United States Department of Labor
Employees' Compensation Appeals Board

J.P., Appellant	)	
and	)	**Docket No. 17-1481**
	)	**Issued: November 8, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Fort Wayne, IN, 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 June 21, 2017 appellant filed a timely appeal from a March 28, 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury on December 19, 2016 in the performance of duty, as alleged.

FACTUAL HISTORY

On December 19, 2016 appellant, then a 56-year-old rural carrier filed a traumatic injury claim (Form CA-1) alleging that he sprained his left upper arm on that date at 3:30 p.m. He listed the cause of his injury as "ice covered up to box covered with ice.[2] On the reverse of the

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant has eight traumatic injury claims adjudicated by OWCP between January 2002 and April 18, 2014.

form, appellant's supervisor indicated that appellant's work schedule was from 7:00 a.m. to 3:30 p.m. and checked a box marked "yes" to indicate that he was injured in the performance of duty. She also checked a box marked "yes" to indicate that her knowledge of the facts agreed with statements made by appellant.

The employing establishment provided appellant with an authorization for examination and/or treatment (Form CA-16) on December 19, 2016.

Drs. Andrew J. McCanna and Andrew Offerle, physicians specializing in emergency medicine examined appellant on December 19, 2016. Appellant reported an injury to his posterior neck and cervical spine with numbness and tingling into his left arm. He noted that he was a mailman, that he had to exit his truck to deliver mail to multiple mailboxes, and that the conditions were icy. Appellant slipped and fell hard onto the mailbox and developed severe pain in his posterior cervical spine with numbness, tingling, and weakness in his left arm. He reported prior lumbar spine surgery. Appellant also reported pain over the posterior left shoulder and scapula with a contusion type of injury to the left shoulder. On physical examination he demonstrated a marked degree of cervical paravertebral spasm on the left side of the posterior neck. Appellant exhibited neurological symptoms in the distribution of C5 on the left. Dr. John L. Bormann, a radiologist, reviewed a computerized tomography scan of appellant's cervical spine on December 19, 2016 and found no evidence of acute fracture, but prominent left paracentral disc protrusion at C5-6 with high-grade left foraminal narrowing. Appellant was transferred from DuPont Hospital to Lutheran Hospital.

On December 20, 2016 appellant underwent a magnetic resonance imaging (MRI) scan due to persistent left arm numbness following a fall. His MRI scan demonstrated chronic moderate left foraminal stenosis at C3-4, chronic mild spinal stenosis with posterior disc bulging at C4-5, severe left foraminal stenosis at C5-6 with disc protrusion, and chronic mild spinal stenosis at C6-7. Dr. David Janizek, a radiologist, diagnosed chronic degenerative changes with stenosis and mild right C6 nerve root compression. Dr. Isa Canvavti, a Board-certified neurosurgeon, performed emergency surgery on December 20, 2016 entailing C5-6 allograft and surgical plate fusion due to C5-6 disc herniation and stenosis. Dr. Edward Yi, a radiologist, examined appellant's cervical x-rays on December 20, 2016 and found postoperative changes consistent with C5-6 anterior cervical disc fusion.

Dr. Canvavti completed the Form CA-16 on December 23, 2016 and noted that appellant sustained a ground level fall with left upper extremity paresthesias and weakness. He diagnosed C5-6 disc herniation and stenosis. Dr. Canvavti checked a box marked "yes" to indicate his opinion that the conditions found were caused or aggravated by the employment activity. He noted appellant's December 20, 2016 surgery and provided a period of disability. Appellant also submitted evidence from a nurse practitioner.

In a letter dated February 15, 2017, OWCP informed appellant that when his claim was received, it appeared to be a minor injury that resulted in minimal or no lost time for work, such that payment of a limited amount of medical expenses was administratively approved. It reopened his claim for consideration as the medical bills had exceeded $1,500.00. OWCP requested additional factual and medical evidence in support of appellant's traumatic injury claim and afforded him 30 days to respond.

Appellant resubmitted the hospital records regarding his admissions on December 19, 2016 and his December 20, 2016 surgery. He also submitted another report from his nurse practitioner.

