United States Department of Labor
Employees' Compensation Appeals Board

D.J., Appellant	)	
and	)	**Docket No. 19-1387**
	)	**Issued: December 20, 2019**
U.S. POSTAL SERVICE, EASTERN SHORE PROCESSING & DISTRIBUTION FACILITY, Easton, 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 June 11, 2019 appellant filed a timely appeal from an April 17, 2019 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.

ISSUE

The issue is whether appellant met his burden of proof to establish a diagnosed medical condition causally related to the accepted July 15, 2018 employment incident.

[1] Together with his appeal request, pursuant to section 501.5(b) of the Board's *Rules of Procedure* (20 C.F.R. § 501.5(b)), appellant timely requested oral argument before the Board. He subsequently withdrew his request on August 19, 2019.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 2, 2018 appellant, then a 50-year-old labor custodian, filed a traumatic injury claim (Form CA-1) alleging that on July 15, 2018 he sustained an injury to the lower right side of his back and right hip when cutting hedges while in the performance of duty. On the reverse side of the claim form, the employing establishment controverted the claim asserting that appellant's injury was not in the performance of duty as he had requested light-duty work for a nonwork-related injury. It further noted that he did not report his injury until after he underwent a magnetic resonance imaging (MRI) scan on August 1, 2018.

In a July 19, 2018 medical note, Dr. Mary Ann Moore, Board-certified in internal medicine, indicated that appellant was seen at her office that day and should remain off work until July 23, 2018.

Appellant's coworker, J.P., noted in an August 2, 2018 witness statement that he and appellant were cutting hedges on July 15, 2018 and that appellant did not report any injuries to him at that time. The following Tuesday, his supervisor informed him that appellant was off work due to a back injury. Appellant later informed J.P. that he had injured his back while cutting the hedges.

In a witness statement of even date, appellant's coworker, R.M., noted that on July 17, 2018 appellant informed him that his back was hurting and that he believed he had injured it on July 15, 2018 while cutting bushes.

Appellant's supervisor, C.G. in a statement of even date, stated that he believed appellant's injury was not work related as appellant had not informed him of his injury until he was at the doctor's office on August 1, 2018. Appellant stated that he informed his supervisor of his injury on July 19, 2018 while he was on the telecom and that he may not have heard him.

An August 2, 2018 duty status report (Form CA-17) with an illegible signature diagnosed pain in appellant's right hip and provided work restrictions.

In an August 2, 2018 medical report, Dr. Michael Carlson, Board-certified in osteopathic manipulative therapy, provided that appellant presented with right hip pain and an abnormal radiograph. He suggested appellant use over-the-counter medication for pain and to perform piriformis and hip flexor stretches.

Appellant also provided an August 2, 2018 medical note from Megan Murphy, a registered nurse, stating that appellant should remain out of work until his follow-up appointment with the orthopedics department.

On August 3, 2018 OWCP received a statement from appellant in which he explained that he strained a muscle in his lower back when he leaned over to cut the hedges at the employing establishment on July 15, 2018. Appellant noted that he did not experience much pain when it happened, but over the next two days he experienced severe pain that made it difficult for him to stand or walk. He informed his supervisor on July 19, 2018 of his injury and left work to visit his doctor the same day. Appellant further noted that Dr. Moore opined that he should remain out of

work until July 25, 2018 and during a follow-up appointment with this doctor on July 30, 2018, he underwent an x-ray that revealed he would need to undergo an MRI scan for further evaluation.

In an August 3, 2018 witness statement, appellant's coworker, J.B., stated that appellant informed her on July 29, 2018 that he had missed time from work after he injured his back.

The employing establishment submitted an August 3, 2018 letter controverting appellant's claim. It argued that he failed to establish fact of injury as his supervisor did not agree with the statements provided in his Form CA-1 and he had not provided medical evidence showing that his injury was causally related to the claimed July 15, 2018 employment injury.

In an August 12, 2018 medical report, Dr. Eric Green, Board-certified in emergency medicine, provided that appellant presented with hip pain. He prescribed medication for appellant's pain.

In an August 16, 2018 development letter, OWCP notified appellant that the information he submitted was insufficient to support his claim. It advised him of the type of factual and medical evidence required to establish his traumatic injury claim and provided a factual questionnaire inquiring about the circumstances surrounding his claimed injury for his completion. OWCP also requested a narrative medical report from appellant's physician. It further advised that pain was not a valid diagnosis, but rather a symptom. OWCP afforded appellant 30 days to respond.

