United States Department of Labor
Employees' Compensation Appeals Board

W.G., Appellant	)	
and	)	**Docket No. 16-0874**
	)	**Issued: August 25, 2016**
SMITHSONIAN INSTITUTION, Washington, DC, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 March 23, 2016 appellant, through counsel, filed a timely appeal from a February 9, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 cervical, lumbar, and shoulder strains on March 30, 2015 causally related to the accepted employment incident.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 2, 2015 appellant, then a 57-year-old maintenance worker, filed a traumatic injury claim (Form CA-1) alleging that on March 30, 2015 he injured his left shoulder and tail bone. He stated that the injury occurred when he fell off the second step of a ladder while changing a ceiling tile. The employing establishment noted that no time had been lost from the injury and no medical expenses incurred.

Appellant submitted medical reports dated April 7 and 27, 2015, signed by a nurse practitioner. He also submitted several unsigned diagnostic tests.

By letter dated June 3, 2015, OWCP informed appellant of the evidence necessary to establish his claim. It noted that he had not submitted sufficient medical evidence to establish his claim and that any medical evidence submitted in support of his claim had to be signed by a qualified physician. Appellant was afforded 30 days to submit further evidence.

Appellant submitted another medical report dated June 2, 2015, signed by a nurse practitioner. He also submitted work restrictions dated June 29, 2015, with an illegible signature.

In a report dated June 29, 2015, Dr. Rochelle Hutchison, a Board-certified orthopedist, assessed appellant with neck pain, left shoulder pain, and back pain. She performed a shoulder injection and recommended work restrictions of no lifting greater than 10 pounds and no prolonged bending or twisting.

By decision dated July 10, 2015, OWCP denied appellant's claim for compensation. It noted that the alleged incident had occurred as described, and appellant had provided a medical report from a physician, but he had not established a diagnosis causally related to the accepted incident. The only assessment contained in that report was for "pain," which was a symptom and not a diagnosis. OWCP further noted that the remaining medical evidence was from nurse practitioners, who did not qualify as physicians under FECA.

On August 7, 2015 appellant requested a review of the written record before an OWCP hearing representative.

In a medical report dated July 13, 2015, Dr. Hutchison diagnosed appellant with neck pain, left shoulder pain, and back pain as a result of cervical and lumbar strain at work. She performed another left shoulder injection and recommended work restrictions of no lifting over 10 pounds and no prolonged bending or twisting. Dr. Hutchison noted that the onset of appellant's symptoms was on April 30, 2015 after a fall at work. She stated that appellant had a surgical history of back surgery, knee arthroscopy, knee surgery, knee replacement, and spinal surgery.

In a report of diagnostic testing dated April 23, 2015, Dr. Timothy S. Eckel, a Board-certified radiologist, interpreted the results of a magnetic resonance imaging (MRI) scan test of the cervical spine. He stated an impression of congenitally short pedicles of the cervical spine, with multilevel disc degeneration and uncovertebral joint hypertrophy.

On September 29, 2015 Dr. Hutchison recommended work restrictions of lifting up to 10 pounds frequently, with standing and walking as needed.

By letter dated June 29, 2015, Dr. Hutchison noted that appellant fell at work on April 30, 2015, resulting in cervical, lumbar, and left shoulder strain. She opined that appellant's fall was the direct and proximate cause of these diagnoses, and that her opinion was based on reasonable medical probability.

By decision dated February 9, 2016, an OWCP hearing representative affirmed the July 10, 2015 decision as appellant had not submitted sufficient evidence to establish a causal relationship between his diagnoses and the incident of March 30, 2015. He noted that Dr. Hutchison had not provided a sufficiently rationalized explanation of how this incident caused appellant's cervical, lumbar, and shoulder strains.

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 filed within the applicable time limitation, that an injury was sustained while 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.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[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.[6] 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.[7] 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.[8]

The claimant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[9] An award of

[3] *Id*.

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

[5] *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

[6] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

[7] *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

[8] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 4.

[9] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.[10]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[11] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors.[12] 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.[13]

ANALYSIS

The Board finds that the medical evidence submitted by appellant is insufficient to establish that the accepted employment incident of March 30, 2015 caused appellant's cervical, lumbar, and shoulder strains.

Appellant submitted several reports from Dr. Hutchison. In a medical report dated July 13, 2015, Dr. Hutchison diagnosed appellant with neck pain, left shoulder pain, and back pain as a result of cervical and lumbar strain at work. She noted that the onset of appellant's symptoms was on April 30, 2015 after a fall at work. By letter dated June 29, 2015, Dr. Hutchison stated that appellant fell at work on April 30, 2015, resulting in cervical, lumbar, and left shoulder strain. She opined that appellant's fall was the direct and proximate cause of these diagnoses, and that her opinion was based on reasonable medical probability.

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.[14] Dr. Hutchison's reports repeatedly refer to a date of injury other than that reported by appellant: while appellant's claim is for an injury resulting from a fall at work on March 30, 2015, Dr. Hutchison's reports consistently refer to a fall on April 30, 2015. As such, her reports either reflect an incorrect history of injury, or refer to a separate traumatic event on April 30, 2015, outside the scope of the current claim. Because Dr. Hutchison's reports contain a date of injury different from the date claimed by appellant, the reports are based on an incorrect history of injury and her reports are therefore of diminished

[10] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[11] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[12] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[13] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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

probative value.[15] Moreover, Dr. Hutchison's reports do not provide a sufficient description of the fall at work, or a biomechanical explanation of how the fall on March 30, 2015 caused or aggravated appellant's cervical, lumbar, and shoulder strain. Lacking such an explanation, Dr. Thompson's reports are insufficient to establish a causal relationship between the events of August 15, 2012 and appellant's diagnosed conditions.[16]

OWCP also received a report from Dr. Eckel, wherein he interpreted the results from appellant's April 23, 2015 MRI scan. As the diagnostic tests do not provide an opinion on causation, they are of diminished probative value.[17]

Appellant also submitted several reports from a nurse practitioner. The Board has held that documents signed by a nurse practitioner are not considered probative medical evidence as a nurse practitioner is not a physician as defined under FECA.[18] Similarly appellant submitted a report with an illegible signature which is not considered probative medical evidence. The Board has held that unsigned reports or ones that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.[19]

As appellant has not submitted sufficiently rationalized medical evidence to support his allegation that he sustained an injury causally related to duties of his employment on March 30, 2015, he has not met her burden of proof to establish a claim.[20]

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 cervical, lumbar, and shoulder strains on March 30, 2015, causally related to the accepted employment incident.

[15] *See B.R.*, Docket No. 16-0456 (issued April 25, 2016).

[16] *See W.H.*, Docket No. 11-1369 (issued December 14, 2011).

[17] *See G.C.*, Docket No. 15-1950 (issued June 13, 2016).

[18] *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's 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).

[19] *See J.P.*, Docket No. 16-0501 (issued July 11, 2016).

[20] *Supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2016
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