United States Department of Labor
Employees' Compensation Appeals Board

A.L., Appellant	)	
and	)	**Docket No. 18-0420**
	)	**Issued: August 21, 2018**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Tampa, FL, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 21, 2017 appellant filed a timely appeal from an August 4, 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 that he sustained an injury on March 9, 2017 causally related to the accepted employment incident.

FACTUAL HISTORY

On March 9, 2017 appellant, then a 36-year-old air traffic control specialist, filed a traumatic injury claim (Form CA-1) alleging that he injured his neck and back on that date when he caught his right arm on a broken locker door. He alleged that his entire body was twisted as his

[1] 5 U.S.C. § 8101 *et seq.*

momentum carried the left side of his body forward while his right side remained caught on the locker door.

Appellant provided a series of treatment notes from Dr. Charles W. Rice, Jr., a chiropractor, from March 20 through June 6, 2017. Dr. Rice diagnosed spinal subluxations at C5, C6, T2, T3, T7, T8, L3, and L4.

On March 20, 2017 the employing establishment provided appellant with an authorization for examination and/or treatment (Form CA-16) which Dr. Rice completed on June 8, 2017.

By development letter dated June 27, 2017, OWCP requested additional factual and medical evidence in support of appellant's traumatic injury claim. It informed him of the requirement that a chiropractor must diagnose a subluxation of the spine demonstrated by x-ray in order to be considered a physician for the purposes of FECA.[2] OWCP afforded appellant 30 days to respond.

Appellant resubmitted Dr. Rice's treatment notes from March 20 through June 6, 2017.

By decision dated August 4, 2017, OWCP denied appellant's traumatic injury claim, finding that he failed to provide medical evidence containing a diagnosis in connection with the accepted employment incident.

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 or specific condition for which compensation is claimed is 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, the 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, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5]

[2] 5 U.S.C. § 8101(2) of FECA provides that 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 demonstrated by x-ray to exist.

[3] *Supra* note 1.

[4] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

[5] *A.D., id.*; *T.H.*, 59 ECAB 388 (2008).

Chiropractors are considered physicians 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.[6] Consequently, their medical findings and/or opinions which are not based on x-rays will not suffice for purposes of establishing entitlement to FECA benefits.[7]

ANALYSIS

The Board finds that appellant has not established that he sustained an injury causally related to the accepted March 9, 2017 employment incident.

Appellant's chiropractor, Dr. Rice, diagnosed spinal subluxations at C5, C6, T2, T3, T7, T8, L3, and L4. The case record, however, does not contain any x-rays of appellant's spine and Dr. Rice did not indicate that he relied on x-rays to establish his diagnoses of spinal subluxations. As such, the Board finds that Dr. Rice is not considered a physician within the meaning of FECA and his reports therefore do not constitute probative medical evidence.[8] Appellant, therefore, has not met his burden of proof.[9]

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 that he sustained an injury on March 9, 2017 causally related to the accepted employment incident.

[6] 5 U.S.C. § 8101(2); *see T.W.*, Docket No. 17-1819 (issued March 14, 2018); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[7] *R.M.*, Docket No. 17-1656 (issued January 16, 2018); *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).

[8] 5 U.S.C. § 8101(2); *see R.M., id.*; *Kathryn Haggerty*, 45 ECAB 383, 389 (1994). 20 C.F.R. § 10.5(bb); *see Bruce Chameroy*, 42 ECAB 121, 126 (1990).

[9] On June 8, 2017 Dr. Rice completed the attending physician's report portion of a form for authorization for examination and/or treatment (Form CA-16). Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See R.M., supra* note 7; *Tracy P. Spillane*, 54 ECAB 608 (2003). 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* 20 C.F.R. § 10.300(c)

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2018
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board