United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 17-0644**
	)	**Issued: July 10, 2017**
U.S. POSTAL SERVICE, POST OFFICE, White Cloud, MI, 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 February 1, 2017 appellant, through counsel, filed a timely appeal from a December 14, 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 an injury causally related to a November 28, 2015 employment incident.

[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.*

On appeal counsel asserts that the December 14, 2016 decision is contrary to fact and law.

FACTUAL HISTORY

On December 2, 2015 appellant, then a 41-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 28, 2015, while placing a package on the bottom shelf of an all-purpose container, he felt a sharp back pain that caused spasms and locked-up his back. He subsequently indicated that he stopped work on December 3 or 4, 2015.

On a form medical report dated December 3, 2015, Dr. Jocelyn Pouliot, a Board-certified internist at Family Health Care, noted a diagnosis of back pain with sciatica. She recommended physical therapy. Additional reports from Dr. Pouliot's office dated December 3, 2015 were signed by Mary Snell, a nurse practitioner. She noted a history of low back injury on November 28, 2015 that was work related and found back pain on examination. Ms. Snell advised that appellant should remain off work until his next visit in two weeks.[3] She also completed a duty status report (Form CA-17) on December 3, 2015 in which she noted findings of decreased back range of motion and severe pain from the shoulder blades down. Ms. Snell advised that appellant could not work. On an attending physician's report (Form CA-20) also dated December 3, 2015, she noted a history of injury that on November 28, 2015 appellant was sorting mail and, when he bent over to do a task, his back froze. Ms. Snell reiterated appellant's complaints and checked a form box marked "yes," indicating that his condition was employment related. A December 3, 2015 thoracic spine x-ray was negative.

In December 15, 2015 reports, Dr. Pouliot noted complaints of constant back pain since November 28, 2015. Examination findings of pain with palpation across the shoulder to the low back and a positive straight leg raise test bilaterally were described. Dr. Pouliot diagnosed back pain with sciatica and appellant was advised to remain off work for another two weeks. On a form report dated December 29, 2015 Ms. Snell reiterated her findings and conclusions, again advising that he remain off work for two weeks. In reports dated January 11, 2016, Dr. Pouliot noted examination findings of an antalgic gait and bilateral positive straight leg raise tests. A magnetic resonance imaging (MRI) scan of the lumbar spine was recommended.

By letter dated February 11, 2016, OWCP informed appellant of the evidence needed to support his claim. This included a narrative report from a physician with a medical explanation as to how the reported work incident caused or aggravated the claimed injury. OWCP informed appellant that a nurse practitioner was not considered a qualified physician under FECA, and that a chiropractor was only considered a physician if spinal subluxation was demonstrated by x-ray.

Appellant thereafter submitted a patient history that he had completed on December 3, 2015. He noted that his job required sorting, pulling down, loading, and delivering mail which included packages weighing up to 70 pounds. Appellant indicated that he hurt his back loading packages onto a low shelf.[4] In reports dated December 29, 2015 and February 19,

[3] An undated, unidentified, and unsigned handwritten note from Great Lakes Family Care was also submitted.

[4] An undated, unidentified, and unsigned medical report was also submitted.

2016, Ms. Snell provided examination findings and reiterated her conclusions. In the latter report, she indicated that appellant should remain off work until March 4, 2016.

A January 28, 2016 MRI scan of the lumbar spine demonstrated chronic degenerative disc disease at L3-4 and L4-5 with a small disc protrusion at L3-4 without nerve root impingement.

In a report dated February 15, 2016, Dr. Hayden M. Boyce, a Board-certified neurosurgeon, noted his review of the January 28, 2016 MRI scan. He diagnosed bilateral low back pain without sciatica. Dr. Boyce recommended physical therapy and referral to a pain clinic.

In correspondence dated March 7, 2016, Dr. Pouliot and Ms. Snell noted that appellant was under their care for a work-related injury. They asserted that patients with workers' compensation injuries should be told of the requirements for medical evidence and recommended that physical therapy be authorized.

By decision dated March 17, 2016, OWCP found that the claimed November 28, 2015 incident occurred as alleged, but denied the claim because the medical evidence submitted did not establish a causal relationship between the diagnosed condition and the November 28, 2015 accepted work incident.

On August 11, 2016 appellant, through counsel, requested reconsideration. He resubmitted the March 7, 2016 correspondence from Dr. Pouliot.

Additional medical evidence received by OWCP subsequent to the March 17, 2016 decision included a more complete February 15, 2016 report from Dr. Boyce who noted that appellant had reported that on November 28, 2015, while loading packages onto a bottom shelf at work, he had sudden back pain, his back locked up, and he was unable to stand. Appellant reported that he had to change positions frequently, that he had been off work for three months, and that physical therapy helped, but his aching back pain continued. Dr. Boyce reviewed the MRI scan. He provided physical and neurological examination findings, noting that gait and station were normal, and that sensation to light touch was intact. Dr. Boyce diagnosed bilateral low back pain without sciatica, and recommended medication, pain management, and physical therapy.

