United States Department of Labor
Employees' Compensation Appeals Board

K.S., Appellant	)	
and	)	**Docket No. 18-1781**
	)	**Issued: April 8, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, 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 September 25, 2018 appellant, through counsel, filed a timely appeal from a July 3, 2018 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.

[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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish that his left shoulder, cervical, and lumbar conditions are causally related to the accepted June 28, 2017 employment incident.

FACTUAL HISTORY

On June 28, 2017 appellant, then a 28-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he suffered a left knee injury when another vehicle reversed and pinned him up against the front of his two-ton truck while in the performance of duty. Appellant stopped work on June 29, 2017.

On June 28, 2017 the employing establishment issued appellant a properly executed, authorization for examination and/or treatment (Form CA-16), which authorized medical treatment at Brooklyn Hospital for his claimed June 28, 2017 left knee injury.

Hospital emergency room records dated June 28, 2017 indicate that appellant was treated by Gunit Tumber, a physician assistant, and Nusrat Mitu, a registered nurse, for left knee pain. An emergency department note excused appellant from work on June 29, 2017.

In a duty status report (Form CA-17) dated June 28, 2017, an unknown provider with an illegible signature noted a date of injury of June 28, 2017 and described that appellant was "hit by car and left knee pain." Appellant was authorized to resume regular duty.

In an attending physician's report (Form CA-20) dated June 28, 2017, an unknown provider with an illegible signature related a history of injury of "back pain and left knee pain." Appellant was diagnosed with lumbar strain.

In a July 5, 2017 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the factual and medical evidence necessary to establish his claim and also provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence.

In a July 6, 2017 work status note, Dr. David Adin, Board-certified in physical medicine and rehabilitation, related that appellant could not return to work at that time.

OWCP received an undated letter from Dr. David Hong, a chiropractor, who indicated that appellant was under his care for his condition.

By decision dated August 7, 2017, OWCP denied appellant's traumatic injury claim. It accepted that the June 28, 2017 employment incident occurred as alleged, but denied the claim because the evidence of record did not establish a valid medical diagnosis in connection with the accepted employment incident. Therefore, he had not met the requirements to establish an injury as defined by FECA.

On October 16, 2017 appellant requested reconsideration and submitted additional medical evidence.

In a June 30, 2017 initial evaluation report, Dr. Hong described that on June 28, 2017 appellant was involved in an accident at work when another car reversed and pinned him against his work truck. He conducted an examination and diagnosed post-traumatic cervical, thoracic, and lumbar strains; cervical, thoracic, and lumbar subluxations; cervicalgia; lower back pain; and left shoulder pain. Dr. Hong opined that "the accident on [June 28,] 2017 was a competent producing cause of [appellant's] symptoms."

OWCP received several state workers' compensation forms dated July 31, November 7, and December 12, 2017 by Dr. Hong, who reported his dates of treatment and diagnoses of muscle strain and back muscle and tendon strain. Additional state workers' compensation forms dated August 22 through December 12, 2017 indicated that appellant underwent physical therapy treatment from Tom L. Rhee, an acupuncturist, and Jonathan Wang, a physical therapist.

An August 17, 2017 left shoulder magnetic resonance imaging (MRI) scan demonstrated an interstitial tear in the infraspinatus tendon, superior labral tear, and subacromial bursitis. An August 21, 2017 lumbar spine MRI scan demonstrated intervertebral disc herniation, mild central spinal canal stenosis, and moderate encroachment of the neural foramina at L4-5 and L5-S1, and intervertebral disc bulge and mild encroachment of the neural foramina at L3-4. An August 22, 2017 cervical spine MRI scan demonstrated an intervertebral disc herniation, central spinal canal stenosis, and encroachment of the neural foramina at C6-7, and intervertebral disc bulge at C5-6 and C7-T1, mild encroachment at C7-T1.

In a September 6, 2017 report, Dr. Mark Kramer, a Board-certified orthopedic surgeon, noted that appellant had complained of persistent left shoulder pain since a June 28, 2017 employment incident. Upon examination of appellant's left shoulder, he observed tenderness to the anterolateral aspect of the shoulder, as well as the bicipital groove. Neer's, Hawkin's, and impingement signs were positive. Dr. Kramer diagnosed left shoulder traumatic impingement syndrome, left shoulder superior labrum anterior posterior (SLAP) tear, and left shoulder rotator cuff tendinitis and partial tear.

