United States Department of Labor
Employees' Compensation Appeals Board

H.C., Appellant	)	
and	)	**Docket No. 18-1026**
	)	**Issued: December 21, 2018**
U.S. POSTAL SERVICE, SUBURBAN PROCESSING & DISTRIBUTION CENTER, Gaithersburg, MD, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 23, 2018 appellant filed a timely appeal from a February 8, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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.

[1] Appellant timely requested oral argument before the Board. By order dated October 15, 2018, the Board exercised its discretion and denied the request as the matter could be adequately addressed based on a review of the case record. *Order Denying Oral Argument*, Docket No. 18-1026 (issued October 15, 2018).

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed back condition causally related to the accepted June 9, 2017 employment incident.

FACTUAL HISTORY

On June 19, 2017 appellant, then a 53-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that, on June 9, 2017, he injured his lower back when he lifted a trailer door at work. He stopped work on June 12, 2017.

In an accompanying narrative statement dated June 19, 2017, appellant reported that on June 9, 2017 he experienced difficulty when he tried to lift the rear door on a trailer, which was later found to be defective. He related that he felt something pull in his lower back. Appellant further related that he did not think his condition was serious so he did not say anything about it. He noted that over subsequent days he realized that his condition was serious. Appellant sought medical treatment on June 12, 2017 and received a verification of treatment form from his physician who placed him on light-duty work through July 4, 2017.

Appellant submitted a June 12, 2017 report from Dr. Jeffrey B. Wetstone, an attending Board-certified family practitioner. Dr. Wetstone reported that appellant sustained a work-related injury. He placed him off work until June 13, 2017 and advised that he could return to work with physical limitations through July 4, 2017.

By development letter dated July 5, 2017, OWCP noted that as appellant's claim initially appeared to be a minor injury that resulted in minimal or no lost time from work, it had approved a limited amount of medical expenses without considering the merits of his claim. It, however, reopened appellant's claim because he had not returned to work in a full-time capacity. OWCP advised appellant of the deficiencies of his claim and requested that he submit additional information. It provided a questionnaire for his completion and afforded him 30 days to submit the necessary information.

OWCP received a series of additional reports from Dr. Wetstone. In a report dated June 30, 2017, Dr. Wetstone again related that appellant sustained a work-related injury on June 9, 2017. He advised that appellant could return to work on July 1, 2017 with physical restrictions through July 14, 2017.

In a June 22, 2017 duty status report (Form CA-17), Dr. Wetstone opined that appellant's diagnosis of low back pain was due to the June 9, 2017 incident when appellant lifted a defective trailer door. He related that, on June 13, 2017, he advised appellant to resume work with restrictions. In an office visit note dated June 30, 2017, Dr. Wetstone noted appellant's vital signs, provided a primary diagnosis of low back pain, and reiterated his physical restrictions.

On July 17, 2017 appellant provided a statement essentially restating the same history of injury and medical treatment presented in his June 19, 2017 narrative statement. He related that the immediate effects of his claimed injury included tightening of his lower back muscles.

Appellant maintained that he did not sustain any other injury, on or off duty, between the date of injury and the date his injury was first reported to his supervisor or physician.

Appellant submitted an additional report from Dr. Wetstone dated June 12, 2017 where he again diagnosed low back pain and noted appellant's physical restrictions.

In progress notes dated June 12 and 30, 2017, Dr. Wetstone noted that appellant performed a lot of heavy lifting at work.

In a July 17, 2017 report, Dr. Wetstone again indicated that appellant sustained a work-related injury, "chronic use and worse," on June 9, 2017. He advised that appellant may return to work on July 18, 2017 with restrictions through July 24, 2017.

Dr. Wetstone, in a July 17, 2017 office visit note, reported appellant's vital signs and advised that he was getting better. He increased the amount of weight appellant could lift, push, and pull and released him to return to full activities on July 25, 2017.[3]

In a July 7, 2017 progress note, Janice Pender, a physical therapist, related a history of the June 9, 2017 incident and appellant's back complaints. She discussed examination findings and provided an impression of lumbar spine joint dysfunction.

By decision dated August 11, 2017, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record did not contain a rationalized opinion explaining how or why his diagnosed back condition was causally related to the accepted June 9, 2017 employment incident.

On September 6, 2017 appellant requested a review of the written record by an OWCP hearing representative.