In a progress note dated March 31, 2016, Dr. Pouliot reported examination findings of negative straight leg raise, normal thoracic and lumbar range of motion with pain, and that appellant could heel walk without difficulty. She advised that he could return to work with a 10-pound weight restriction and a sit/stand option. Dr. Pouliot reiterated the work restriction on April 14, 2016. On April 28, 2016 she advised that appellant could return to work without restriction on May 3, 2016, working every-other-day for three days a week.

On August 2, 2016 Dr. Nick Dreliozis, a chiropractor, reported that he began treating appellant on March 29, 2016. He advised that the repetitive work duties of bending and twisting, up and down for a long time reached the point in November 2015 where appellant's "back could not take it anymore" Dr. Dreliozis noted that his examination on August 1, 2016 demonstrated severe subluxations in the lumbar region. He diagnosed lumbalgia and sprain/strain of the

lumbar region. Dr. Dreliozis opined that appellant's back problems resulted from his injury in November 2015.

In a merit decision dated December 14, 2016, OWCP denied modification of the March 17, 2016 decision, again finding the medical evidence of record insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[5] including that he or she is an "employee" within the meaning of FECA and that he or she filed a claim within the applicable time limitation.[6] The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that disability for work, if any, was causally related to the employment injury.[7]

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 she 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.[8]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[9] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 employee.[10] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

Under section 8101(2) of FECA, 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 regulation

[5] *J.P.*, 59 ECAB 178 (2007).

[6] *R.C.*, 59 ECAB 427 (2008).

[7] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

[9] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[11] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

by the Secretary.[12] Implementing regulations indicate that the diagnosis of spinal subluxation must appear in the chiropractor's report, and a chiropractor may interpret his or her x-rays to the same extent as any other physician.[13] Likewise, a nurse practitioner is not considered a physician under FECA.[14]

ANALYSIS

There is no dispute that on November 28, 2015 appellant placed a package on the bottom shelf of an all-purpose container at work. The Board also finds, however, that the medical evidence is insufficient to establish that this incident resulted in an employment injury.

Medical evidence submitted to support a claim for compensation should reflect a correct history and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.[15] No physician did so in this case.

The December 3, 2015 thoracic spine x-ray and January 28, 2016 lumbar MRI scan did not provide a cause of any diagnosed conditions. Likewise, Dr. Boyce did not offer an opinion regarding the cause of his diagnosis of low back pain without sciatica. 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.[16]

As to Dr. Dreliozis' August 2, 2016 report, as noted, in assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under section 8101(2) of FECA. A chiropractor is not considered a physician under FECA unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.[17] The evidence in this case does not reflect that Dr. Dreliozis diagnosed subluxation based on results of an x-ray. While he advised that appellant had severe subluxations in the lumbar region, he did not reference an x-ray. Dr. Dreliozis' report, therefore, does not constitute probative medical evidence as he does not meet the statutory definition of a physician.[18]

Dr. Pouliot first saw appellant on December 3, 2015 and continued to submit reports until April 28, 2016. She noted his report that low back pain began at work on November 28, 2015 and diagnosed back pain with sciatica. Dr. Pouliot, however, did not provide an explanation as to how the November 28, 2015 work incident caused a diagnosed condition. The fact that a

[12] 5 U.S.C. § 8102(2); *see D.S.*, Docket No. 09-0860 (issued November 2, 2009).

[13] 20 C.F.R. § 10.311(b), (c). 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. 5 U.S.C. § 8101(2); *see Phillip L. Barnes*, 55 ECAB 426 (2004).

[14] *L.D.*, 59 ECAB 648 (2008).

[15] *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

[16] *Willie M. Miller*, 53 ECAB 697 (2002).

[17] *Supra* note 12.

[18] *See J.G.*, Docket No. 15-1468 (issued October 7, 2015).

condition manifests itself during a period of employment is insufficient to establish causal relationship.[19]

As to the reports signed solely by Ms. Snell, these do not constitute competent medical evidence as a nurse practitioner is not considered a physician under FECA.[20]

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale, and be based upon a complete and accurate medical and factual background of the claimant.[21] There is no medical evidence of record of sufficient rationale to establish a back injury caused by the November 28, 2015 employment incident.[22]

It is appellant's burden of proof to establish that a diagnosed condition is causally related to the November 28, 2015 incident. As none of the medical evidence of record provides the necessary rationale explaining how and why the physician opines that this accepted incident resulted in a diagnosed back condition, the evidence of record is insufficient to establish an injury caused by this incident. Appellant has failed to meet his burden of proof.

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 did not meet his burden of proof to establish an injury causally related to a November 28, 2015 employment incident.

[19] *See R.J.*, Docket No. 15-0088 (issued February 25, 2015).

[20] 5 U.S.C. § 8101(2); *supra* note 14.

[21] *Patricia J. Glenn*, 53 ECAB 159 (2001).

[22] *Supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 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