United States Department of Labor
Employees' Compensation Appeals Board

T.H., Appellant	)	
and	)	**Docket No. 14-1866**
	)	**Issued: January 20, 2015**
DEPARTMENT OF JUSTICE, BUREAU OF PRISIONS, FEDERAL CORRECTIONAL INSTITUTION, Salters, SC, 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
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 21, 2014 appellant filed a timely appeal from a March 13, 2014 merit decision of the Office of Workers' Compensation Programs. 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 a back injury on February 7, 2013 while in the performance of duty.

On appeal, appellant contends that a medical opinion of a treating physician is sufficient to establish that he sustained an employment-related back injury. He also provides additional evidence.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 7, 2013 appellant, then a 43-year-old correctional officer, filed a traumatic injury claim alleging that he sustained a lower back injury that day when he twisted the wrong way while dragging a bag of property which included books and legal material.

In a duty status report (Form CA-17) and an authorization for examination and treatment (Form CA-16) dated February 7, 2013, Darlene W. Fludd, a family nurse practitioner, provided a history that appellant was pulling a property bag that day when he twisted to the left and felt pain in his left lower back. She listed a diagnosis of muscle strain and sprain. Ms. Fludd advised that appellant could resume work with restrictions as of February 12, 2013. In a February 7, 2013 prescription, she ordered his medications. In a February 14, 2013 slip, Ms. Fludd excused appellant from work through February 19, 2013.

A February 7, 2013 letter from the Williamsburg Regional Health Center which contained an unknown signature stated that appellant was seen in the office that day. A request was made to allow him to return to work with no restrictions on February 12, 2013.

In a March 6, 2013 letter, Dr. Henry Bowens, Jr., a Board-certified family practitioner, advised that appellant could return to work with no restrictions on March 20, 2013.

On August 2, 2013 appellant filed a claim requesting leave buyback from February 9 to March 20, 2013.

By letter dated September 16, 2013, OWCP indicated that, when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work. Because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. OWCP reopened the claim for adjudication because it had received a claim for wage-loss compensation.

Thereafter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional medical evidence. It also requested that the employing establishment submit medical evidence, if appellant had been treated at its medical facility.

In an October 17, 2013 decision, OWCP accepted that the February 7, 2013 incident occurred as alleged. It denied appellant's claim and determined that the medical evidence did not establish a causal relationship between his back condition and the accepted employment incident. OWCP also denied appellant's claim for leave buyback, finding that the medical evidence failed to establish any disability during the claimed period.

On October 29, 2013 appellant requested a review of the written record by an OWCP hearing representative and submitted medical evidence. In a March 6, 2013 progress note, Dr. Bowens listed physical examination findings and discussed laboratory test results with appellant. He advised that appellant had low back pain and excused him from work.

In a March 13, 2014 decision, an OWCP hearing representative affirmed the October 17, 2013 decision, finding that the medical evidence of record failed to establish that appellant's back injury was causally related to the accepted February 7, 2013 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence[3] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that 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.[5] There are two components involved in establishing the fact of injury. 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.[6]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[8] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[9]

ANALYSIS

OWCP accepted that on February 7, 2013 appellant dragged a bag of property while in the performance of duty. It found that the medical evidence failed to establish that he sustained a back injury as a result of the accepted incident. The Board finds that appellant failed to provide sufficient medical evidence to establish that he sustained a back injury causally related to the accepted February 7, 2013 employment incident.

Dr. Bowen's March 6, 2013 letter found that appellant could return to work with no restrictions. In a progress note of even date, he determined that appellant had low back pain and excused appellant from work. Dr. Bowen provided no rationale for his disability finding or explains the discrepancy between his two reports. The Board has held that medical conclusions

[2] *Id*. at §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[8] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[9] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.[10] Moreover, the Board has held that pain is generally considered a symptom, not a firm medical diagnosis.[11] Consequently, Dr. Bowen's report and progress note are insufficient to meet appellant's burden of proof.

The February 7, 2013 CA-17 and CA-16 forms, and February 14, 2013 slip from Ms. Fludd, a nurse practitioner, have no probative value in establishing appellant's claim. The Board has held that a nurse practitioner is not considered a physician as defined under FECA.[12]

The February 7, 2013 letter which contained an unknown signature is insufficient to establish appellant's claim. A report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence.[13]

Therefore, the Board finds that there is insufficient medical evidence to establish that appellant sustained a back injury causally related to the accepted February 7, 2013 employment incident.

On appeal, appellant contended that Dr. Bowen's medical opinion was sufficient to establish that he sustained an employment-related back injury. As discussed, Dr. Bowen did not provide a rationalized medical opinion explaining the causal relationship between appellant's back condition and resultant disability, and the accepted February 7, 2013 employment incident.

Also, on appeal appellant submitted new evidence. However, the Board has no jurisdiction to review this evidence for the first time on appeal.[14] 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 a back injury on February 7, 2013 while in the performance of duty.

[10] *See Albert C. Brown*, 52 ECAB 152 (2000).

[11] *Robert Broome*, 55 ECAB 339 (2004); *see also N.C.*, Docket No. 12-761 (issued November 1, 2012).

[12] *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Under FECA, a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

[13] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[14] *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 2015
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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