United States Department of Labor
Employees' Compensation Appeals Board

F.W., Appellant	)	
and	)	**Docket No. 15-1435**
	)	**Issued: September 15, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 19, 2015 appellant filed a timely appeal from a June 1, 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, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish an injury as a result of an April 2, 2015 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence following the June 1, 2015 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt,* 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On April 3, 2015 appellant, then a 64-year-old city carrier, filed a traumatic injury claim alleging that on April 2, 2015 he injured his lower back when he picked up a parcel at work. He stopped work following this incident.

Appellant also submitted an April 3, 2015 Form CA-16 authorization for examination and/or treatment issued to Dr. Howard J. Rosner, a chiropractor, for an April 2, 2014 lower back injury. Dr. Rosner completed the form and related that on April 2, 2015 appellant had sustained a lower back injury when he lifted a 25-pound package at work. He diagnosed lumbar sprain and indicated "yes" that appellant's condition was caused or aggravated by the April 2, 2015 work incident. Dr. Rosner reported that appellant was totally disabled from April 3 to May 2, 2015 and could return to work on May 4, 2015. He included a duty status report which documented that appellant could resume work with certain restrictions.

By letter dated April 28, 2015, OWCP informed appellant that his claim was initially accepted as a minor injury but was now reopened because he had not returned to work. It requested additional factual information to substantiate the factual elements of his claim and medical evidence to establish that he sustained a diagnosed condition causally related to the April 2, 2015 employment incident.

Dr. Rosner submitted a May 4, 2015 termination of disability form and indicated that appellant could return to full duty on May 4, 2015.

In a decision dated June 1, 2015, OWCP denied appellant's traumatic injury claim. It accepted that the April 2, 2015 employment incident occurred as alleged, but denied the claim finding insufficient medical evidence to demonstrate a low back condition causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative, and substantial evidence[4] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[5]

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.[6] There are two components involved in establishing the fact of injury. First, the employee must

[3] 5 U.S.C. §§ 8101-8193.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.[7] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[8] An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.[9]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[10] 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.[11] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[12]

ANALYSIS

Appellant alleged that on April 2, 2015 he sustained a low back condition when he lifted a heavy parcel at work. OWCP accepted that the incident occurred as alleged but denied his traumatic injury claim finding insufficient medical evidence to establish a diagnosed back condition causally related to the accepted incident. The Board finds that appellant did not meet his burden of proof to demonstrate a back condition as a result of the April 2, 2015 employment incident.

In support of his claim, appellant submitted an April 3, 2015 Form CA-16 and treatment notes by Dr. Rosner, a chiropractor. Section 8101(2) provides that 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.[13] OWCP regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation, or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.[14] If the diagnosis of a subluxation as demonstrated by x-ray is not established, the chiropractor is not a

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[8] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[10] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[12] *James Mack*, 43 ECAB 321 (1991).

[13] 5 U.S.C. § 8101(2).

[14] 20 C.F.R. § 10.5(bb); *see also Bruce Chameroy*, 42 ECAB 121 (1990).

physician as defined under FECA and his or her report is of no probative value to the medical issue presented.[15] Because Dr. Rosner has not provided a diagnosis of subluxation nor provided x-rays of appellant's alleged back condition, he is not a physician as defined under FECA. Accordingly, his reports lack probative value and are insufficient to establish appellant's traumatic injury claim. The Board therefore finds appellant has not met his burden of proof to establish an injury as a result of the April 2, 2015 employment incident.

On appeal appellant notes the Form CA-16 authorization form of April 3, 2015 issued to Dr. Rosner. A properly executed Form CA-16 can form a contractual agreement for payment of medical expense, even if the claim is not accepted. *See* 20 C.F.R. § 10.300; *Val D. Wynn*, 40 ECAB 666 (1989). Upon return of the case record, OWCP shall review this aspect of the case.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an injury as a result of the April 2, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[15] *See Jack B. Wood*, 40 ECAB 95, 109 (1988).