United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 16-1674**
	)	**Issued: January 3, 2017**
DEPARTMENT OF AGRICULTURE, FOOD SAFETY & INSPECTION SERVICE, Jamaica, NY, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 17, 2016 appellant filed a timely appeal from a June 27, 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish cervical, lumbar, and right leg conditions causally related to a November 23, 2015 employment incident.

FACTUAL HISTORY

On November 23, 2015 appellant, a 55-year-old enforcement investigations and analysis officer, filed a traumatic injury claim (Form CA-1) for cervical, lumbar, and leg conditions,

[1] 5 U.S.C. § 8101 *et seq.*

which he attributed to a motor vehicle accident earlier that day. He was operating a government-owned vehicle in the performance of duty at the time of the alleged injury.

In a November 23, 2015 form report, Dr. Simon Lipetz, a specialist in internal medicine, indicated that appellant was temporarily totally disabled from November 23, 2015 to January 23, 2016. He diagnosed post-traumatic cervical and lumbar radiculopathy, and advised that appellant's prognosis was guarded. Dr. Lipetz also completed an authorization for examination and/or treatment (Form CA-16) dated November 23, 2015 with the same diagnosis. The Form CA-16 noted that appellant had been in a car accident on November 23, 2015. Dr. Lipetz indicated that appellant's post-traumatic cervical and lumbar radiculopathy was caused or aggravated by the described employment activity. He reiterated that appellant was totally disabled as of November 23, 2015, and recommended a three-week course of physical therapy.

By letter dated December 9, 2015, OWCP advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. Appellant was afforded 30 days to submit the additional evidence.

OWCP subsequently received a November 23, 2015 narrative report from Dr. Lipetz. Dr. Lipetz advised that appellant was involved in a motor vehicle accident on November 23, 2015 when he was hit by another vehicle. He reported that upon impact, appellant sustained injuries to his neck, lower back, and right leg. Appellant refused to go to the emergency room. Dr. Lipetz noted that appellant had complaints of neck pain radiating to both shoulders, in addition to lower back pain radiating to the lower extremities. He diagnosed right leg derangement and post-traumatic cervical and lumbar radiculopathy. Dr. Lipetz prescribed a course of physical therapy. He opined that, on the basis of the medical history presented by appellant and the physical examination findings, the diagnosed conditions were causally related to the November 23, 2015 work incident.

Appellant submitted several reports dated November 2015 through January 2016 from physical therapists and a chiropractor, Dr. Albert Youssefi, which indicated that he was undergoing periodic treatment for his neck and lower back conditions.

By decision dated January 13, 2016, OWCP denied the claim, finding that appellant had failed to provide medical evidence sufficient to establish that his right leg derangement and cervical and lumbar radiculopathy were causally related to the November 23, 2015 employment-related motor vehicle accident.

In a December 16, 2015 report, received by OWCP on January 19, 2016, Dr. Igor Stiller, Board-certified in neurology, advised that appellant underwent a comprehensive neurological examination and evaluation for signs and symptoms associated with injuries incurred during a November 23, 2015 motor vehicle accident. He reported that appellant's vehicle was struck in a right front impact collision and that his body was tossed about on impact. Dr. Stiller noted complaints of moderate-to-severe neck pain, rated a 7 on a scale of 1 to 10, with associated

radicular symptoms to the distal right upper extremity; appellant also had episodes of numbness and tingling to the right forearm which was exacerbated by movement and activity during the day. In addition, he complained of severe lower back pain, rated as a 9 on a scale of 1 to 10, with associated radicular symptoms to the right anterior thigh. Dr. Stiller advised that these symptoms were exacerbated by increased standing, walking and activity during the day.

Dr. Stiller diagnosed traumatic injury to the cervical and lumbar spine, with radiculopathy, based on his history and neurological examination. He recommended that appellant undergo a magnetic resonance imaging (MRI) scan of the cervical and lumbar spine, given the persistence of his symptoms despite undergoing conservative treatment. Dr. Stiller advised that he wanted to rule out the possibility of underlying intervertebral disc pathology or other space occupying lesions, which could result in appellant's continued symptoms. He also recommended electromyogram (EMG) and nerve conduction velocity (NCV) studies of the upper and lower extremities to evaluate the nature and severity of his radicular complaints, as well as to rule out the possibility of radiculopathy *versus* peripheral nerve entrapment. Dr. Stiller advised appellant to continue with his course of physical therapy, three times a week for an additional four weeks, followed by a reevaluation. He opined that, based on history and examination, appellant's signs and symptoms were causally related to the November 23, 2015 motor vehicle accident.

In a December 21, 2015 report, received by OWCP on January 19, 2016, Dr. Lipetz advised that appellant had undergone the recommended MRI scan of his lumbar and cervical spine, the results of which were pending. He reported complaints of neck and lower back pain with obvious radicular symptoms, in addition to pain in the right leg. Dr. Lipetz reiterated his diagnoses of cervical and lumbar radiculopathy and noted that appellant was still undergoing physical therapy three times per week.

In a January 13, 2016 report, Dr. Stiller advised that appellant noted improvement in his symptoms as a result of physical therapy and rehabilitation treatments. He related that his neck and lower back pain had diminished in frequency and intensity; he now rated his neck pain as a 5 on a scale of 1 to 10 and his lower back pain as a 7 on a scale of 1 to 10. Dr. Stiller advised that appellant's symptoms were aching and dull pain, with associated radicular symptoms into the right forearm and right anterior thigh.

