

**United States Department of Labor
Employees' Compensation Appeals Board**

W.C., Appellant)	
)	
and)	Docket No. 15-1024
)	Issued: December 14, 2015
DEPARTMENT OF TRANSPORTATION,)	
FEDERAL AVIATION ADMINISTRATION,)	
Washington, DC, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 2, 2015 appellant filed a timely appeal of a January 2, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (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 has met his burden of proof to establish a traumatic injury in the performance of duty.

¹ Appellant filed a timely request for oral argument. By order dated October 6, 2015, the Board denied his request on the grounds that his arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 15-1024 (issued October 6, 2015).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 3, 2014 appellant then a 53-year-old program analyst, filed a traumatic injury claim (Form CA-1), alleging that on September 2, 2014 while working in the library he attempted to carry and move a cardboard box full of archive materials and pulled his neck and back, causing pain and loss of feeling. He did not stop work.

Appellant submitted a magnetic resonance imaging (MRI) scan report dated September 16, 2014 which revealed an irregular central herniation superimposed upon spurring to the left extending into the foramen at C3-4, irregular spurring across the disc margin at C4-5, spurring to the left at C5-8 and disc bulge at C6-7. In an undated attending physician's report, Dr. Gary Raab, an osteopath, noted that appellant reported carrying a box and injuring his neck and shoulder. He diagnosed acute cervical spasm and cervical radiculitis and noted with a checkmark in the box marked "yes" that the condition was caused or aggravated by an employment activity. Dr. Raab advised that appellant did not miss work.

Appellant was treated by Dr. Jeffrey D. Polcer, an osteopath and Board-certified anesthesiologist, who, in prescription slips dated September 22 and 23, 2014, recommended physical therapy and an electromyogram (EMG). In reports dated September 23 and October 7, 2014, Dr. Polcer noted that appellant presented with right neck pain radiating down the right arm. Appellant reported a work-related neck injury on September 2, 2014 when he lifted a box off of a pallet. Dr. Polcer noted an EMG revealed an acute right C7 radiculopathy. He noted findings on examination of symmetrical reflexes of the biceps and triceps. Dr. Polcer diagnosed cervicalgia and cervical radiculopathy and recommended cervical epidural steroid injections and physical therapy. He returned appellant to work without restrictions. On October 24, 2014 Dr. Polcer administered a cervical epidural steroid injection and epidurography, and diagnosed cervical radiculopathy.

On October 2, 2014 appellant was treated by Dr. Salvatore Russomano, a Board-certified physiatrist, who noted that appellant reported a work-related injury approximately one month earlier while pulling a heavy stack of books. Dr. Russomano noted appellant's symptoms of progressive right-sided neck discomfort with radiation down his right upper extremity and numbness involving the second and third digits of his right hand. Manual muscle testing revealed significant weakness of the triceps on the right, sensory examination was diminished over his second and third digits of his right hand, and reflexes revealed a diminished triceps response on the right. The electrodiagnostic testing revealed electrical evidence of an acute right C7 radiculopathy with axon loss.

Appellant was treated by Dr. Fernando Delasotta, a Board-certified neurosurgeon, on November 18, 2014, for pain in the base of the neck, right shoulder into the right arm with associated numbness of the wrist, second and third digits of the right hand with subjective weakness. Dr. Delasotta noted that a November 12, 2014 cervical myelogram revealed minimal degenerative spurring to the left at C3-4 and mildly narrowing the left neural foramen. On examination, appellant ambulated without assistance, was able to walk on tip toes and heels, had no gross motor or sensory deficit, and had restricted range of motion of the neck. Dr. Delasotta diagnosed cervical radiculopathy and recommended that appellant continue working full time.

Appellant also submitted a nurse's note dated November 18, 2014 diagnosing cervical radiculopathy and recommending physical therapy.

By letter dated December 1, 2014, OWCP advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It indicated that appellant's claim had been administratively handled to allow medical payments up to \$1,500.00 without formal adjudication of the merits of the claim. OWCP advised that, because the medical bills exceeded \$1,500.00, his claim would be formally adjudicated. It requested that appellant submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed right arm injury.

