United States Department of Labor
Employees' Compensation Appeals Board

P.M., Appellant	)	
and	)	**Docket No. 16-0483**
	)	**Issued: May 12, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Aurora, CO, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 19, 2016 appellant filed a timely appeal from a December 29, 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 has met his burden of proof to establish an injury in the performance of duty on November 3, 2015, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted new evidence on appeal. The Board cannot consider evidence submitted for the first time on appeal as the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final merit decision. 20 C.F.R. § 501.2(c)(1); *see also Dennis E. Maddy*, 47 ECAB 259 (1995).

FACTUAL HISTORY

On November 12, 2015 appellant, then a 31-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 3, 2015 he sustained right shoulder strain, explaining, "Employee vehicle was struck by a private party." The information regarding the third party was not recorded as a part of the supervisor's report, with the supervisor noting, "I have limited knowledge of this incident. I was approached by [appellant] on 11/09/2015 saying he was having some shoulder pain early in the mornings from an accident the previous week. I referred him to the supervisor he had reported it to but I have not seen any documentation."

By letter dated November 24, 2015, OWCP informed appellant of his responsibilities as a potential beneficiary under FECA as relating to pursuing an action against the third party at OWCP's request and paying a portion of any recovery to OWCP. It noted that it had referred the third-party aspect of his case to the Office of the Solicitor.

Further, OWCP requested that appellant submit additional factual and medical information, including a detailed report from an attending physician addressing the causal relationship between any diagnosed condition and the identified work incident. It further advised him that, under FECA, a chiropractor was considered a physician only if he or she diagnosed a spinal subluxation by x-ray. OWCP included a questionnaire for appellant to complete, asking that he submit any investigation made by law enforcement officers into the incident. By letter of even date, it also requested information and a series of questions regarding the factual circumstances of appellant's claimed incident from the employing establishment, noting that in the absence of a full reply OWCP may accept appellant's allegations as factual. Neither appellant nor the employing establishment responded to OWCP's factual inquiries.

Appellant submitted numerous reports from Dr. Jeffrey Hembree, a chiropractor. In a duty status report (Form CA-17) dated November 11, 2015, Dr. Hembree diagnosed appellant with shoulder strain and noted that he was not advised to return to work. He diagnosed appellant with subluxations of the occipital, cervical, thoracic, lumbar, lumbosacral, sacral, sacroiliac, and coccyx spine in subjective, objective, assessment, and plan (SOAP) notes dated from December 5, 2014 through December 22, 2015.

In a radiology report dated November 11, 2015, Dr. Hembree noted that appellant tested positive for subluxations of the cervical, lumbar, and lumbosacral spine at L3-L5. His diagnosis of subluxation of the lumbosacral spine was based on an anterior-posterior (AP) x-ray view and his diagnosis of subluxation of the lumbar spine on a lateral x-ray view. However, Dr. Hebree's diagnosis of a cervical spinal subluxation was based on testing of flexion and extension rather than an x-ray.

By letter dated August 21, 2015, Dr. Hembree noted that appellant was in a motor vehicle collision on November 3, 2015 at 3:45 p.m.[3] Appellant reported to Dr. Hembree that he was parking his mail truck on the street when another driver hit his truck head-on. Dr. Hembree

[3] The Board notes that this letter is erroneously dated several months before appellant's alleged November 3, 2015 incident.

noted that appellant was subjected to acceleration forces resulting in injuries to the neck, back, ribs, and shoulders, as well as ligaments and muscles.

By decision dated December 29, 2015, OWCP denied appellant's claim. It found that he had not submitted sufficient evidence to establish that the incident of November 3, 2015 occurred as described, because appellant had not responded to OWCP's inquiries regarding the circumstances of that incident. It further found that appellant had not submitted sufficient medical evidence, as Dr. Hembree had not diagnosed a spinal subluxation demonstrated by x-ray to exist.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish 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.[5] 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.[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.[7] 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.[8] 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.[9]

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.[10] An award of 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

[4] *Supra* at note 1.

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

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

[7] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* at 5 n.5.

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

[9] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* at 5 n.5.

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

the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[11]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[12] 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.[13] 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.[14]

ANALYSIS

The Board finds that appellant has not submitted sufficient evidence to establish that he sustained a traumatic injury in the performance of duty on November 3, 2015, as alleged.

Appellant must establish all of the elements of his claim in order to prevail. He must prove the time, place, and manner of the alleged incident, and a resulting personal injury.[15] Appellant has not provided a sufficient description of the time, place, and manner of his alleged injury, or any information regarding the third party alleged to have struck his vehicle. The information provided is therefore insufficient to establish that the alleged injury occurred in the performance of duty. The Board also finds that the original Form CA-1 claiming a traumatic injury did not include sufficient factual information as to the circumstances of appellant's injury to establish his claim. The Board notes that appellant's description of the traumatic event is vague and fails to provide any detail to determine precisely how he sustained the alleged injury.

On November 24, 2015 OWCP sent a letter to appellant requesting clarification on the issue, but appellant did not respond. As the only factual explanation provided pertaining to the alleged traumatic incident of November 3, 2015 was the generalized and vague statement contained in appellant's Form CA-1, appellant failed to sufficiently describe the employment incident and circumstances surrounding his alleged injury. The Board finds that appellant has not established that the traumatic injury occurred as alleged.[16] Consequently, it is unnecessary to address the medical evidence of record.[17]

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

[12] *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).

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

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

[15] *See generally John J. Carlone*, 41 ECAB 354 (1989).

[16] *See P.T.*, Docket No. 14-598 (issued August 5, 2014).

[17] *See M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin V. Gadd*, 57 ECAB 172 (2005).

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 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 an injury in the performance of duty on November 3, 2015, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the December 29, 2015 decision the Office of Workers' Compensation Programs is affirmed.

Issued: May 12, 2016
Washington, DC

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

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

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