Dr. Stiller advised that appellant underwent a cervical MRI scan on December 21, 2015 which showed multilevel degenerative changes, with facet joint hypertrophy and disc osteophyte complexes at C3-4, C4-5, C5-6, and C6-7. He also underwent a lumbar MRI scan on December 21, 2015, the results of which revealed evidence of multilevel degenerative changes with facet hypertrophy and disc herniations noted at T11-12, T12-L1, L1-2, and L5-S1; there was also bulging disc at L4-5. In addition, appellant underwent EMG/NCV studies of the upper and lower extremities which showed moderate chronic C7 and L5-S1 radiculopathies, bilaterally. Given the improvement in his condition, Dr. Stiller released appellant to return to regular work without restrictions on January 20, 2016.

On March 29, 2016 appellant requested reconsideration of the January 13, 2016 decision.

By decision dated June 27, 2016, OWCP denied modification of the January 13, 2016 decision. It found that appellant had failed to submit a medical report which established a causal relationship between the November 23, 2015 accepted motor vehicle accident and the diagnosed conditions of cervical and lumbar radiculopathy. OWCP noted that medical evidence of record indicated that appellant had preexisting multilevel degenerative spondylosis. However, it found that his treating physicians had failed to provide any medical rationale to differentiate between the effects of the work-related conditions and the preexisting conditions. In addition, it found that, although appellant's treating physician diagnosed right leg derangement in his November 23, 2015 report, he did not indicate any abnormal findings for the lower extremities or specify which part of the leg was deranged.

LEGAL PRECEDENT

A claimant seeking benefits under FECA 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, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[2]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[3] The second component is whether the employment incident caused a personal injury.[4] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[5]

ANALYSIS

It is uncontested that appellant experienced pain in his lower back, neck and right leg when the government-owned vehicle he was driving was struck by another vehicle on November 23, 2015 while he was in the performance of duty. OWCP accepted that the November 23, 2015 incident occurred as alleged. It also accepted that appellant received cervical, lumbar, and right leg diagnoses. However, OWCP denied appellant's traumatic injury

[2] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[5] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

claim because he failed to submit rationalized, probative medical evidence demonstrating a causal relationship between the diagnosed conditions and the accepted incident.

Appellant submitted reports from Drs. Lipetz and Stiller. These physicians noted complaints of low back, neck, and right leg pain and found, based on examination and diagnostic tests, cervical and lumbar radiculopathy. They did not, however, provide a rationalized, probative medical opinion to establish that these conditions were causally related to the November 23, 2015 accident.

In his November 23, 2015 report, Dr. Lipetz noted that appellant sustained injuries to his neck, lower back, and right leg as a result of the employment incident he experienced that day. He reported having neck pain which was radiating to both shoulders and lower back pain radiating to the lower extremities. Dr. Lipetz diagnosed post-traumatic cervical radiculopathy, post-traumatic lumbar radiculopathy, and right leg derangement. He opined, based on the medical history and his physical examination findings, that these conditions were causally related to the November 23, 2015 work incident. Dr. Lipetz essentially reiterated these findings and conclusions in his December 21, 2015 report.

In his December 16, 2015 report, Dr. Stiller, a Board-certified neurosurgeon, noted that appellant had moderate-to-severe neck pain with associated radicular symptoms to the distal right upper extremity. He further noted that he had severe lower back pain with associated radicular symptoms to the right anterior thigh. Dr. Stiller diagnosed traumatic injury to the cervical and lumbar spine, with radiculopathy, based on appellant's history and neurological examination.

The weight of medical opinion evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested, and the medical rationale expressed in support of the stated conclusions.[6]

While Drs. Lipetz and Stiller noted complaints of low back, neck, and right leg pain which they generally attributed to the November 23, 2015 work incident, the reports from these physicians did not contain a probative, rationalized opinion regarding whether the diagnosed conditions were causally related to the November 23, 2015 motor vehicle accident. They did not adequately describe appellant's accident or how the accident would have been competent to cause the claimed conditions.

The reports from appellant's chiropractor, Dr. Youssefi, are of no probative medical value as he is not considered a physician under FECA as he failed to diagnose spinal subluxation or document whether x-rays were taken.[7] As such, the Board finds that appellant did not meet

[6] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[7] Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the secretary. *Pamela K. Guesford*, 53 ECAB 726 (2002); *see Merton J. Sills*, 39 ECAB 572, 575 (1988).

his burden of proof with the submission of this evidence. While appellant submitted the reports from a physical therapist, these reports do not constitute medical evidence under section 8101(2). Because healthcare providers such as nurses, acupuncturists, physician assistants and physical therapists are not considered "physicians" under FECA, their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability, or causal relationship.[8]

The other medical evidence of record, including diagnostic test reports, is of limited probative value and is insufficient to establish the claim as it does not specifically address whether appellant's diagnosed conditions are causally related to the November 23, 2015 work incident.[9]

Appellant did not provide a report containing sufficient medical evidence demonstrating a causal connection between appellant's November 23, 2015 work incident and his claimed lower back, neck and right leg injuries.[10] OWCP advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the November 23, 2015 work accident would have caused the claimed injury. Accordingly, he has failed to meet his burden of proof.

The Board also notes that the employing establishment issued appellant a Form CA-16 on November 23, 2015 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.[11] 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 record, OWCP should further address this issue.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish cervical, lumbar, and right leg conditions causally related to a November 23, 2015 employment incident.

[8] 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649, 1989); *Jan A. White*, 34 ECAB 515 (1983).

[9] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (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] Furthermore, the form reports which supported causal relationship with a check mark are insufficient to establish the claim, as the Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation. *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

[11] *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. § 10.300.

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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