United States Department of Labor
Employees' Compensation Appeals Board

B.M., Appellant	)	
and	)	**Docket No. 16-1381**
	)	**Issued: November 23, 2016**
U.S. POSTAL SERVICE, SPRING GARDEN STATION, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 20, 2016 appellant, through counsel, filed a timely appeal of a March 18, 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained a traumatic injury causally related to a November 3, 2014 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.*

On appeal counsel contended that appellant had submitted *prima facie* factual and medical evidence to establish his claim for right lower extremity lumbar radiculopathy and that his physician's report should be read in the light most favorable to appellant.

FACTUAL HISTORY

On November 4, 2014 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 3, 2014 he slipped on wet leaves that he could not see in the dark and injured his right hip. On the reverse side of the claim form, the employing establishment disagreed with appellant's description of his employment incident, noting that he asserted that he stepped onto the sidewalk which was covered with wet leaves. The employing establishment found no wet leaves present when investigating the site of the incident.

Appellant signed a statement on November 3, 2014 alleging that while delivering mail he slipped on some wet leaves that he could not see in the dark. He alleged that he slightly injured his right hip. Appellant refused medical treatment.

The employing establishment challenged appellant's claim on November 6, 2014 noting again that on-site investigation did not reveal wet leaves. Appellant's supervisor alleged that appellant did not want to complete his assignment because it was dark. He further noted that appellant initially refused medical treatment and reported his right hip was sore the following day after driving to work.

Appellant completed a statement on November 4, 2014 noting that on November 3, 2014 he was delivering mail and walking down steps while holding the railing with his left hand. As he descended the last step, he slipped injuring his right hip. Appellant alleged that he noticed wet leaves that he was unable to see in the dark. He did not initially believe that he had sustained a serious injury or that he needed medical attention. On November 4, 2014 appellant's hip was painful and pain was shooting down his leg to his knee.

The employing establishment provided appellant with an authorization for examination (Form CA-16) on November 4, 2014.

In a letter dated November 12, 2014, OWCP requested that appellant provide additional factual and medical evidence in support of his claim. It allowed 30 days for a response.

Dr. Craig H. Rosen, a Board-certified orthopedic surgeon, examined appellant on November 11, 2014. He noted that appellant was descending stairs while delivering mail when he slipped on some wet leaves. Dr. Rosen indicated that appellant's legs went out from under him and he fell onto his right hip and lower back. He diagnosed lumbar radiculopathy or lumbosacral neuritis. Appellant returned to full-duty work at the employing establishment on November 12, 2014.

On December 9, 2014 Dr. Rosen reported that appellant was performing full work duties and experienced continued low back pain with increased pain and tingling in the right lower extremity. He diagnosed lumbar spondylosis and lumbar radiculopathy at L4 and L5 on the right.

By decision dated December 18, 2014, OWCP denied appellant's traumatic injury claim finding that he had not established that the employment event occurred as alleged. It noted that he did not explain the discrepancy between his statement that he slipped on wet leaves and the employing establishment's assertion that there were no wet leaves present at the location of his alleged employment incident.

Appellant submitted a request for reconsideration dated December 30, 2014, received January 6, 2015. He described his employment incident and noted that on November 3, 2014 at 5:15 pm, it was dark and the pavement was wet from the previous day's rain. Appellant slipped as he came off the bottom step, but was holding the railing which prevented him from falling to the ground. He felt pain in his hip and lower back. Appellant looked to see what caused him to slip and saw wet leaves. He disagreed that the employing establishment performed an on-site inspection. Appellant asserted that there was a tree in front of the house where he slipped and definitely leaves at the bottom of the steps.

Appellant submitted his emergency records dated November 4, 2014. The records indicated that he tripped and almost fell to the ground. Appellant held on to a railing and twisted his right hip. Dr. Paul H. Reyes, a Board-certified internist, diagnosed a muscle strain.

By decision dated March 24, 2016, OWCP modified its prior decision finding that appellant had submitted sufficient factual evidence to establish that the employment incident occurred as alleged. However, it found that neither Dr. Reyes nor Dr. Rosen provided medical reasoning explaining how appellant's slip on November 3, 2014 resulted in right-sided radiculopathy.

