United States Department of Labor
Employees' Compensation Appeals Board

J.L., Appellant	)	
and	)	**Docket No. 17-1006**
	)	**Issued: August 14, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Seaside, OR, 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 7, 2017 appellant filed a timely appeal from a December 21, 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 in this case.

ISSUE

The issue is whether appellant met his burden of proof to establish back injury causally related to an October 17, 2016 employment incident.

FACTUAL HISTORY

On October 17, 2016 appellant, then a 48-year-old distribution and retail clerk, filed an occupational disease claim (Form CA-2) alleging that lifting heavy parcels over the window and distributing parcels to the carriers aggravated his back pain. He became aware of his condition

[1] 5 U.S.C. § 8101 *et seq.*

and realized it was causally related to his employment on October 17, 2016. Appellant did not stop work.

Appellant submitted a duty status report (Form CA-17) dated October 17, 2016 from a physician assistant who noted clinical findings of reproducible pain with muscle spasm. The physician assistant diagnosed thoracic pain, sprain, and strain and advised that appellant could return to work with restrictions. In an October 17, 2016 referral form, he diagnosed acute right-sided thoracic back pain and referred appellant for physical therapy.

Appellant submitted physical therapy notes dated October 20, 2016 signed by a physical therapist and cosigned by a physician assistant who noted that appellant was referred for evaluation and treatment of acute right- and left-sided thoracic and lumbar back pain. The physical therapist noted appellant's history was significant for low back pain treated in January 2016. He indicated that appellant would benefit from a thoracic and lumbar spine strengthening program.

The employing establishment provided an accident report (PS Form 1769/301) which indicated that on October 17, 2016, while working on the window, appellant handled a heavy parcel, turned, and experienced pain from the shoulder to lower back. Appellant also indicated that distributing parcels to carriers aggravated his pain. The cause/circumstance of the injury was repetitive motions.

By letter dated November 4, 2016, 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 claimed condition to his specific employment factors. It also advised that a physician assistant did not qualify as a physician under FECA. OWCP further indicated that it was unclear from the evidence received whether appellant was claiming an occupational disease or a traumatic injury and requested that he clarify the type of injury claimed.

In a statement dated November 16, 2016, appellant indicated that the employment activities that contributed to his condition were breaking down parcels, sorting parcels into routes, taking parcels over the counter at the front window, and sending them to their destinations. He performed these duties six days a week for six hours a day. Appellant indicated that he did not have activities outside of work. He noted that he was claiming a traumatic injury and indicated that this was a preexisting injury from 2000 which was aggravated. Appellant submitted a copy of an OWCP notice from the year 2000 which provided a File No. xxxxxx518 and a date of injury of May 6, 2000.[2]

Appellant submitted employing establishment medical records from February 15, 1995 to September 23, 2002. On June 13, 2002 Dr. Timothy J. Craven, a Board-certified family practitioner, performed a medical examination and noted appellant's history was significant for an old back injury from two years ago. Appellant also submitted physical therapy reports dated October 20, 2016.

[2] File No. xxxxxx518 is not before the Board on the present appeal.

In a December 21, 2016 decision, OWCP denied the claim, finding that appellant failed to submit medical evidence establishing that a medical condition was diagnosed in connection with the accepted work incident. Therefore, fact of injury was not established.

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 are 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, an 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. Second, an 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 October 17, 2016, while working as a clerk, appellant broke down parcels, sorted parcels into routes, and lifted and handled parcels over the counter and sent them to their destinations. Although he initially filed an occupational disease claim, he clarified on November 16, 2016 that he was claiming a traumatic injury. While the work events of October 17, 2016 are established, the Board finds that appellant failed to submit sufficient medical evidence to establish that these work activities caused or aggravated a diagnosed back condition. In a letter dated November 4, 2016, OWCP requested that appellant submit a comprehensive medical report from his treating physician addressing causal relationship.

Appellant submitted employing establishment medical records from February 15, 1995 to September 23, 2002. However, these records are of no probative value in establishing the

[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).

claimed low back condition since they predate the time of the claimed condition of October 17, 2016 and is irrelevant to the claim.[7]

Appellant was treated by a physician assistant on October 17, 2016. On October 20, 2016 he was treated by a physical therapist. The Board has held that notes signed by physician assistants[8] or physical therapists[9] are not considered medical evidence as they are not considered physicians under FECA.[10] Thus, these treatment records are also of no probative medical value in establishing appellant's claim.

As noted, part of appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting such causal relationship between the employment and the diagnosed condition. Therefore, these notes are insufficient to meet appellant's burden of proof.

The record contains no other medical evidence. Because appellant has not submitted reasoned medical evidence explaining how or why a diagnosed back condition is causally related to the work incident of October 17, 2016, he has not met his burden of proof.

On appeal appellant contends that he had injured his back in 2000 and was in physical therapy for several months. In October 2016, he was lifting a parcel from the front window line and twisted wrong and reinjured his back in the same place. 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 or why the work incident on October 17, 2016 caused or aggravated a low back condition.[11]

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.

[7] *See E.P.*, Docket No. 15-1746 (issued December 3, 2015) (the Board found that medical evidence which predated the date of injury was of no value and was irrelevant to the claim).

[8] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (reports of a physician assistant have no probative value as medical evidence).

[9] *See L.W.*, Docket No. 16-1317 (issued June 21, 2017) (reports of a physical therapist have no probative value as medical evidence).

[10] *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). *See also Paul Foster*, 56 ECAB 208 (2004) where the Board found a nurse practitioner was considered a physician under FECA.

[11] To the extent that appellant attributes his current back condition to a prior injury adjudicated under a separate claim file, he my contact OWCP regarding pursuing the matter under the separate claim file.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a back injury causally related to the accepted October 17, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 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