United States Department of Labor
Employees' Compensation Appeals Board

M.R., Appellant	)	
and	)	**Docket No. 16-0803**
	)	**Issued: July 13, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Phoenix, AZ, Employer	)	

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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 10, 2016 appellant filed a timely appeal of a February 9, 2016 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 to consider the merits of the case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to a July 17, 2015 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence to OWCP after the February 9, 2016 decision. The Board's jurisdiction, however, is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore the Board lacks jurisdiction to review this additional evidence on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On July 22, 2015 appellant, then a 40-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2015 he strained his left elbow in a motor vehicle accident while in the performance of his duties. In support of his claim, he submitted a copy of the crash report from the police. This report indicated that he was stopped at an intersection when another vehicle struck his vehicle from the rear. The driver of the other moving vehicle was charged with driving under the influence and driving with a suspended license.

In a letter dated July 28, 2015, OWCP requested that appellant provide additional factual and medical evidence in support of his claim for traumatic injury. It informed appellant that medical evidence must be from a qualified physician and allowed him 30 days for a response.

Appellant was treated at an emergency room on July 17, 2015. He exhibited tenderness in his left hand, wrist, left upper arm, and thoracic back. Appellant reported pain in his upper back and left arm. He noted that the motor vehicle accident had occurred one hour prior to his emergency room visit. Appellant was in the driver's seat at the time of the accident and was restrained by a shoulder strap and a lap belt. He did not lose consciousness, and the vehicle's windshield was intact with no deployment of the airbag. Dr. Jha'Nae Stoffer, a physician Board-certified in emergency medicine, reviewed x-rays of appellant's left hand, forearm, and elbow and found these to be negative except for an old fracture in appellant's left forearm. She found no swelling, no ecchymosis, no deformity, and no wounds in appellant's left upper extremity and upper back. Dr. Stoffer diagnosed pain in limb and pain in thoracic spine.

By decision dated September 4, 2015, OWCP denied appellant's claim, finding that, although he established that the employment event occurred as alleged, he failed to submit sufficient medical evidence of a diagnosed condition resulting from the July 17, 2015 motor vehicle accident. It noted that pain was considered a symptom and not a diagnosis of a medical condition.

Appellant submitted September 1, 2015 reports from Elizabeth A. Longbothum, a nurse practitioner, diagnosing a hematoma of the arm based on a minimal lump proximal to the radius. She also described the motor vehicle accident of July 17, 2015.

Appellant requested a review of the written record from OWCP's Branch of Hearings and Review on September 29, 2015. He submitted a note dated July 20, 2015 from Brian Reasoner, a family nurse practitioner, describing appellant's reports of right shoulder or clavicle pain. Mr. Reasoner described the motor vehicle accident and noted that appellant demonstrated bruising, spasms, crepitus, and weakness. He noted that appellant's seatbelt was located in his reported area of pain. Mr. Reasoner diagnosed a shoulder contusion and acute pain due to trauma. Appellant submitted an additional note from Ms. Longbothum dated November 13, 2015.

In a note dated December 19, 2015, Dr. John Medlen, a Board-certified orthopedic surgeon, asserted that appellant had experienced left forearm pain and weakness in his left hand since his motor vehicle accident on July 17, 2015. He found scapular fracture and pneumothorax

following the motor vehicle accident on July 17, 2015. Dr. Medlen reported that appellant was rear-ended while driving a postal vehicle and had since then experienced left upper extremity pain, numbness, and weakness. He diagnosed synovitis and tenosynovitis and medial epicondylitis of the left elbow. Appellant underwent a left elbow magnetic resonance imaging (MRI) scan on January 8, 2016 which demonstrated mild distal biceps tendinitis with no evidence of significant tear or other internal derangement.

By decision dated February 9, 2016, OWCP's hearing representative reviewed the written record and found that the medical evidence of record was insufficient to meet appellant's burden of proof. She noted that Dr. Stoffer diagnosed pain, but no other condition as resulting from the accepted motor vehicle accident. The hearing representative further noted that, while Dr. Medlen provided a diagnosis of synovitis and tenosynovitis, he did not provide a reasoned opinion establishing that these conditions were due to the motor vehicle accident. OWCP found that there was no contemporary medical evidence to support the diagnoses of scapular fracture and pheumothorax.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and 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 or specific condition for which compensation is claimed is 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 upon a traumatic injury or an occupational disease.[5]

OWCP defines 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."[6] 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. 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.[7] Second, the employee must submit sufficient

[3] *Supra* note 1.

[4] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] 20 C.F.R. § 10.5(ee).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[9] Medical rationale includes a physician's detailed opinion on the issue of whether these is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.[10]

ANALYSIS

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish that he sustained an injury as a result of his July 17, 2015 employment incident.

Appellant has submitted sufficient factual information to establish that the July 17, 2015 motor vehicle accident occurred as alleged. However, he has not submitted the necessary medical opinion evidence to establish an injury resulting from this employment incident. Appellant initially sought treatment in the emergency room following the July 17, 2015 employment incident. Dr. Stoffer examined appellant and diagnosed pain in his left upper extremity and thoracic spine. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.[11] As Dr. Stoffer did not provide any other diagnosis of a condition resulting from the July 17, 2015 motor vehicle accident, her report is not sufficient to meet appellant's burden of proof.

Dr. Medlen examined appellant on December 19, 2015 (five months after the accident), due to continued left forearm pain and weakness in his left hand following the motor vehicle accident on July 17, 2015. He indicated that appellant had sustained a scapular fracture and pneumothorax due to this accident. The Board notes that the record does not support that these conditions were present on July 17, 2015. Dr. Stoffer obtained x-rays of appellant's left arm and these reports were read as negative. Dr. Medlen's report is not based on a consistent medical history and is therefore of limited probative value.[12] He diagnosed synovitis and tenosynovitis and medial epicondylitis of the left elbow due to the motor vehicle accident. While these conditions, if established as caused by the motor vehicle accident could be compensable, Dr. Medlen failed to provide the necessary accurate history and medical reasoning explaining

[8] *J.Z.*, 58 ECAB 529 (2007).

[9] *T.F.*, 58 ECAB 128 (2006).

[10] *A.D.*, 58 ECAB 149 (2006).

[11] *Robert Broome*, 55 ECAB 339 (2004).

[12] *See Beverly R. Jones*, 55 ECAB 411 (2004) (medical conclusions based on inaccurate or incomplete histories are of diminished probative value).

how and why these diagnoses arose five months after the motor vehicle accident. For these reasons, his report is not sufficient to meet appellant's burden of proof.[13]

Appellant also submitted reports from Ms. Longbothum, a nurse practitioner, and Mr. Reasoner, a family nurse practitioner. Healthcare providers such as nurses, acupuncturists, and physician assistants are not considered physicians under FECA and their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability, or causal relationship.[14]

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 submitted the necessary medical opinion evidence to establish an injury causally related to a July 17, 2015 employment incident.

[13] *Id*.

[14] 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

ORDER

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

Issued: July 13, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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