United States Department of Labor
Employees' Compensation Appeals Board

T.J., Appellant	)	
and	)	**Docket No. 15-248**
	)	**Issued: March 16, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Oklahoma City, OK, 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 November 12, 2014 appellant filed a timely appeal from an October 28, 2014 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 met his burden of proof to establish that he sustained an injury in the performance of duty on September 10, 2014, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the October 28, 2014 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On September 18, 2014 appellant, then a 45-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that he sustained a lower back strain on September 10, 2014 as a result of lifting a package in the performance of duty.

In a September 25, 2014 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

An OWCP Form CA-16, authorization for examination, was issued by the employing establishment on September 15, 2014. Appellant was authorized to visit Irvin Medical Clinic in Hugo, Oklahoma. He submitted an attending physician's report dated September 29, 2014 and a duty status report dated October 2, 2014 from Dr. Michael Irvin, a family medicine specialist, at Irvin Medical Clinic. Dr. Irvin diagnosed back pain with radiating left leg pain and "possible herniated disc." He indicated that appellant was lifting at work on September 10, 2014.

A magnetic resonance imaging (MRI) scan dated October 9, 2014 revealed a disc bulge at L4-5 and L5-S1 and a focal left foraminal annual tear at L4-5.

By decision dated October 28, 2014, OWCP denied appellant's claim finding that the evidence submitted was not sufficient to establish fact of injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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[4] was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment

[3] 5 U.S.C. § 8101 *et seq.*

[4] OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[5] *See T.H.*, 59 ECAB 388 (2008). *See also Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[7]

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury related to the September 10, 2014 employment incident.

In his reports, Dr. Irvin indicated that appellant was lifting at work on September 10, 2014. He diagnosed back pain with radiating left leg pain and "possible herniated disc." The Board finds that Dr. Irvin's diagnosis of back pain with radiating left leg pain is a description of a symptom rather than a clear diagnosis of the medical condition.[8] The Board further finds that Dr. Irvin's diagnosis of "possible herniated disc" is speculative and equivocal in nature.[9] Therefore, the reports from him are insufficient to establish a medical diagnosis in connection with the injury and appellant has failed to establish fact of injury.

Appellant also submitted an October 9, 2014 MRI scan in support of his claim. This document does not constitute competent medical evidence as it does not contain rationale by a physician relating appellant's disability to his employment.[10] As such, the Board finds that appellant did not meet his burden of proof with this submission.

As appellant has not submitted any evidence to support his allegation that he sustained an injury related to the September 10, 2014 employment incident, he has failed to meet his burden of proof to establish a claim.

The Board also notes that the employing establishment issued appellant a Form CA-16 on September 15, 2014 authorizing medical treatment. The Board has held that where an employing

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[6] *Id. See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Id. See Gary J. Watling*, 52 ECAB 278 (2001).

[8] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[9] Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

[10] 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." *See also Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.[11] Although OWCP denied appellant's claim for an injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case record, OWCP should address this issue.

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 an injury in the performance of duty on September 10, 2014, as alleged. On return of the record, OWCP shall consider the Form CA-16 issued in this case.

ORDER

IT IS HEREBY ORDERED THAT the October 28, 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

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

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

[11] *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304.