

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

N.U., Appellant)

and)

DEPARTMENT OF JUSTICE, FEDERAL)
BUREAU OF INVESTIGATION,)
Washington, DC, Employer)

**Docket No. 15-0934
Issued: October 14, 2015**

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 H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 17, 2015 appellant filed a timely appeal from a February 23, 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 this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a cervical condition causally related to a November 16, 2014 employment incident, as alleged.

On appeal, appellant contends that the evidence he submitted was sufficient to establish a causal relationship and argues that OWCP erred in finding that the lifting incident occurred two months prior to the filing of his claim.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 14, 2015 appellant, a 55-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury in the performance of duty on November 16, 2014 when changing a flat tire on the rear passenger side of his government-issued vehicle. He stated that he changed the tire on a Sunday, and the following Monday morning he noted a loss of sensation in the fingertips of his right hand. On Monday evening, appellant began to experience pain in his shoulder, upper back, and neck. On the claim form, the employing establishment noted that the injury was sustained in the performance of duty, but was not reported within 30 days following the incident.

In a January 16, 2015 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and to respond to its inquiries.

Appellant submitted a January 30, 2015 narrative statement and medical bills for radiological services rendered on December 1, 2014 and a magnetic resonance imaging (MRI) scan on December 8, 2014.

In a January 27, 2015 report (Form CA-20), Dr. Ted Dunn, a Board-certified family practitioner, stated that appellant had pain in his neck radiating to his right hand and diagnosed cervical spondylosis/canal stenosis. He found loss of disc space at C5-6 and indicated that an MRI scan showed canal stenosis at C5-6. Dr. Dunn checked a box “yes” indicating his support for causal relationship, noting that the injury occurred while appellant was on duty and opined that he had “some preexisting disease with symptoms triggered by lifting” at work.

By decision dated February 23, 2015, OWCP denied appellant’s claim finding that the medical evidence was not sufficient to establish a causal relationship between his cervical condition and the November 16, 2014 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 injury³ 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.⁴

² *Id.*

³ 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).

⁴ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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 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 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.⁵

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.⁶

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish a cervical condition causally related to the November 16, 2014 employment incident, as alleged.

OWCP accepted that the employment incident of November 16, 2014 occurred at the time, place, and in the manner alleged. The issue on appeal is whether appellant’s cervical condition resulted from the November 16, 2014 employment incident. Appellant argues that OWCP erred in finding that the lifting incident occurred two months prior to the filing of his claim. The Board finds, however, that OWCP did in fact properly find the November 16, 2014 incident occurred approximately two months prior to January 14, 2015, which was the date appellant filed his claim for a traumatic injury. On the claim form, the employing establishment noted that the injury was sustained in the performance of duty, but was not reported within 30 days following the incident.

In a Form CA-20 report dated January 27, 2015, Dr. Dunn stated that appellant had pain in his neck radiating to his right hand and diagnosed cervical spondylosis/canal stenosis. He found loss of disc space at C5-6 and indicated that an MRI scan showed canal stenosis at C5-6. Dr. Dunn noted that the injury occurred while appellant was on duty and opined that appellant had “some preexisting disease with symptoms triggered by lifting” at work. Although Dr. Dunn presented a diagnosis of appellant’s condition and stated that results of an MRI scan demonstrated canal stenosis at C5-6, he did not adequately address how this condition and these findings were causally related to the November 16, 2014 employment incident. Dr. Dunn failed to provide a rationalized opinion explaining how changing a tire on November 16, 2014 caused or aggravated appellant’s cervical condition. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is

⁵ *Id.* See Shirley A. Temple, 48 ECAB 404 (1997); John J. Carlone, 41 ECAB 354 (1989).

⁶ *Id.* See Gary J. Watling, 52 ECAB 278 (2001).

a causal relationship between the two.⁷ Furthermore, in the January 27, 2015 form report, Dr. Dunn checked a box “yes” indicating his support for causal relationship. The Board has held, however, that without further explanation or rationale, a checked box is insufficient to establish causation.⁸ Thus, the Board finds that the report from Dr. Dunn is insufficient to establish that appellant sustained an employment-related injury.⁹

Appellant further submitted a January 30, 2015 narrative statement and medical bills for radiological services rendered on December 1, 2014 and an MRI scan on December 8, 2014. These documents do not constitute competent medical evidence as they do not contain rationale by a physician relating his disability to his employment.¹⁰ As such, the Board finds that appellant did not meet his burden of proof with these submissions.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to a November 16, 2014 employment incident, he has failed to meet his burden of proof to establish a claim for compensation.

Appellant contends on appeal that the evidence he submitted was sufficient to establish a causal relationship. For the reasons stated above, the Board finds that appellant has not met his burden of proof.

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 a cervical condition causally related to a November 16, 2014 employment incident, as alleged.

⁷ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁸ See *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

⁹ See *C.W.*, Docket No. 14-1114 (issued August 25, 2014) (where the claimant, a correctional officer alleging that he injured his lower back while responding to a call for assistance, submitted medical evidence and the Board found that a Form CA-20 duty status report from the his treating physician which supported causal relationship with a check mark was insufficient to establish the claim without further explanation or rationale).

¹⁰ See 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).

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2015
Washington, DC

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

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

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