

**United States Department of Labor
Employees' Compensation Appeals Board**

T.H., Appellant)	
)	
and)	Docket No. 19-1353
)	Issued: December 17, 2019
)	
U.S. POSTAL SERVICE, KISSIMMEE)	
CARRIER ANNEX, Kissimmee, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 4, 2019 appellant filed a timely appeal from an April 12, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met his burden of proof to establish a back condition causally related to the accepted December 26, 2018 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² Following the issuance of OWCP's April 12, 2019 decision, appellant submitted new evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On December 26, 2018 appellant, then a 60-year-old laborer custodial, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained a low back injury as he squatted to clean under a rim while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that appellant stopped work on the date of injury.

In a December 26, 2018 narrative statement, appellant noted that on that date he was performing his daily duties. He squatted as he started to clean under a toilet rim and felt a strain in his back which made it difficult for him to raise up and breathe.

In a letter dated January 29, 2019, the employing establishment challenged appellant's claim, contending that he had not established fact of injury.

OWCP received a January 24, 2019 progress note from Dr. Roxann C. Cook, Board-certified in family medicine and osteopathic manipulative therapy, who released appellant to return to work with no restrictions as of January 30, 2019.

OWCP also received emergency department treatment records, including a report dated January 11, 2019 from Dr. Jason Deleon, Board-certified in emergency medicine, and several nurses, who evaluated appellant for a back injury sustained several weeks prior when he stood up quickly. Dr. Deleon diagnosed back pain. A nurse also diagnosed sciatica.

In a March 8, 2019 development letter, OWCP advised appellant that when his claim was first submitted it appeared to be a minor injury that resulted in minimal or no lost time from work and it, therefore, had administratively approved payment of a limited amount of medical expenses. It explained that his claim was being reopened for formal consideration of the merits because the employing establishment had challenged his claim. OWCP requested that appellant provide additional medical evidence to establish that he sustained a diagnosed condition as a result of the

alleged employment incident and respond to an attached factual development questionnaire. It afforded him 30 days to submit the necessary evidence.

In a December 26, 2018 work/school excuse, Dr. Christopher J. Scott, Board-certified in emergency medicine, noted that appellant could return to work in two days with no restrictions.

A December 29, 2018 work release form with an illegible signature indicated that appellant may return to work with no restrictions on December 31, 2018.

In an additional emergency department report dated December 30, 2018, Dr. Dana Kleinman, a Board-certified internist, reviewed appellant's chart and agreed he had a diagnosis of back pain.

An undated and unsigned work/school excuse noted that appellant could return to work/school "in two days" with no restrictions.

In a January 11, 2019 work release form, a nurse indicated that appellant could return to work on January 15, 2019 with no restrictions.

In a March 2, 2019 letter, Dr. Malcolm J. Heagle, a Board-certified family practitioner, placed appellant off work until March 6, 2019 and released him to return to light-duty work with restrictions.

In a statement dated March 11, 2019, appellant responded to OWCP's development questionnaire. He reiterated the factual history of injury he provided on the December 26, 2018 claim form and in the December 26, 2018 narrative statement. Appellant denied having any similar injury to his back prior to December 26, 2018. He related that, since his claimed injury, he continued to experience pain and limitations for which he sought medical treatment.

OWCP, by decision dated April 12, 2019, accepted that the December 26, 2018 employment incident occurred as alleged. It denied the claim, however, finding that the evidence of record failed to establish a medical diagnosis in connection with the accepted December 26, 2018 employment incident. It concluded, therefore, that the requirements had not been met for establishing an injury as defined by FECA.³

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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

³ On May 22, 2019 appellant informed OWCP that he had not received the April 12, 2019 denial decision. On May 22, 2019 OWCP resent a copy of its April 12, 2019 decision and advised appellant to pursue his appeal rights attached to that decision.

⁴ *Supra* note 1.

time limitation period of FECA,⁵ and 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 the employment injury.⁶ 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.⁷

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.⁸ There are 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.⁹ The second component is whether the employment incident caused a personal injury.¹⁰

Causal relationship is a medical question that 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 incident 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 incident.¹³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted December 26, 2018 employment incident.

The December 30, 2018 and January 11, 2019 medical reports from Dr. Kleinman and Dr. Deleon diagnosed back pain. The Board has long held that a diagnosis of pain does not

⁵ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *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).

⁸ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁹ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *E.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *S.S.*, *supra* note 8; *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹³ *Id.*

constitute a basis for the payment of compensation under FECA as pain is considered a symptom rather than a diagnosis.¹⁴ Therefore, these reports are insufficient to establish appellant's claim.

The December 26, 2018 work/school excuse from Dr. Scott, January 24, 2019 progress note from Dr. Cook, and March 2, 2019 letter from Dr. Heagle addressed appellant's work capacity. None of these physicians provided a history of injury, a firm diagnosis of a particular medical condition, or a rationalized opinion regarding causal relationship.¹⁵ For the stated reasons, the Board finds that the reports of Drs. Scott, Cook, and Heagle are insufficient to establish appellant's claim.

Several notes from attending nurses diagnosed back pain and sciatica, and addressed appellant's work capacity. However, these reports are insufficient to establish appellant's burden of proof as a nurse practitioner is not considered a physician as defined under FECA.¹⁶ Therefore, their reports are of no probative value on the issue of casual relationship.

The undated and unsigned work/school excuse and December 29, 2018 work release form with an illegible signature addressed appellant's work capacity. The Board has held that unsigned reports and reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification.¹⁷ Similarly, these reports did not offer an opinion on causal relationship which also negates its probative value.¹⁸ For these reasons, the Board finds that this evidence has no probative value to establish appellant's claim.

As appellant has failed to submit rationalized medical evidence establishing that a diagnosed medical condition was causally related to the accepted December 26, 2018 employment incident the Board finds that he has not met his burden of proof.¹⁹

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 and 20 C.F.R. §§ 10.605 through 10.607.

¹⁴ See *E.C.*, Docket No. 19-0736 (issued October 8, 2019); *T.T.*, Docket No. 17-0681 (issued March 13, 2018).

¹⁵ See *I.C.*, Docket No. 19-0804 (issued August 23, 2019); see also *A.A.*, Docket No. 18-0031 (issued April 5, 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 also § 8102(2); 20 C.F.R. § 10.5(t); *A.A.*, Docket No. 19-0957 (issued October 22, 2019). Lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA. See *E.O.*, Docket No. 19-0472 n. 11 (issued August 15, 2019).

¹⁷ See *T.H.*, *supra* note 6; *R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006); *Richard J. Charot*, 43 ECAB 357 (1991).

¹⁸ See *C.S.*, Docket No. 19-0999 (issued October 10, 2019); *L.E.*, Docket No. 19-0470 (issued August 12, 2019).

¹⁹ See *J.T.*, Docket No. 18-1755 (issued April 4, 2019); *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted December 26, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board