United States Department of Labor
Employees' Compensation Appeals Board

I.M., Appellant	)	
and	)	**Docket No. 14-973**
	)	**Issued: August 25, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Huntington Beach, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 25, 2014 appellant filed a timely appeal from a February 20, 2014 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 his back condition is causally related to the accepted December 21, 2013 injury.

FACTUAL HISTORY

On January 7, 2014 appellant, then a 55-year-old sales associate, filed a traumatic injury claim alleging that he hurt his low back in the performance of duty on December 21, 2013. In a December 21, 2013 statement, he noted that he was lifting parcels from a plastic pallet on the

[1] 5 U.S.C. § 8101 *et seq.*

floor when a coworker, who was pushing a U-cart, passed by and the U-cart wheel hit the pallet, which struck his ankle and caused him to fall forward. Appellant attempted to keep his balance and felt a twinge in his back. He submitted two witness statements, which corroborated the incident. A January 7, 2014 duty status report, with an illegible signature, diagnosed low back pain and took appellant off work.

In a January 17, 2014 letter, OWCP advised appellant of the deficiencies in his claim. It requested additional factual and medical information, including a physician's opinion supported by a medical explanation as to how the work incident caused or aggravated the claimed back injury. Appellant was provided 30 days to provide such information. He submitted a January 31, 2014 physical therapy note; duty status reports dated January 14 to 30, 2014 from a physician with an illegible signature, which diagnosed lumbar pain and radiculopathy due to a December 21, 2013. Appellant was placed off work until the next visit.

Dr. Herbert D. Jennings, Board-certified in occupational medicine, submitted reports dated January 7 to February 13, 2014. On January 7, 2013 he related that on December 21, 2013 appellant was bending over lifting packages off a cart when it suddenly rolled into his lower extremities causing him to fall forward. Appellant experienced immediate pain in his mid-lower back. He left for a week of vacation the next day. After a week, appellant's symptoms increased and he experienced radiation of pain down his right lower extremity. Dr. Jennings diagnosed lumbosacral sprain/strains and thoracic or lumbosacral neuritis or radiculitis, which occurred at the industrial premises on December 21, 2013. He placed appellant on temporary total disability pending his next visit. Dr. Jennings recommended a magnetic resonance imaging (MRI) scan of the lumbar spine and physical therapy. Authorization requests for an MRI scan and physical therapy were also submitted.

By decision dated February 20, 2014, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish that his back condition was causally related to the accepted December 21, 2013 incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 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 on a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient

[2] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[3] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[4]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[5] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[6] The weight of the 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] 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.[8]

ANALYSIS

OWCP accepted that the December 21, 2013 incident occurred as alleged. It denied appellant's claim on the grounds that there was insufficient medical evidence to establish that his back condition was caused or aggravated by the December 21, 2013 incident. The Board finds that he did not meet his burden of proof to establish fact of injury.

The medical reports from Dr. Jennings note that appellant injured his back at work on December 21, 2013 and diagnosed a lumbar strain, thoracic and lumbar neuritis with radiculitis. In a January 7, 2013 report, Dr. Jennings related appellant's history of injury and provided diagnoses, but he did not provide sufficient opinion on causal relation. He did not adequately address how the diagnosed condition arose as a result of the work incident.[9] Dr. Jennings noted only that appellant reported pain in his mid-low back which he medicated with ice while on vacation. At the end of his vacation, appellant's symptoms had increased. Dr. Jennings did not report a history of appellant's activities while on vacation that gave rise to the increased symptoms. He did not provide a complete and accurate history.[10] Moreover, Dr. Jennings offered no medical explanation as to how the employment incident caused the diagnosed

[4] *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[5] *See J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

[6] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[7] *James Mack*, 43 ECAB 321, 329 (1991).

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

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

[10] *See T.H.*, 59 ECAB 388 (2008).

conditions. He related appellant's history of the incident and provided a diagnosis but he did explain how physiologically the movements involved in the employment incident caused or contributed to the diagnosed condition.[11] Dr. Jennings did not explain, with supporting medical rationale, the mechanism of injury in this case.[12] The Board notes that, while Dr. Jennings related December 21, 2013 as the date of injury, he has not explained why appellant developed radicular symptoms after a week of vacation. The Board therefore concludes that the reports from Dr. Jennings are of limited probative value and not sufficient to establish appellant's claim.

The duty status reports, which contained an illegible signature of a physician, are also insufficient to establish appellant's claim. There is no history of the claimed work injury other than listing the date of injury. The reports do not identify the physician and are of little probative value.[13]

The physical therapy report do not establish appellant's claim. A physical therapist is not a "physician," as defined under FECA. A physical therapist's opinion regarding causal relationship is of no probative value.[14] The other evidence pertaining to authorization requests is not probative to the issue of causal relationship.

On appeal, appellant disagreed with OWCP's decision denying his claim for compensation. As noted, the medical evidence does not establish that his diagnosed back condition was causally related to the accepted December 21, 2013 incident.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his back condition was causally related to the accepted December 21, 2013 incident.

[11] *See R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

[12] *See A.R.*, Docket No. 14-712 (issued July 3, 2014).

[13] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (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).

[14] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as physician as defined in 5 U.S.C. § 8101(2). 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. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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