United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 16-1182**
	)	**Issued: October 11, 2016**
U.S. POSTAL SERVICE, POST OFFICE, St. Paul, MN, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 11, 2016 appellant filed a timely appeal from a December 14, 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.

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic injury in the performance of duty on April 18, 2015.

FACTUAL HISTORY

On May 6, 2015 appellant, then a 65-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 18, 2015 he sustained an abdominal hernia while loading a trailer at work. The employing establishment controverted the claim. It noted that the employee

[1] 5 U.S.C. § 8101 *et seq.*

was overheard talking to a coworker "that he was doing landscaping around his house including putting down rocks." Appellant did not stop work.

By letter dated May 14, 2015, OWCP advised appellant that additional evidence was required to support his claim. Appellant was advised of the medical and factual evidence needed and was afforded 30 days to respond to the questions provided in the letter.

OWCP subsequently received several documents dated May 18, 2015 from appellant's healthcare provider, which diagnosed an inguinal hernia. These documents were signed by a nurse practitioner.

By decision dated June 18, 2015, OWCP denied appellant's claim as he did not submit any medical evidence containing a medical diagnosis in connection with the injury and or events. It explained that the evidence in his case was from a nurse or nurse practitioners, neither of which is considered a qualified physician under FECA.

On July 14, 2015 appellant requested a review of the written record.

Appellant provided an April 27, 2015 report from Dr. Sheila Flynn, Board-certified in family medicine, who examined appellant and reviewed his medical history. Dr. Flynn's diagnoses included an inguinal hernia. She advised that, while it was not painful or limiting, he would be affected by the work he did, which included "extreme lifting." Dr. Flynn noted that appellant would let her know if he wished to proceed with surgery. OWCP also received additional nurses' notes and an electrocardiogram.

Appellant provided a June 11, 2015 statement explaining that Dr. Flynn found his hernia during a routine physical examination. He noted that he was unaware of it until that time. Appellant explained that "it was impossible to give an exact location or time of the injury occurrence because I was unaware of the injury." He indicated that the nature of the injury was caused by stress or strain. Appellant noted the activities he engaged with at home included: vacuuming, laundry, cleaning, cooking, and assisting his wife. He explained that his work as a mail handler included loading and unloading of trailers and moving of containerized mail to different locations and noted that stress and strain were only a part of his work life. Appellant also confirmed that he moved rocks at home, but they were river rocks, which weighed less than an ounce or two each, and he explained that he did this after the discovery of the hernia. He noted that he was under no limitations with regard to the hernia. Appellant also indicated that his work was not stressful or strain inducing.

In a letter dated November 12, 2015, Nancy Schmitz, a health and resource manager with the employing establishment, disputed the claim and reiterated that appellant was overheard talking to a coworker that he was doing some landscaping around his house, which included "putting down rocks." She also noted there were no medicals before May 18, 2015.

By decision dated December 14, 2015, an OWCP hearing representative modified the denial of the claim to a denial based on lack of medical evidence sufficient to establish a connection between appellant's right-sided hernia condition and any work-related lifting activity from April 18, 2015.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. 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.[5] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[6] 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.[7]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.[8]

ANALYSIS

Appellant has alleged that on or around April 18, 2015 he sustained an inguinal hernia while loading a trailer at work. It is undisputed that appellant loaded trailers at part of his regular work duties. Therefore, the Board finds that the claimed incident occurred at work as alleged. However, the medical evidence of record is insufficient to establish that the employment incident caused an injury, as it contains no reasoned explanation of how the specific employment incident on or about April 18, 2015 caused or aggravated appellant's injury.

In an April 27, 2015 report, Dr. Flynn examined appellant and diagnosed an inguinal hernia. He noted that, while it was not painful or limiting, he would be affected by the work he

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[5] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987).

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

[7] *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

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

did, which included "extreme lifting." While Dr. Flynn indicated that lifting could worsen the condition, he did not offer any opinion as to whether work factors caused or aggravated the diagnosed hernia. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9]

OWCP received records from a nurse practitioner. Section 8101(2) of FECA[10] provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Reports by nurse practitioners are not considered medical evidence as nurse practitioners are not considered physicians under FECA.[11] These records are of no probative medical value in establishing appellant's claim.

Other medical reports submitted by appellant, including diagnostic reports, are insufficient to establish appellant's claim as they do not specifically address how any condition was caused by the April 18, 2015 incident.

Because the medical evidence submitted by appellant does not address how activities at work caused or aggravated a hernia condition, these reports are of limited probative value and are insufficient to establish that work factors on or around April 18, 2015 caused or aggravated a specific injury.

On appeal, appellant argues that his condition could have occurred during work activities as the nature of his job as a mail handler was the only place that he was engaged in strenuous work. However, as found above the medical evidence of record is insufficient to establish his claim.

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 in the performance of duty on April 18, 2015.

[9] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[10] *See* 5 U.S.C. § 8101(2). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

[11] *Sean O'Connell*, 56 ECAB 195 (2004).

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 11, 2016
Washington, DC

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

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

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