United States Department of Labor
Employees' Compensation Appeals Board

J.K., Appellant	)	
and	)	**Docket No. 14-1545**
	)	**Issued: December 1, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Fort Worth, TX, Employer	)	

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 June 30, 2014 appellant filed a timely appeal from a February 4, 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 he sustained an injury on September 17, 2013.

FACTUAL HISTORY

On September 30, 2013 appellant, then a 56-year-old maintenance mechanic, filed a traumatic injury claim alleging that on September 17, 2013 he sustained a back injury. He

[1] 5 U.S.C. § 8101 *et seq.*

alleged that he injured his back when he lifted a conveyor roller to facilitate drive belt installation. Appellant did not stop work.

By letter dated October 4, 2013, OWCP notified appellant that the evidence of record was insufficient to establish his claim. Appellant was advised to submit medical evidence from his physician including a diagnosis, opinion on causal relationship, and results of any x-ray or laboratory findings.

In a September 30, 2013 statement, appellant noted that he injured himself when he bent over a conveyor belt to lift a large conveyor belt roller. He felt a pop in his lower back and pain which limited his mobility. In an October 15, 2013 witness statement, appellant's coworker concurred with appellant's assertions.

In a September 30, 2013 report, Dr. Aaron Wall, a chiropractor, diagnosed vertical subluxation and severe disc degeneration of the lumbar spine. He advised that appellant was being treated with spinal adjustments three times a week in order to correct his spinal misalignment. Dr. Wall stated that appellant lost over 50 percent of his lumbar curve and 80 percent of the disc space at the L4-L5 level. He noted that appellant's spinal cord was compressed at the base of his skull and the base of his lower back. Dr. Wall advised that appellant should refrain from twisting his back and lifting more than 20 pounds for at least four weeks. Several treatment notes from Dr. Wall were submitted. On September 25, 2013 Dr. Wall indicated that x-rays were ordered due to postural distortion found during the physical examination. In an accompanying September 25, 2013 x-ray report, appellant was diagnosed with subluxations at C5-C6, T2-T3, and L3-L4, narrowed disc space and osteoarthritis.

In an October 15, 2013 report, Dr. Wall diagnosed vertebral subluxation and severe disc degeneration of the lumbar spine. He noted that appellant injured his back on September 17, 2013 at work while heavy lifting. Appellant related that he lifted a conveyor roller and twisted at the same time. Dr. Wall opined that lifting and twisting at the same time, combined with degenerative disc at the L4-L5 level, would exacerbate the entire lower back region and cause severe pain and limited range of motion. He advised that appellant would be reevaluated in one month and x-rayed again in two months. Dr. Wall expected to see 30 to 50 percent improvement by appellant's two-month x-ray.

On October 20, 2013 appellant accepted a limited-duty assignment.

By decision dated February 4, 2014, OWCP denied appellant's claim. It found the medical evidence insufficient to establish causal relation. OWCP found that there were no x-ray reports diagnosing subluxation of the spine; therefore, Dr. Wall was not a physician as defined under FECA.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[2] including that he or she is an "employee" within the meaning of FECA and that he or

[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

she filed his or her claim within the applicable time limitation.[3] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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]

Section 8101(2) of FECA 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.[7] 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.

ANALYSIS

On September 17, 2013 appellant lifted a conveyor roller and OWCP accepted that the claimed work incident occurred. Therefore, the Board finds that the first component of fact of injury is established. However, the medical evidence does not establish that this work incident caused an injury.

OWCP found that Dr. Wall was not a physician within the meaning of FECA because appellant did not submit an x-ray report diagnosing subluxation of the spine. Its regulations provide that a chiropractor may interpret his own x-rays to the same extent as any other physician and do not require that an x-ray film or x-ray report be submitted. The regulations provide that the x-ray or a report of the x-ray be made available for submittal upon request.[8] Dr. Wall noted that appellant was seen on September 25, 2013. X-rays were obtained by the

[3] *R.C.*, 59 ECAB 427 (2008).

[4] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

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

[7] 5 U.S.C. § 8101(2).

[8] *See* 20 C.F.R. § 10.311(c).

chiropractor which were interpreted as showing spinal subluxations. In his September 30 and October 15, 2013 reports, Dr. Wall diagnosed subluxations of the cervical, thoracic, and lumbar spine. He submitted the x-ray report of September 25, 2013 that diagnosed subluxations of the spine. As Dr. Wall diagnosed a spinal subluxation based on a review of x-rays, he is a physician under FECA.[9]

In his October 15, 2013 report, Dr. Wall diagnosed vertebral subluxation and severe disc degeneration of the lumbar spine. He noted that appellant's back injury resulted from a September 17, 2013 work incident involving heavy lifting. Dr. Wall stated that appellant related to him that he lifted and twisted at the same time. He opined that lifting and twisting at the same time combined with degenerative disc at the L4-L5 level would exacerbate the entire lower back region and cause severe pain and limited range of motion. Although Dr. Wall opined that the work incident combined with appellant's degenerative condition would exacerbate the entire lower back region and cause severe pain, he did not specifically explain the reasons why this incident caused the diagnosed subluxation. He did not provide adequate medical rationale explaining the process by which lifting and twisting at the same time would have caused subluxation.

In his September 30, 2013 report, Dr. Wall diagnosed vertical subluxation and severe disc degeneration of the lumbar spine. He advised that appellant was being treated with spinal adjustments three times a week in order to correct his spinal misalignment. Although this report provides a medical diagnosis, it does not give a history of the injury nor does it provide an opinion on causal relationship. As a result, it is insufficient to discharge appellant's burden of proof.[10] Other treatment notes from Dr. Wall do not support that appellant's low back condition was caused or aggravated by work factors on September 17, 2013. As a result, these reports are of little probative value.

On appeal appellant argues that medical evidence does include an x-ray report identifying subluxations at C5-C6, T2-T3, and lumbar L3-L4. The Board agrees that the medical evidence includes a diagnosis of subluxation as demonstrated by an x-ray. However, Dr. Wall did not sufficiently explain the reasons why the work incident caused or contributed to the diagnosed spinal subluxations.

Consequently, appellant has submitted insufficient medical evidence to establish his claim. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.[11] The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have

[9] *See T.A.*, Docket No. 14-1334 (issued October 27, 2014); *Mary A. Ceglia*, 55 ECAB 626 (2004); *Robert S. Winchester*, 54 ECAB 191 (2002).

[10] *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

[11] *See supra* note 6.

caused or aggravated his condition.[12] Because appellant has not provided such medical opinion evidence in this case, he has failed to meet his burden of proof.

Appellant may submit new evidence or argument as part of a formal 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 establish that he was injured in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2014
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

[12] *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).