United States Department of Labor
Employees' Compensation Appeals Board

P.J., Appellant	)	
and	)	**Docket No. 17-0991**
	)	**Issued: August 15, 2017**
DEPARTMENT OF JUSTICE, U.S. MARSHALS SERVICE, West Palm Beach, FL, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 5, 2017 appellant filed a timely appeal from a March 10, 2017 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 in this case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish an injury due to his accepted January 24, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] With his request for an appeal, appellant submitted additional evidence. 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 may not consider this additional evidence on appeal; 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On January 31, 2017 appellant, then a 51-year-old criminal investigator, filed a traumatic injury claim (Form CA-1), alleging that on January 24, 2017 the automobile in which he was riding as a passenger was rear ended by another car. He reported experiencing whiplash pain in his neck and back pain. The employing establishment did not dispute that appellant was in the performance of duty at the time of the accident. Appellant stopped work on January 27, 2017.

By letter dated February 6, 2017, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting that he submit a physician's reasoned opinion addressing the relationship of his injury and any diagnosed condition. It noted that medical evidence must be submitted by a qualified physician under FECA.

Appellant submitted a January 24, 2017 report from a nurse practitioner who treated him for injuries sustained in a motor vehicle accident that occurred when he was driving to a class for work. He reported being a passenger in a car that was rear ended and the impact of the accident caused his body to jerk forward and backward causing multiple injuries. Appellant complained of cervical, thoracic, and lumbar spine pain due to the accident. The nurse practitioner noted findings of neck swelling, tenderness, and decreased range of motion of the cervical spine. She diagnosed cervical, thoracic, and lumbar spine pain status post motor vehicle accident and referred appellant for physical therapy. On January 26, 2017 the nurse practitioner treated appellant in follow up and noted magnetic resonance imaging (MRI) scans of the cervical and lumbar spine revealed multiple disc bulges and herniations. She diagnosed work-related injury status post motor vehicle accident, cervical and lumbar spine disc herniations and bulges, and muscle spasms. On February 10, 2017 the nurse practitioner noted appellant's neck and back pain improved. She diagnosed status post work-related motor vehicle accident, cervical and lumbar spine pain resolved, disc bulges, and disc herniations.

A January 24, 2017 MRI scan of the lumbar spine revealed slight interval progression of the L4-5 disc bulge, L3-4 stable in appearance annular disc bulge, and L5-S1 diffuse annular disc bulge with foraminal narrowing. A January 24, 2017 MRI scan of the cervical spine revealed chronic degenerative changes, C3-4 and C4-5 small central annular disc bulges, foraminal narrowing at C3-4, C5-6 and C6-7, small central subligamentous disc herniations, and osteophytes. An x-ray of the lumbar spine dated January 24, 2017 revealed mild degenerative vertebral spondylosis. An x-ray of the cervical spine of the same date showed degenerative vertebral spondylosis with chronic disease at C5-6 and C6-7 while a thoracic spine x-ray was normal.

In a March 10, 2017 decision, OWCP denied appellant's claim for compensation because the medical evidence of record was insufficient to establish a medical condition due to the accepted work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. 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.[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. There are two components involved in establishing fact of injury. 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5]

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.[6]

ANALYSIS

It is undisputed that on January 24, 2017 appellant was a passenger in a motor vehicle that was rear ended while he was in the performance of duty. However, he has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment incident or that any alleged lumbar, cervical, thoracic spine pain, lumbar or cervical disc herniations, and bulges were causally related to the January 24, 2017 employment incident.

[3] *Supra* note 1.

[4] *Gary J. Watling*, 52 ECAB 357 (2001).

[5] *T.H.*, 59 ECAB 388 (2008).

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

Appellant was treated by a nurse practitioner from January 24 to February 10, 2017. The Board has held that nurses[7] and nurse practitioners[8] are not considered physicians under FECA. Thus, their treatment notes are of no probative medical value in establishing appellant's claim.

The remainder of the medical evidence, including January 24, 2017 MRI scans of the lumbar and cervical spine and x-rays of the lumbar, cervical, and thoracic spines dated January 24, 2017, are of limited probative value as they fail to provide a physician's opinion on the causal relationship between appellant's work incident and his lumbar, cervical, and thoracic conditions.[9] For this reason, this evidence is insufficient to meet his burden of proof.

Because appellant has not submitted medical evidence establishing an injury in connection with the January 24, 2017 employment incident, he has not met his burden of proof.

On appeal appellant contends that he was injured in the performance of duty and that he has submitted sufficient evidence from his doctor supporting his claim. As found above, the medical evidence of record is insufficient to establish that appellant has a diagnosed medical condition causally related to his accepted work incident. Appellant has not submitted a physician's report which describes how the incident on January 24, 2017 caused or aggravated a neck and back condition.[10]

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 an injury due to his accepted January 24, 2017 employment incident.

[7] *Paul Foster*, 56 ECAB 208 (2004) (where the Board found that a nurse practitioner is not a "physician" pursuant to FECA).

[8] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

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

[10] Appellant also asserts that he was given a Form CA-16 (authorization for examination and/or treatment) that he provided to his treating physician and that he wants his physician paid for services rendered. The Board notes that no Form CA-16 was of record at the time the appeal was filed on April 5, 2017, and it may not consider evidence for the first time on appeal which was not before OWCP at the time of its final decision. *See supra* note 2. This decision does not preclude appellant from further pursuing, with OWCP, the matter of payment for initial medical expenses pursuant to any Form CA-16 that may have been issued to him. *See, e.g., R.H.*, Docket No. 16-1055 (issued May 22, 2017) (ordinarily where the employing establishment authorizes treatment of a job-related injury by providing the employee a properly executed Form CA-16, OWCP is under a contractual obligation to pay for the medical expenses).

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2017
Washington, DC

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

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

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