By a September 5, 2017 narrative report, Dr. Wetstone informed appellant that he wished to clarify issues concerning his back pain. He related that pulling on a partially stuck or heavy door could strain muscles, which would cause low back pain. Dr. Wetstone indicated that appellant demonstrated physical findings including, abnormal straight leg raises and flexion/abduction/external rotation of the hips from this injury. The examination performed on the date of his letter showed that these physical findings were no longer present. Dr. Wetstone maintained that this further provided evidence that appellant suffered an injury. He noted that it was common that imaging such as an x-ray and a magnetic resonance imaging scan could find physical abnormalities. However, it was not proven that these abnormalities explained most causes of low back pain. Dr. Wetstone advised that, based on appellant's history and physical findings, it was likely that he had a low back muscle strain. In a September 5, 2017 after visit summary report, he noted that appellant's back pain was much better. A diagnosis of lumbar muscle strain was listed. Dr. Wetstone concluded that appellant could perform full-duty work.

OWCP also received physical therapy reports dated September 13 and 27, 2017 from Ms. Pender. Ms. Pender indicated that appellant received medical treatment on those dates.

[3] The record indicates that appellant returned to full-time, full-duty work with no restrictions on July 25, 2017.

Appellant had a primary diagnosis of somatic dysfunction of the lumbar region and an additional diagnosis of lumbar radiculopathy.

By decision dated February 8, 2018, an OWCP hearing representative affirmed the August 11, 2017 decision as modified. He found that, while the claim was initially denied because appellant had not established that the diagnosed condition was causally related to the accepted June 9, 2017 employment incident, the medical evidence of record was insufficient to establish a medical condition diagnosed in connection with the accepted work incident.

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[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5]

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.[6] There are two components involved in establishing the 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.[7] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.[9]

ANALYSIS

The Board initially notes that the hearing representative denied the claim on the basis that there was no diagnosed medical condition. However, the Board finds that the evidence of record

[4] *A.H.*, Docket No. 18-0722 (issued November 6, 2018); *see also J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *A.H., id.*; *see also G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *S.W.*, Docket No. 18-0721 (issued November 6, 2018); *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[8] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

is sufficient to establish a diagnosed medical condition. Therefore, the issue pending before the Board is whether appellant has met his burden of proof to establish a diagnosed back condition causally related to the accepted June 9, 2017 employment incident.

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted June 9, 2017 employment incident.

Appellant submitted a series of reports from his attending physician, Dr. Wetstone. In reports dated June 12 and 30 and July 17, 2017, Dr. Wetstone concluded that appellant sustained a work-related injury on June 9, 2017 and addressed his work capacity and physical restrictions. However, he failed to provide a firm diagnosis of a particular medical condition[10] or offer medical rationale explaining how lifting up a defective door on a trailer on June 9, 2017 caused or aggravated a medical condition, disability from work, and physical restrictions.[11] As such, the Board finds that Dr. Wetstone's reports are, therefore, of diminished probative value and insufficient to establish appellant's burden of proof.

In a June 22, 2017 Form CA-17 report, Dr. Wetstone diagnosed low back pain due to the accepted June 9, 2017 employment incident. The Board has consistently held that a diagnosis of pain does not constitute the basis for the payment of compensation.[12] Without further explanation or rationale regarding causal relationship between the diagnosed condition and the accepted work incident, this report is of limited probative value.[13]

In a September 5, 2017 report, Dr. Wetstone opined that appellant had low back pain that "likely" resulted in low back muscle strain based on his history and objective physical examination findings. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.[14] For the reasons stated, the Board thus finds that Dr. Wetstone's September 5, 2017 report is insufficient to establish appellant's burden of proof.

Dr. Wetstone's remaining reports are also insufficient to meet appellant's burden of proof. Within these additional reports, he did not provide a rationalized medical opinion explaining how the accepted June 9, 2017 employment incident caused appellant's alleged back condition, and physical restrictions. As the Board has held, medical evidence that does not offer an opinion

[10] *See Deborah L. Beatty,* 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

[11] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[12] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams,* 41 ECAB 345 (1989).

[13] *C.L.*, Docket No. 17-0354 (issued July 10, 2018); *Beverly A. Spencer*, 55 ECAB 501 (2004).

[14] *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[15]

The reports and progress note from Ms. Pender, a physical therapist, are also of no probative value as physical therapists are not considered "physicians" as defined under FECA.[16] As such, this evidence is also insufficient to meet appellant's burden of proof.

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition causally related to his accepted June 9, 2017 employment incident. Appellant, therefore, has not met his burden of proof.[17]

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 back condition causally related to the accepted June 9, 2017 employment incident.

[15] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[16] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See Jennifer L. Sharp,* 48 ECAB 209 (1996) (physical therapist); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[17] *See supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2018 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: December 21, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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