

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

C.B., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION,
Kansas City, MO, Employer

Docket No. 15-1565
Issued: November 17, 2015

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 14, 2015 appellant filed a timely appeal of a January 29, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on September 7, 2014.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 9, 2014 appellant then a 43-year-old police officer, filed a traumatic injury claim, Form CA-1, alleging that on September 7, 2014 he injured his lower back while engaged in a physical altercation with an assaultive patient. He did not stop work.

Appellant was seen in the employing establishment health unit by a nurse on September 8, 2014 for low back pain. He reported a physical altercation with a patient and twisting his back. The nurse diagnosed low back strain and recommended ice and Ibuprofen.

Appellant came under the treatment of Dr. Brad M. Woodle, a chiropractor, from September 10 to October 1, 2014, for lumbar, thoracic, sacral, shoulder, scapular, and upper torso pain. He related sustaining an occupational injury on September 7, 2014 when he was involved in a physical altercation with an aggressive subject. Appellant noted that the patient was punching and kicking and had to be pepper sprayed in order to be restrained. He reported waking up the next morning with pain, sharp and aching in the middle and lower back. Dr. Woodle noted findings in the bilateral lumbar, thoracic, and sacral regions of taut and tender fibers, mild-to-moderate myofascial pain and tenderness in the shoulder region and upper torso. He noted biomechanical alterations at C4, C5, T3, T6, T7, T1, T2, L4, L5, left ilium, right ilium, and sacrum. Dr. Woodle noted decreased cervical lordosis, increased upper and mid thoracic kyphosis, negative straight leg raising test bilaterally, positive cervical compression test bilaterally, negative impingement sign bilaterally, and limited overall global range of motion for the cervical, lumbar, thoracic, cervical, sacrum, ilium/pelvis and bilateral shoulder regions. He diagnosed somatic dysfunction of the lumbar, thoracic, sacral regions, sprain of lumbar, sacrum, and thoracic regions, muscle spasm, chest pain, shoulder pain, thoracic disc degeneration, cervical and thoracic spondylosis, cervicalgia, degenerative joint disease, and degenerative disc disease. Dr. Woodle provided acupuncture, infrared light therapy, electric stimulation, intersegmental traction, electrodes and chiropractic manipulative therapy. He recommended 18 treatments. In a work excuse dated September 22, 2014, Dr. Woodle recommended that appellant work light duty until September 24, 2014 to prevent any aggravation of his condition.

In a letter dated October 30, 2014, OWCP advised appellant of the deficiencies in his claim and provided him the opportunity to submit additional evidence. It noted that Dr. Woodle's treatment notes were partially illegible. OWCP requested that appellant submit a comprehensive narrative medical report with a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors. It further noted that under FECA, chiropractors are deemed physicians "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." OWCP also noted its definition of the term "subluxation."

Appellant submitted a September 15, 2014 lumbar spine x-ray report from Dr. Jack Henry, a chiropractor to whom appellant was referred by Dr. Woodle. The x-ray showed spinal biomechanical alterations, Baastrup's kissing spinouses at L3-4, L4-5, facet tropism at L3-4, L4-5 and L5-S1, facet arthrosis of the lumbar spine, mild spondylosis of the lumbar and lower thoracic spine, slight disc narrowing at L1, L2, and L5 levels, altered interosseous spacing at L1, L2, and L5 disc levels indicating chiropractic subluxation complex at those levels, and pelvic

sacral unleveling on the right resulting in chiropractic subluxation complex of the S1 joints. Appellant also submitted a November 25, 2014 letter from Dr. Woodle who noted first treating appellant on September 10, 2014 for the September 7, 2014 work injury. He stated that he diagnosed a subluxation on September 10, 2014 and noted Dr. Henry's x-ray report which also diagnosed subluxations.

In an e-mail dated January 13, 2015, OWCP requested the employing establishment provide appellant's work status. The employing establishment noted that appellant transferred away from the employing establishment on October 4, 2014 and was on light duty at the time of his transfer.

In a January 29, 2015 decision, OWCP denied the claim on the grounds that appellant did not submit any medical evidence from a physician containing a medical diagnosis in connection with the accepted work event. It noted that he submitted treatment notes from a chiropractor but that the chiropractor did not diagnose a subluxation of the spine and therefore 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 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 is 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.²

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.³

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 rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *T.H.*, 59 ECAB 388 (2008).

⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

It is not disputed that on September 7, 2014, appellant was engaged in a physical altercation with an assaultive patient while performing his police officer duties. He was also diagnosed with several conditions as noted. The Board finds, however, that appellant has not submitted sufficient medical evidence to establish that his diagnosed conditions were caused or aggravated by this incident. On October 30, 2014 OWCP advised him of the type of medical evidence needed to establish his claim. Appellant has not submitted sufficient medical evidence to establish that any of these conditions are causally related to specific employment factors or conditions.

Appellant submitted several reports from Dr. Woodle, a chiropractor who noted first treating appellant on September 10, 2014 for a September 7, 2014 injury at work. On November 25, 2014 Dr. Woodle noted that on September 10, 2014 he diagnosed a subluxation and provided a September 15, 2014 x-ray report confirming subluxations as related to appellant's injury.

Section 8101(2) of FECA provides that chiropractors are considered physicians "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 regulation by the Secretary."⁵ Thus, where x-rays do not demonstrate a subluxation (a diagnosis of a subluxation based on x-rays has not been made), a chiropractor is not considered a "physician," and his or her reports cannot be considered as competent medical evidence under FECA.⁶ The record indicates that Dr. Woodle reviewed x-rays in diagnosing a spinal subluxation. Contrary to OWCP's January 29, 2015 finding, the Board finds that Dr. Woodle is a physician under FECA.⁷ However, Dr. Woodle's reports are of limited probative value regarding causal relationship and are insufficient to establish appellant's claim.

Reports from Dr. Woodle from September 10 to November 25, 2014, noted appellant's treatment for pain in the lumbar, thoracic, sacral, shoulder and bilateral upper torso regions. Appellant reported being involved in a physical altercation with a subject while at work on September 7, 2014 and sustaining a back injury. He noted findings of a taut and tender lumbar, thoracic, and sacral regions of the back, myofascial pain and tenderness of the shoulder and upper torso regions, decreased cervical lordosis and increased upper and mid thoracic kyphosis. The chiropractor diagnosed somatic dysfunction of the lumbar, thoracic, sacral regions, sprain of lumbar region, sacrum, thoracic spine, muscle spasm, chest pain, shoulder pain, thoracic disc degeneration, cervical and thoracic spondylosis, cervicgia, degenerative joint disease and

⁵ 5 U.S.C. § 8101(2); *see also* section 10.311 of the implementing federal regulations provides: "(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submittal of the x-ray, or a report of the x-ray, but the report must be available for submittal on request."

⁶ *See Susan M. Herman*, 35 ECAB 669 (1984).

⁷ Section 8101(2) of FECA provides that chiropractors are considered physicians "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 regulation by the Secretary." *See* 5 U.S.C. § 8101(2).

degenerative disc disease. However, the physician appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's spinal subluxation was work related. To the extent that Dr. Woodle is providing his own opinion, he has failed to provide a rationalized opinion regarding the causal relationship between a spinal subluxation and the factors of employment believed to have caused or contributed to such condition.⁸ Therefore, these reports are insufficient to meet appellant's burden of proof.

In a work excuse note dated September 22, 2014, Dr. Woodle recommended light duty to prevent aggravation of appellant's condition. Dr. Woodle's restrictions on appellant's return to work were prophylactic in nature and fear of future injury is not compensable under FECA.⁹ This evidence was therefore insufficient to show that appellant sustained a work-related injury in the performance of duty. Other reports submitted by appellant, including Dr. Henry's September 15, 2014 x-ray report did not specifically address causal relationship between appellant's claimed injury and his work duties and therefore have little probative value.

Appellant was treated in the employing establishment health unit by a nurse on September 7, 2014 for low back pain. However, the Board has held that treatment notes signed by a nurse are not considered medical evidence as nurses are not physicians under FECA.¹⁰

Consequently, the medical evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.¹¹ Appellant failed to submit such evidence, and OWCP therefore properly denied appellant's claim for compensation.

On appeal appellant asserts that OWCP had improperly denied his claim and believed he submitted sufficient evidence to establish that on September 17, 2014 sustained a low back condition causally related to his work duties. As noted above, the medical evidence does not establish that his diagnosed conditions were causally related to his employment. Reports from appellant's physician failed to provide medical rationale explaining the reasons why appellant's diagnosed medical conditions were caused or aggravated by particular employment duties.

⁸ *Id.*

⁹ See *Mary Geary*, 43 ECAB 300, 309 (1991); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980) (finding that appellant's fear of a recurrence of disability upon return to work is not a basis for compensation).

¹⁰ *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA). See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician 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).

¹¹ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

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 on September 7, 2014.

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2015 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: November 17, 2015
Washington, DC

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

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

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