United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 15-180**
	)	**Issued: March 16, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Twin Falls, ID, 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 HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 4, 2014 appellant filed a timely appeal from a June 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 has met his burden of proof to establish that he sustained an injury in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 17, 2014 appellant, then a 48-year-old postal employee, filed a traumatic injury claim alleging that on March 13, 2014 he sustained a lower back and buttocks injury in the performance of duty. He alleged that he fell to the ground after sitting in a broken chair at work. Appellant did not stop work.

By letter dated April 30, 2014, OWCP notified appellant that evidence was insufficient and advised him of the type of factual and medical evidence needed to establish his claim. It particularly noted that medical evidence must come from a qualified physician. OWCP advised that a chiropractor was only considered to be a physician if a spinal subluxation demonstrated by x-ray was diagnosed.

In a May 6, 2014 duty status report (Form CA-17), Dr. John Holland, a chiropractor, advised that he treated appellant on March 13, 2014. He diagnosed sprain/strain and advised that appellant was able to perform his regular duties. Treatment records and authorization requests from Dr. Holland's office, from March 13 to May 2014, accompanied the duty status report.

By decision dated June 4, 2014, OWCP denied appellant's claim because there was no medical evidence from a physician diagnosing a condition in connection with the work incident.

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 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 rationalized 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

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

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

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

[5] *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.[6]

ANALYSIS

On March 13, 2014 appellant fell after sitting in a broken chair. The evidence supports that the claimed work incident with the chair occurred as alleged. Therefore, the Board finds that the first component of fact of injury is established. However, the medical evidence is insufficient to establish that the employment incident on March 13, 2014 caused a back condition.

Appellant submitted several treatment records and a duty status report from Dr. Holland. Medical opinion, in general, can only be given by a qualified physician.[7] 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.[8] Chiropractors are considered "physicians" within the meaning of FECA only when they have diagnosed a subluxation of the spine as demonstrated by x-ray.[9] Dr. Holland did not diagnose a spinal subluxation as demonstrated by an x-ray; therefore, he is not a physician within the meaning of FECA and his reports are not entitled to any probative medical weight.[10] As noted, on April 30, 2014, OWCP advised appellant of the circumstances in which a chiropractor is considered to be a physician. Appellant did not submit any other medical evidence from a physician supporting that the March 13, 2014 incident caused or contributed to an injury. As a result, the medical evidence is insufficient to discharge appellant's burden of proof.

On appeal appellant argues that medical evidence submitted was sufficient to establish the claim and that the employing establishment concurred with his factual history of the injury. As stated, OWCP accepted that the claimed work incident occurred as alleged. However, there was no medical evidence from a physician diagnosing a medical condition in connection with the accepted work incident. The lack of medical evidence from a qualified physician, supporting causal relationship, is the basis of the claim denial by OWCP.

The Board notes that appellant submitted medical evidence after the issuance of OWCP's June 4, 2014 decision. However, the Board lacks jurisdiction to review new evidence for the first time on appeal.[11]

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

[7] *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

[8] 5 U.S.C. § 8101(2).

[9] *Id.*

[10] *Allen C. Hundley*, 53 ECAB 551 (2002); *Lyle E. Dayberry*, 9 ECAB 369 (1998).

[11] *See* 20 C.F.R. § 501.2(c).

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 sustained a traumatic injury in the performance of duty on March 13, 2014.

ORDER

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

Issued: March 16, 2015
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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