United States Department of Labor
Employees' Compensation Appeals Board

E.M., Appellant	)	
and	)	**Docket No. 16-1185**
	)	**Issued: November 17, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, 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 May 11, 2016 appellant filed a timely appeal from a March 28, 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 over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a lumbar injury causally related to an accepted January 21, 2016 employment incident.

FACTUAL HISTORY

On January 26, 2016 appellant, then a 64-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 21, 2016 he strained his back when a truck backed

[1] 5 U.S.C. § 8101 *et seq.*

into the driver's side of his vehicle, shattered his window, and damaged the door. He stopped work and returned on February 10, 2016.

By letter dated February 17, 2016, OWCP advised appellant that the evidence of record was insufficient to establish his traumatic injury claim. It requested that he respond to a questionnaire in order to substantiate that the January 21, 2016 incident occurred as alleged, and that he provide medical evidence to demonstrate that he sustained a medical condition causally related to the described event.

OWCP received appellant's completed questionnaire on March 3, 2016. Appellant explained that he was in his vehicle at a gas station when a truck backed into the driver's side door of his vehicle. He related that he was examined by emergency medical personnel. Appellant stated that he did not feel soreness in his back until the morning of January 22, 2016, at which time he went to the emergency room for treatment of his back injury. He indicated that he did not have any similar disability or symptom before the injury.

Appellant submitted hospital records, which indicated that on January 22, 2016 he was treated in the emergency room by Mary Andrews, a certified nurse practitioner. Ms. Andrews noted that, on the previous day, appellant was involved in a motor vehicle collision while working and that he woke up this morning with right lower lumbar pain. She reviewed appellant's history and conducted an examination. Ms. Andrews reported no tenderness in the back, normal range of motion, and normal strength. Straight leg raise testing was negative. Neurological examination showed no observed neurological deficit. Ms. Andrews diagnosed muscle strain and noted that appellant had been involved in a motor vehicle collision.

A January 22, 2016 triage report by Annemarie Graham, a registered nurse, indicated that appellant was examined for a back injury. Ms. Graham noted that appellant was involved in a motor vehicle accident on the previous day and that appellant woke up this morning with right lower back soreness.

OWCP denied appellant's traumatic injury claim in a decision dated March 28, 2016. It accepted that the January 21, 2016 incident occurred as alleged, but denied his claim finding that the medical evidence of record failed to provide a firm medical diagnosis or medical explanation regarding causal relationship. OWCP noted that the employing establishment would charge any previously paid continuation of pay to sick or annual leave or declare an overpayment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[3] including that he or she sustained an injury in the performance of duty and that any

[2] *Supra* note 1.

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

specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[4]

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.[5] There are two components involved in establishing the fact of injury. 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.[6] 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.[7] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.[8]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[9] 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.[10] 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.[11]

ANALYSIS

Appellant alleged that on January 21, 2016 he strained his lower back when he was involved in motor vehicle accident at work. OWCP accepted that the January 21, 2016 incident occurred as alleged but denied appellant's claim finding that the medical evidence failed to establish that he sustained a diagnosed condition as a result of the accepted incident.

The only medical evidence submitted consisted of hospital records dated January 22, 2016 from Ms. Andrews, a nurse practitioner, and Ms. Graham, a registered nurse. These records, however, are of no probative value because nurses are not considered physicians as defined under FECA. Section 8102(2) provides that the term "physician" includes surgeons,

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

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

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

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

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

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

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

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

podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. As nurses and nurse practitioners are not considered "physicians" as defined by FECA, their medical opinions regarding diagnosis and causal relationship are of no probative medical value.[12]

On appeal appellant notes that the only medical documents he had were the emergency room records. He explains that his doctor's office did not handle workers' compensation cases. Appellant just wants to be reimbursed for the three days of sick leave and nine days of annual leave that he used in order to recover from this accident. With his appeal, he resubmitted the January 22, 2016 emergency room records.

Section 8118 of FECA[13] provides for payment of continuation of pay, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.[14] In order to establish entitlement to continuation of pay, an employee must establish, on the basis of reliable, probative, and substantial evidence, that he or she was disabled as a result of a traumatic employment injury. As part of this burden, he or she must furnish medical evidence from a qualified physician who, based on a complete and accurate history, concludes that the employee's disability for specific periods was causally related to such injury.[15]

As appellant has not submitted any medical reports from a physician to demonstrate that he sustained a diagnosed medical condition as a result of the January 21, 2016 employment incident, he has not met his burden of proof to establish his claim or his entitlement to continuation of pay.

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 a traumatic injury causally related to a January 21, 2016 employment incident.

[12] 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005) (registered nurses); *Joseph N. Fassi*, 42 ECAB 677 (1991) (nurse practitioners).

[13] 5 USC § 8118.

[14] *Id*. at § 8122(a)(2).

[15] *See R.L.*, Docket No. 14-0149 (issued April 10, 2014).

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2016 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 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