Appellant submitted a November 18, 2014 report from Dr. Polcer who treated him for radiating neck and arm pain. He reported sustaining a work-related neck injury on September 2, 2014 while lifting a box off a pallet. Dr. Polcer diagnosed cervicgia and cervical radiculopathy and returned appellant to work without restrictions.

In a January 2, 2015 decision, OWCP denied the claim because the medical evidence failed to establish that the diagnosed medical conditions were causally related to the established work-related events.

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 filed within the applicable time limitation 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

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.⁴

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

³ Gary J. Watling, 52 ECAB 357 (2001).

⁴ T.H., 59 ECAB 388 (2008).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

ANALYSIS

It is undisputed that on September 2, 2014 appellant was attempting to carry and move a cardboard box full of archive materials from the library. It is also undisputed that appellant was diagnosed with cervicalgia and cervical radiculopathy. However, appellant has not submitted sufficient medical evidence to establish that these diagnosed conditions were caused or aggravated by this incident. On December 1, 2014 OWCP advised appellant of the type of medical evidence needed to establish his claim. Appellant has not submitted sufficient medical evidence to establish that the diagnosed conditions are causally related to work factors.

Appellant was treated by Dr. Polcer who, in reports dated September 23, October 7, and November 18, 2014, noted that appellant presented with radiating right neck and arm pain. Appellant reported injuring his neck on September 2, 2014 while lifting a box off a pallet. Dr. Polcer diagnosed cervicalgia and cervical radiculopathy. He provided cervical epidural steroid injections on October 24, 2014 and returned appellant to work without restrictions. Dr. Polcer did not provide medical rationale explaining the basis of his opinion regarding the causal relationship between appellant's diagnosed conditions and the September 2, 2014 work incident. He did not explain how work activities on September 2, 2014 could have caused or aggravated the diagnosed conditions.

Appellant was treated by Dr. Russomano on October 2, 2014, for progressive right-sided neck discomfort with radiation down his right arm and numbness involving the second and third digits of his right hand. He reported being involved in a work-related injury approximately one month prior while pulling a heavy stack of books. An EMG revealed electrical evidence of an acute right C7 radiculopathy with axon loss. However, Dr. Russomano appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related. To the extent that Dr. Russomano is providing his own opinion, he did not provide a rationalized opinion regarding the causal relationship between appellant's right C7 radiculopathy and the factors of employment believed to have caused or contributed to such condition.⁶ Therefore, this report is insufficient to meet appellant's burden of proof.

In an undated attending physician's report, Dr. Raab diagnosed acute cervical spasm and cervical radiculitis. He noted with a checkmark "yes" that the condition was caused or aggravated by an employment activity. The Board has held that when a physician's opinion on causal relationship consists only of checking a box marked "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.⁷

⁵ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *Id.*

⁷ *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

Dr. Delasotta treated appellant on November 18, 2014, for neck, right shoulder, and arm pain with associated numbness to the wrist and fingers. He noted findings, offered a diagnosis, and recommended that appellant continue working full time. This report is of limited probative value as Dr. Delasotta did not provide a history of injury⁸ or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.⁹

Likewise, the remainder of the medical evidence, including diagnostic test reports, fails to provide an opinion on the causal relationship between appellant's job and his diagnosed conditions. For this reason, this evidence is insufficient to meet appellant's burden of proof.¹⁰

Also submitted was a nursing note. The Board has held that treatment notes signed by a nurse are not considered medical evidence as these providers are not considered physicians under FECA.¹¹

On appeal appellant disagreed with OWCP's decision denying his claim for compensation and noted that he submitted sufficient evidence to establish his claim as work related. He sought payment of the medical expenses incurred as a result of his work-related condition. As noted above, the medical evidence does not establish that appellant's diagnosed conditions were causally related to his employment. Reports from appellant's physician's failed to provide sufficient medical rationale explaining the reasons why appellant's diagnosed medical conditions were caused or aggravated by particular work duties on September 2, 2014.

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 meet his burden of proof to establish a traumatic injury in the performance of duty.

⁸ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

⁹ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁰ *Id.*

¹¹ *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board