Appellant requested reconsideration on June 1, 2015. He submitted a note from Dr. Rosen dated December 9, 2014 and amended December 30, 2014. Dr. Rosen added that the diagnosed conditions were causally related to the workers' compensation injury sustained on November 3, 2014. He also amended his November 11, 2014 note on December 30, 2014 to include that appellant's diagnosed lumbar radiculopathy was causally related to his November 3, 2014 work incident.

By decision dated August 18, 2015, OWCP declined to reopen appellant's claim for consideration of the merits. It found that Dr. Rosen's reports were repetitious and did not warrant consideration of the merits of appellant's claim.

Counsel requested reconsideration on December 22, 2015. He submitted a report from Dr. Rosen dated November 23, 2015. Counsel contended that Dr. Rosen provided "abundant reasons" for his conclusion that appellant sustained injury on November 3, 2014. Dr. Rosen provided a history of treatment beginning on November 11, 2014 and diagnosed lumbar radiculopathy. He described the November 3, 2014 employment incident noting that appellant was descending stairs and slipped on some wet leaves, "[h]is legs went out from under him and he fell on his right hip and lower back." Appellant reported lower back pain with radiculopathy to the right lower extremity. Dr. Rosen opined that there was a causal relationship between appellant's ongoing complaints of low back pain with radicular symptoms into his right lower extremity and his November 3, 2014 injury sustained while delivering mail. He again noted that appellant was descending steps and slipped on wet leaves. Dr. Rosen found that appellant was

able to "hold onto a railing at that point preventing his fall to the ground, but he felt pain in his low back and to his right hip and right lower extremity." He concluded that appellant "wrenched his lower back and created the irritation of the nerve roots in the lower back causing the radicular symptoms in his right lower extremity."

By decision dated March 18, 2016, OWCP reviewed the merits of appellant's claim and denied modification. It found that Dr. Rosen's report was not sufficient to meet appellant's burden of proof to establish his traumatic injury claim as it provided two different descriptions of the employment incident. OWCP found that, due to the factual discrepancies, Dr. Rosen's report was not based on an accurate factual history.

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 and 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] 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 there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The

[3] *Id*.

[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).

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

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

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 evidence to establish that he sustained a traumatic injury on November 3, 2014.

Appellant has submitted a clear description of the events of November 3, 2014 indicating that he slipped, but did not fall, on wet leaves sustaining injury to his right hip. The emergency room notes signed by Dr. Reyes the next day included this history of injury. Dr. Reyes diagnosed a muscle strain, but did not provide any medical reasoning in describing how appellant's employment incident caused this condition. Due to this deficiency, this report is not sufficient to meet appellant's burden of proof and establish his traumatic injury claim.[11]

In support of his traumatic injury claim, appellant has also submitted a series of medical reports from Dr. Rosen beginning on November 11, 2014. The initial report provided a history of injury that did not comport with appellant's statements. Dr. Rosen indicated that appellant fell injuring his right hip and back on November 3, 2014. While Dr. Rosen provided additional opinions and noted in an amended report on December 30, 2014 that the fall on November 3, 2014 resulted in appellant's diagnosed lumbar radiculopathy, these reports were not based on an accurate factual background and could not contain the necessary medical reasoning to establish appellant's traumatic injury claim.

In the November 23, 2015 report, Dr. Rosen provides two different descriptions of appellant's November 3, 2014 employment incident. He reiterates his earlier description of a slip and fall, but at the end of his report indicates that appellant was able to prevent a fall to the ground by holding onto a railing. Due to the variations of the descriptions of the employment incident, the Board is unable to find that Dr. Rosen's report is based on a proper history of injury. Without a proper factual background, his opinions on causal relationship and his medical reasoning lack probative value and contrary to counsel's arguments on appeal are not sufficient to meet appellant's burden of proof or to require additional development of the medical evidence by OWCP.[12]

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

[11] *See T.P.*, Docket No. 14-1946 (issued February 13, 2015).

[12] As noted, the employing establishment executed a Form CA-16 on November 4, 2014 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304. Although OWCP denied appellant's claim for an injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case, OWCP should further address this matter.

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 that he sustained a traumatic injury causally related to a November 3, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy 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