aware that his treatment was by a physician's assistant and would not be acceptable to OWCP. As noted, it is his burden of proof to submit probative medical evidence from a physician in support of his claim.

[12] *See supra* note 7.

[13] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[14] 5 U.S.C. § 8101(2).

[15] OWCP's implementing federal regulations define subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. *See* 20 C.F.R. § 10.5(bb).

[16] *E.K.*, Docket No. 09-1827 (issued April 21, 2010).

[17] *R.M.*, 59 ECAB 690, 693 (2008).

The Board also notes that the employing establishment issued appellant a Form CA-16 on June 12, 2012 authorizing medical treatment. The Board has held that where 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, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.[18] Although OWCP denied appellant's claim for an injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case record, OWCP should further address this issue.

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 to establish that he sustained an injury in the performance of duty on June 12, 2012. On return of the record, OWCP should consider the Form CA-16 issued in this case.

[18] *D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304.

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: April 28, 2014
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