United States Department of Labor
Employees' Compensation Appeals Board

F.D., Appellant	)	
and	)	**Docket No. 15-0868**
	)	**Issued: August 10, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Wappingers Falls, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 9, 2015 appellant filed a timely appeal from a December 24, 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.[2]

ISSUE

The issue is whether appellant established an injury in the performance of duty on November 4, 2014, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted new evidence after the issuance of OWCP's November 4, 2014 decision. However, the Board may not consider this evidence as it may only review the evidence that was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On November 4, 2014 appellant, then a 23-year-old city carrier assistant, filed a traumatic injury claim alleging that on that date he suffered a strain to his back while bending into a hamper to place a mail tray. He stated that, while pulling down flats and loading them into the hamper, he felt a mild sensation in his lower back. Appellant explained that as the day continued, the pain began to spread and increase.

In support of his claim, appellant submitted a November 12, 2014 attending physician's report wherein Dr. Warren H. Landesberg, a chiropractor, diagnosed appellant with lumbar dysfunction/lumbar strain and combined subluxation L3-4 and L4-5. Dr. Landesberg checked a box that the condition was caused by appellant's employment activity.

By letter dated November 14, 2014, OWCP informed appellant that the documentation was insufficient to support his claim, and noted that he must submit further evidence, including a physician's opinion as to how his injury resulted in the diagnosed condition. It informed appellant that his chiropractor was not considered a physician under FECA as there was no diagnosis of a subluxation as demonstrated by x-rays to exist.

In response, appellant submitted unsigned notes with no attribution as to the author. Appellant also submitted a second report from Dr. Landesberg dated November 12, 2014, diagnosing a vertical subluxation and finding that appellant's employment activity of repetitive lifting was the obvious cause of the low back condition. In a November 15, 2014 letter, he again found that it was his best opinion that appellant was injured on November 4, 2014 while lifting trays at work, but was able to return to work with no limitations on November 13, 2014.

Appellant returned to full-time regular-duty work on November 13, 2014.

By decision dated December 24, 2014, OWCP denied appellant's claim finding that fact of injury had not been established. It explained that the medical evidence was insufficient to establish an employment-related medical condition as his chiropractor was not considered a physician under FECA.

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, 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. 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]

In order 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

[3] *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

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 or exposure, which is alleged to have occurred.[4] In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.[5]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6] The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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.[7]

ANALYSIS

OWCP accepted that the November 4, 2014 employment incident occurred as alleged. It denied appellant's claim as it found that he had failed to establish that any medical condition resulted from the accepted employment incident. The Board finds that appellant has not met his burden of proof.

Appellant submitted reports from his attending chiropractor, Dr. Landesberg, discussing his treatment of appellant for an employment-related back injury. The Board finds that Dr. Landesberg does not qualify as a physician under FECA. Section 8101(2) of FECA[8] 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 and subject to regulations by the Secretary.[9] Although Dr. Landesberg provided a diagnosis of subluxation, there is no x-ray evidence of subluxation. Without a diagnosis of spinal subluxation from an x-ray, a chiropractor is not a physician under FECA and his opinion does not constitute competent medical evidence.[10] As such, Dr. Landesberg's reports are insufficient to establish a work-related diagnosis from a qualified physician under FECA.

[4] *See Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Linda S. Jackson*, 49 ECAB 486 (1998).

[6] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[7] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[8] 5 U.S.C. § 8102(2).

[9] *See* 20 C.F.R. § 10.311.

[10] *See Jay K. Tomokiyo*, 51 ECAB 361, 367-68 (2000).

The unsigned typed progress notes are also of no probative value as there is no indication of who prepared these notes. The Board has held that incomplete medical reports not containing a signature do not constitute probative medical evidence.[11]

As appellant failed to submit a rationalized medical opinion supporting that his injuries were causally related to the accepted November 4, 2014 employment incident, he did not meet his burden of proof to establish an employment-related traumatic injury.

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 did not establish an injury in the performance of duty on November 4, 2014, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 24, 2014 is affirmed.

Issued: August 10, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[11] *See R.M.*, 59 ECAB 690, 693 (2008); *Merton J. Sills*, 39 ECAB 571, 575 (1988).