In an October 12, 2017 follow-up evaluation report, Dr. Adin noted the June 28, 2017 work-related injury and related that appellant continued to complain of persistent low back pain that radiated from the back of both thighs, ongoing left shoulder pain, and neck pain radiating into his shoulders bilaterally. Examination of appellant's neck revealed tenderness to the periscapular musculature bilaterally. Spurling's testing bilaterally reproduced concordant radiating symptoms into the shoulders. Examination of appellant's left shoulder showed evidence of impingement with positive provocative measures including cross-body pain with anterior tenderness. Sensation was intact and strength was symmetric throughout both upper limbs. Dr. Adin diagnosed discogenic neck pain secondary to disc herniation and bulging, discogenic low-back pain with herniation resulting in radicular compromise, and left shoulder labral tear with evidence of impingement.

In an October 18, 2017 report, Dr. Kramer reevaluated appellant for complaints of left shoulder pain. Examination of appellant's left shoulder showed no tenderness and normal range of motion. Impingement sign was negative. Dr. Kramer indicated that appellant was doing well.

By decision dated January 12, 2018, OWCP affirmed the August 7, 2017 decision with modification. It found that the medical evidence of record was sufficient to establish diagnoses of left shoulder impingement syndrome, left shoulder superior labral tear, anterior to posterior SLAP tear, left shoulder rotator cuff tendinitis, left shoulder labral tear, cervical disc herniation, and lumbar disc herniation. However, OWCP denied appellant's claim due to insufficient medical evidence to establish causal relationship between his diagnosed conditions and the accepted June 28, 2017 employment incident.

On April 4, 2018 appellant, through counsel, requested reconsideration.

In a February 15, 2018 follow-up report, Dr. Adin noted that appellant sustained a work-related injury on June 28, 2017. He described that appellant was struck in the back of his thighs and low back when a car abruptly reversed and pinned him between the car and his work truck. Dr. Adin related that appellant turned, rotating his trunk, and hit the back of the automobile. When the driver moved the automobile forward, appellant fell onto his abdomen and jolted his neck and low back. Dr. Adin noted that appellant's injuries were "predominantly discogenic in origin with disc herniations and bulging that [was] in accord with such a traumatic event." Upon physical examination of appellant's neck, he observed no signs of infection, ecchymosis, or erythema. Examination of his lumbar spine showed improved range of motion. Dr. Adin reported intact strength and sensation throughout both upper and lower limbs. He noted that appellant was partially disabled.

OWCP received additional state workers' compensation forms, dated April 10, 2018, from Mr. Rhee and Dr. Hong.

By decision dated July 3, 2018, OWCP denied modification of the January 12, 2018 decision. It found that the medical evidence of record was insufficient to establish that appellant's diagnosed left shoulder, cervical, and lumbar conditions were causally related to the accepted June 28, 2017 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 timely filed within the applicable time limitation of FECA,[4] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to

[3] *Id.*

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.[5] 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.[6]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[7] Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[8] The second component is whether the employment incident caused a personal injury.[9] 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.[10]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[11] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[12] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his diagnosed left shoulder, cervical, and lumbar conditions were causally related to an accepted June 28, 2017 employment incident.

Appellant submitted several reports by Dr. Adin dated July 6, 2017 to February 15, 2018. Dr. Adin accurately described the June 28, 2017 employment incident and related appellant's continued complaints of pain in his left shoulder, neck, and back. He noted that appellant's injuries were "predominantly discogenic in origin with disc herniations and bulging that [were] in accord

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *D.D.*, Docket No. 18-0648 (issued October 15, 2018); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[11] *T.H.*, *supra* note 7 at 388, 393; *Robert G. Morris*, 48 ECAB 238 (1996).

[12] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[13] *Id.*

with such a traumatic event." Dr. Adin provided examination findings and diagnosed discogenic neck pain secondary to disc herniation and bulging, discogenic low-back pain with herniation resulting in radicular compromise, and left shoulder labral tear with evidence of impingement.