By decision dated March 28, 2017, OWCP denied appellant's traumatic injury claim finding that he had failed to submit sufficient factual evidence to establish that the injury or event occurred as alleged. It further found that he had not provided any medical evidence to establish that a diagnosed medical condition was causally related to the work injury or event.

LEGAL PRECEDENT

An employee 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 the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3]

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."[4] In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

With respect to the first component of fact of injury, the employee has the burden of proof to establish the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met 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. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. However, an employee's statement alleging that an injury

[3] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[4] 20 C.F.R. § 10.5(ee).

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

occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[6]

The second component is whether the employment incident caused a personal injury.[7] 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.[8]

Causal relationship is a medical issue and the medical evidence required to establish 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]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered to be physicians as defined under FECA.[12] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[13]

ANALYSIS

The Board finds that appellant has established that the employment incident of December 19, 2016 occurred as alleged. However, appellant did not meet his burden of proof to establish a causal relationship between the claimed injury and the incident of December 19, 2016.

With regard to the first element of fact of injury, appellant alleged that he was injured on ice on December 19, 2016 while performing his job duties. His supervisor agreed that appellant was in the performance of duty when the injury occurred and that her knowledge of events

[6] *D.B.*, 58 ECAB 464, 466-67 (2007).

[7] *Supra* note 5; *M.P.*, Docket No. 17-1221 (issued August 21, 2017).

[8] *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *id. M.P*.

[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).

[12] *See Charles H. Tomaszewski*, 39 ECAB 461 (1988); *M.P., supra* note 7. *See* 5 U.S.C. § 8101(2) (provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

[13] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.P., supra* note 7.

agreed with these supplied by appellant. Appellant consistently reported to his various physicians on December 19 and 20, 2016 that he slipped on ice after exiting his vehicle to deliver mail and hit the mailbox. He sought medical treatment on December 19, 2016 and the employing establishment provided him with a Form CA-16.[14] The Board finds that appellant's statements are consistent with the surrounding facts and circumstances and his subsequent course of action. Appellant immediately notified the employing establishment of his injury and immediately sought medical treatment. As noted above, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[15] The Board finds that the December 19, 2016 incident slipping and falling on ice in the performance of duty, occurred as alleged.

On December 23, 2016 Dr. Canvavti completed a form report and noted that appellant sustained a ground level fall with left upper extremity paresthesias and weakness. He diagnosed C5-6 disc herniation and stenosis. Dr. Canvavti checked a box marked "yes" to indicate that he believed that the diagnosed conditions were caused or aggravated by the employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking a box marked "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[16]

Appellant submitted a series of medical notes from Drs. McCanna and Offerle regarding his treatment while being hospitalized for numbness in the left arm in the C5-6 nerve distribution. These physicians did not provide a specific opinion on the causal relationship between his accepted employment incident and his diagnosed condition. Without an opinion on the cause of appellant's condition, these opinions are insufficient to establish causal relationship.[17] Similarly, other medical reports submitted are also of limited probative value as they do not contain a physician's opinion supporting that the December 19, 2016 work incident caused or aggravated a diagnosed medical condition.[18]

Appellant also provided evidence from a nurse practitioner. The Board finds that these reports are of no probative medical value with respect to his claim for a September 4, 2016 work

[14] When the 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, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

[15] *D.C.*, Docket No. 17-0690 (issued July 19, 2017); *A.D.*, Docket No. 17-0550 (issued July 7, 2017); *E.W.*, Docket No. 17-0069 (issued May 23, 2017); *P.C.*, Docket No. 17-0082 (issued April 13, 2017); *B.M.*, Docket No. 17-0324 (issued March 24, 2017).

[16] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991); *id. A.D.*

[17] *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

[18] *Id.*

injury because under FECA, the report of a nurse practitioner[19] does not constitute probative medical evidence as they are not physicians under FECA.[20]

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 cervical condition causally related to the accepted December 19, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: November 8, 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

[19] *K.C.*, Docket No. 15-0552 (issued November 10, 2015).

[20] *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *L.L.*, Docket No. 13-0829 (issued August 20, 2013); *M.P.*, *supra* note 7.