United States Department of Labor
Employees' Compensation Appeals Board

H.A., Appellant	)	
and	)	**Docket No. 15-1449**
	)	**Issued: October 6, 2015**
U.S. POSTAL SERVICE, PACIFIC BEACH STATION, San Diego, CA, 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 H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 24, 2015 appellant filed a timely appeal from a May 19, 2015 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,[2] 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 traumatic injury in the performance of duty on April 7, 2015.

On appeal appellant generally asserts that the medical evidence establishes his claim.

[1] 5 U.S.C. §§ 8101-8193.

[2] The Board notes that appellant submitted evidence with his appeal to the Board. The Board cannot consider this evidence as its jurisdiction is limited to the evidence of record that was before OWCP at the time it issued its final decision. 20 C.F.R. § 501.2(c)(1); *P.W.*, Docket No. 12-1262 (issued December 5, 2012).

FACTUAL HISTORY

On April 7, 2015 appellant, then a 62-year-old distribution clerk, filed an occupational disease claim alleging that he felt low back pain while throwing a parcel that day. He stopped work on April 7, 2015.

By letter dated April 10, 2015, OWCP informed him of the evidence needed to support his claim. It specifically asked that he clarify the date of injury and whether he was claiming a traumatic injury or an occupational disease. In a response dated April 16, 2015, appellant clarified that he was, in fact, filing a traumatic injury claim. He related that, in support of a traumatic injury claim, around 6:00 a.m. on Tuesday, April 7, 2015 he was picking up, scanning, and throwing boxes to the appropriate hamper for delivery. Appellant stated that he picked up a box that weighed approximately 35 to 40 pounds to throw 10 feet into the hamper and, as he threw it, he felt a snap in his lower back, followed by pain. He indicated that he immediately told his supervisor who took him to the station manager who advised him to see his physician and bring in a medical report. On May 6, 2015 appellant reiterated that he intended to file a traumatic injury claim.

Medical evidence of record submitted includes reports dated April 8, 2015 in which Dr. Lawrence J. Schlitt, a Board-certified family physician, noted appellant's complaint of low back pain. A lumbosacral spine x-ray that day demonstrated diffuse lumbar spondylosis and a transitional L5 body. On a duty status report dated that day, Dr. Schlitt noted physical findings of tenderness at L4-5 and advised that appellant could not work. On April 9, 2015 he advised that appellant could return to work on April 15, 2015 with no restrictions.

In an April 14, 2015 report, Dr. Patrick Javidan, a chiropractor, advised that appellant was under his care for lower back pain. He indicated that appellant's symptoms had not improved enough for him to return to work, finding that he could return to work on April 22, 2015.

In an April 22, 2015 treatment note, Dr. Schlitt noted appellant's report that after four treatments with Dr. Javidan he had improved somewhat, but had worsening pain when sitting or standing for extended periods. He described physical examination findings of tender paralumbar and parathoracic muscle trigger points and diminished back range of motion with no neurological deficits. Dr. Schlitt diagnosed low back pain and lumbar spondylosis and referred appellant for a physiatry consultation and physical therapy evaluation. He also completed a Family and Medical Leave Act health care provider certification that day. Dr. Schlitt reported that appellant's condition began on April 7, 2015 and would probably continue for 30 days. He reiterated his findings and conclusions and advised that appellant could not return to work until cleared.

By decision dated May 19, 2015, OWCP found that appellant established that the claimed employment incident occurred on April 7, 2015 as alleged, but denied the claim as the medical evidence did not demonstrate that a diagnosed condition was related to the accepted incident.

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 timely filed within the applicable time limitation period 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 are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[3]

OWCP regulations, at 20 C.F.R. § 10.5(ee) 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.[4] To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[5]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8]

Under section 8101(2) of FECA, the term "physician" includes chiropractors 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.[9] Implementing regulations indicate that the diagnosis of spinal subluxation

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[3] *Gary J. Watling*, 52 ECAB 278 (2001).

[4] 20 C.F.R. § 10.5(ee) (1999, 2011); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *Supra* note 3.

[6] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[7] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[8] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[9] 5 U.S.C. § 8102(2); *see D.S.*, Docket No. 09-860 (issued November 2, 2009).

must appear in the chiropractor's report, and a chiropractor may interpret his or her x-rays to the same extent as any other physician.[10]

ANALYSIS

The Board finds that the April 7, 2015 incident occurred as alleged. However, the medical evidence submitted by appellant is insufficient to establish a medical condition causally related to the April 7, 2015 incident.

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.[11] No physician did so in this case.

As noted above, a chiropractor is not considered a physician under FECA without an x-ray diagnosing subluxation.[12] Appellant submitted an April 14, 2015 report in which Dr. Javidan, a chiropractor, indicated that appellant was under his care for lower back pain and could not return to work. Dr. Javidan did not diagnosis a subluxation or discuss any x-ray findings. The Board, therefore, concludes that he is not a physician as defined under FECA, and his report is of no probative value on the issue of whether appellant sustained an injury causally related to the April 7, 2015 incident.[13]

In his reports dated April 8 and 22, 2015, Dr. Schlitt provided examination findings and diagnosed low back pain and lumbar spondylosis. However, he did not discuss the history of injury or a cause of these diagnosed conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[14] Appellant, therefore, did not meet his burden of proof to establish that he sustained a traumatic injury on April 7, 2015.

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 establish that he sustained a traumatic injury in the performance of duty on April 7, 2015.

[10] 20 C.F.R. § 10.311(b)(c).

[11] *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

[12] *Supra* note 9.

[13] *See A.O.*, Docket No. 08-580 (issued January 28, 2009).

[14] *Willie M. Miller*, 53 ECAB 697 (2002).

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 2015
Washington, DC

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

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

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