Although Dr. Adin attributed appellant's left shoulder, cervical, and lumbar conditions to the accepted June 28, 2017 employment incident, he did not provide an affirmative opinion explaining how the described work incident resulted in the diagnosed medical conditions. The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition(s).[14] Because Dr. Adin did not provide a reasoned opinion explaining how the June 28, 2017 employment incident caused or contributed to appellant's left shoulder, cervical, and lumbar conditions, his reports are insufficient to establish appellant's claim.

Appellant was also treated by Dr. Kramer. In reports dated September 6 and October 18, 2017, Dr. Kramer reported examination findings of tenderness to the anterolateral aspect of appellant's left shoulder and diagnosed left shoulder traumatic impingement syndrome, left shoulder SLAP tear, and left shoulder rotator cuff tendinitis and partial tear. He did not, however, opine on the cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[15] These reports, therefore, are insufficient to establish appellant's claim.

Likewise, the diagnostic reports, including the August 17, 2017 left shoulder, August 21, 2017 lumbar spine, and August 22, 2017 cervical spine MRI scans also fail to establish appellant's claim as they did not provide an opinion on the causal relationship between his diagnosed left shoulder, cervical, and lumbar conditions and the accepted June 28, 2017 employment incident. The Board has held that reports of diagnostic tests lack probative value as they fail to provide an opinion on the causal relationship between his employment duties and the diagnosed conditions.[16]

Appellant also received medical treatment from Dr. Hong, a chiropractor. In a June 30, 2017 initial evaluation report, Dr. Hong accurately described the June 28, 2017 employment incident. He conducted an examination and diagnosed post-traumatic cervical, thoracic, and lumbar muscle strains, cervical, thoracic, and lumbar subluxations, cervicalgia, lower back pain, and left shoulder pain. Dr. Hong opined that "the accident on [June 28,] 2017 was a competent producing cause of [appellant's] symptoms." He also provided workers' compensation forms dated July 31, November 7, and December 12, 2017.

Under 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

[14] *See V.J.*, Docket No. 17-0358 (issued July 24, 2018); *John W. Montoya*, 54 ECAB 306 (2003).

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

[16] *See A.B.*, Docket No. 17-0301 (issued May 19, 2017).

correct a subluxation as demonstrated by x-ray to exist.[17] OWCP's regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.[18] If the diagnosis of a subluxation as demonstrated by x-ray is not established, the chiropractor is not a physician as defined under FECA and his or her report is of no probative value to the medical issue presented.[19] The Board finds that the evidence of record does not include an x-ray establishing the diagnosis of subluxation. Accordingly, Dr. Hong's opinion is of no probative value to establish appellant's claim.

The remaining emergency department records dated June 28, 2017 by Gunit Tumber, a physician assistant, and state workers' compensation forms dated August 22 through April 10, 2018 by Tom L. Rhee, an acupuncturist, and Jonathan Wang, a physical therapist, are also insufficient to establish appellant's traumatic injury claim. These records are of no probative value because a physician assistant, physical therapist, and acupuncturist, are not considered a physician as defined under FECA.[20] Likewise, the June 28, 2017 Form CA-17 and Form CA-20 from an unknown provider with illegible signatures are of no probative value to establish appellant's claim. Reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.[21]

On appeal, counsel contends that OWCP "nit-picked" the evidence and ignored the medical description of causation. He did not, however, provide any evidence to support his argument. Because appellant has failed to provide well-reasoned medical evidence establishing causal relationship, he has not met his burden of proof to establish his traumatic injury claim.[22]

[17] 5 U.S.C. § 8101(2).

[18] 20 C.F.R. § 10.5(bb); *see also Bruce Chameroy*, 42 ECAB 121 (1990).

[19] *R.P.*, Docket No. 18-0860 (issued December 4, 2018); *Mary A. Ceglia*, 55 ECAB 626 (2004); *Jack B. Wood*, 40 ECAB 95, 109 (1988).

[20] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005). *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *George H. Clark*, 56 ECAB 162 (2004) (physician assistant); *Nemat M. Amer*, Docket No. 03-0338 (issued April 7, 2003) (acupuncturist); *Jane A. White*, 34 ECAB 515, 518 (1983) (physical therapist).

[21] *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[22] When the employing establishment properly executes a CA-16 form which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the CA-16 form 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* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

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 his left shoulder, cervical, and lumbar conditions are causally related to the accepted June 28, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 3, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2019
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