United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 16-1734**
	)	**Issued: January 27, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Fayetteville, AR, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 30, 2016 appellant, through counsel, filed a timely appeal from an August 1, 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 over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic injury causally related to a September 29, 2015 employment incident, as alleged.

[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.*

FACTUAL HISTORY

On September 29, 2015 appellant, then a 37-year-old mail handler, filed a traumatic injury claim (Form CA-1) claiming that earlier that day, he reached into a wire container to grab a flat bundle and sustained a low back strain. Appellant's supervisor confirmed that appellant was in the performance of duty. An employing establishment manager also completed an incident report on September 30, 2015 confirming appellant's account of the September 29, 2015 lifting incident.

In an October 2, 2015 letter, OWCP advised appellant of the type of additional evidence needed to establish his claim, including factual corroboration of the September 29, 2015 incident, and medical evidence diagnosing an injury resulting from that event. It afforded him 30 days to submit such evidence.

In response, appellant submitted October 9 and 16, 2015 chart notes from Community Physicians Group (CPG), diagnosing an acute low back strain and chronic sacroiliitis due to a September 29, 2015 lifting and twisting injury. He also provided October 9 and 12, 2015 duty status reports (Form CA-17) noting work restrictions. None of these forms bears a legible signature. The duty status reports note a practitioner's specialty as "FP."

The employing establishment submitted an October 9, 2015 letter alleging that appellant did not sustain a new injury on September 29, 2015, but rather had experienced symptoms from a prior back injury accepted under File No. xxxxxx600.[3] Appellant returned to work in a limited-duty capacity as of September 23, 2015. He underwent a "fusion surgery" related to the prior back injury and was awaiting authorization for a second fusion.

By decision dated November 9, 2015, OWCP accepted that the September 29, 2015 lifting incident occurred at the time, place, and in the manner alleged, but denied the claim as appellant did not submit probative medical evidence diagnosing an injury causally related to the accepted incident.

On July 5, 2016 appellant, through counsel, requested reconsideration. He submitted October 16 and 30, 2015 duty status reports, and an October 30, 2015 chart note from CPG diagnosing a low back strain due to a September 29, 2015 incident. None of these forms bear a legible signature.

By decision dated August 1, 2016, OWCP denied modification, finding that none of the medical documents "had a legible signature denoting it was signed by a physician." It noted that although the October 9 and 12, 2015 duty status reports contained the specialty designation "FP," the signer did not describe him or herself as a medical doctor or doctor of osteopathy. Therefore, there was no indication that the forms were signed by a qualified physician under FECA.

[3] File No. xxxxxx600 is not before the Board on the present appeal.

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 filed within the applicable time limitation, that an injury was sustained while 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.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

In order to determine whether 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 conjunctively. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident that is alleged to have occurred.[6] An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[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]

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medial 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.[9]

Generally, medical evidence must be provided by a qualified physician.[10] Section 8101(2) of FECA provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.[11] If a document does not bear a legible signature identifying

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

[5] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *Gary J. Watling*, 52 ECAB 278 (2001).

[7] *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

[8] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[9] *Solomon Polen*, 51 ECAB 341 (2000).

[10] *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[11] 5 U.S.C. § 8101(2).

that it was authored or reviewed by a qualified physician, it does not constitute probative medical evidence.[12]

ANALYSIS

Appellant alleges that he sustained a lumbar strain when reaching into a wire container to grab a mail bundle on September 29, 2015. OWCP accepted incident of injury, but denied the claim as he did not submit any probative medical evidence substantiating an injury as resulting from the work incident.

In support of his claim, appellant submitted chart notes dated October 9, 16, and 30, 2015 from CPG. He also provided October 9 and 12, 2015 duty status reports, noting the practitioner's specialty as "FP." However, none of these documents bear a legible signature. Because it cannot be determined that the person signing the report is a physician as defined in 5 U.S.C. § 8101(2), the report lacks probative medical value.[13] The Board has previously held that medical documents must be signed or reviewed by a qualified physician to constitute probative medical evidence.[14] As the author or authors of the CPG and duty status reports remain unknown, these reports are not medical evidence for the purposes of this case. Consequently, appellant has provided insufficient medical evidence in support of his claim.

OWCP advised appellant by October 2, 2015 letter of the type of evidence needed to establish his claim, including medical evidence from a qualified physician. As appellant did not submit probative medical evidence diagnosing an injury related to the accepted incident, OWCP properly denied the claim.[15]

On appeal, counsel contends that OWCP's August 1, 2015 merit decision is "[c]ontrary to law and fact." However, irrespective of counsel's general arguments, appellant did not submit any probative medical evidence to support 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 causally related to a September 29, 2015 employment incident, as alleged.

[12] *Merton J. Sills*, 39 ECAB 572 (1983).

[13] *See id.*; *R.M.*, 59 ECAB 690, 693 (2008).

[14] *Charley V.B. Harley*, *supra* note 10; *Merton J. Sills*, *supra* note 12.

[15] *Deborah L. Beatty*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 1, 2016 is affirmed.

Issued: January 27, 2017
Washington, DC

Christopher J. Godfrey, 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