In response, appellant provided an August 14, 2018 duty status report (Form CA-17) with an illegible signature diagnosing right lower back pain and right hip pain and included work restrictions.

In response to OWCP's questionnaire, appellant submitted an August 20, 2018 statement wherein he indicated that he self-medicated to alleviate his pain until he was first seen at Dr. Moore's office on July 19, 2018. He stated that he did not have any other disability or symptoms before his injury and that he did not sustain any other injury between July 15, 2018 and the date he first reported his injury to his supervisor.

In an August 27, 2018 medical report, Walton Reddish, a nurse practitioner, noted appellant's history of injury related to the claimed July 15, 2018 employment incident. He diagnosed lower back pain, an unspecified disc disorder, and intervertebral disc disorders with radiculopathy. Mr. Reddish also advised appellant to avoid aggravating activities and to treat his pain with ice and heat.

A duty status report (Form CA-17) of even date with an illegible signature included a diagnosis of resolving lower back pain and provided appellant additional work restrictions.

In an August 28, 2018 medical note, Dr. Moore reported that she saw appellant that day and that she cleared him to return to work on September 1, 2018.

By decision dated September 17, 2018, OWCP denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with his injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

On September 25, 2018 appellant requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review.

Appellant also resubmitted copies of Dr. Carlson's August 2, 2018 medical report and Dr. Green's August 12, 2018 medical report.

On February 5, 2019 a telephonic hearing was held before an OWCP hearing representative. During the hearing, appellant explained that he was unable to receive a diagnosis for his condition because he was unable to undergo an MRI scan. The hearing representative advised appellant of the type of medical evidence needed to establish his claim and kept the record open for 30 days for the submission of additional evidence.

Appellant submitted a July 19, 2018 medical note from Lauren Samuel, a nurse practitioner, instructing him to take pain medication and use a heating pad to treat his back pain.

In a February 13, 2019 letter, Dr. Sara Coulbourn, Board-certified in family medicine, provided that appellant was seen on July 19, 30, August 14 and 28, 2018 for back and right hip pain. She noted that a right hip x-ray was performed on July 30, 2018 and that he was referred to an orthopedic doctor for further evaluation.

By decision dated April 17, 2019, OWCP's hearing representative modified OWCP's September 17, 2018 decision finding that the July 15, 2018 employment incident occurred as alleged. However, she affirmed OWCP's September 17, 2018 decision, finding that there was no rationalized medical evidence of record establishing a causal relationship between a diagnosed medical condition and the accepted July 15, 2018 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 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 whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established.

[3] *Supra* note 1.

[4] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[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] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

Rationalized medical opinion evidence is 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 incident.[8] 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.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted July 15, 2018 employment incident.

Dr. Carlson, in his August 2, 2018 medical report, provided that appellant presented with right hip pain and an abnormal radiograph. Similarly, Dr. Green, in his August 12, 2018 medical report, diagnosed right hip pain and provided treatment instructions for appellant to follow. The Board has held that, under FECA, the assessment of pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.[10] Accordingly, the reports of Drs. Carlson and Green are insufficient to establish the claim.

Appellant also provided July 19 and August 28, 2018 medical notes from Dr. Moore noting that appellant was seen in her office and that he should remain out of work until his condition improves. However, Dr. Moore's notes neither provided a diagnosis in connection with the July 15, 2018 employment incident, nor an opinion as to causal relationship. 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. These reports, therefore, are insufficient to establish appellant's claim.[11]

Dr. Coulbourn indicated in a February 13, 2019 letter that appellant was seen on July 19 and 30, and August 14 and 28, 2018 for back and right hip pain. As mentioned above, the Board

[7] *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *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).

[8] *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[9] *T.M., id.; J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[10] *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[11] *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

has held that pain is a symptom, not a specific diagnosis.[12] For this reason, Dr. Coulbourn's letter is also insufficient to meet appellant's burden of proof.

Appellant further submitted July 19 and August 27, 2018 medical reports from nurse practitioners Samuel and Reddish, respectively. The Board has held that medical reports signed solely by a nurse practitioner are of no probative value as such health care providers are not considered physicians as defined under FECA and are therefore not competent to provide medical opinions.[13] Consequently, this evidence is also insufficient to establish the claim.

Appellant submitted multiple duty status reports, CA-17 forms, containing illegible signatures dated August 2, 14, and 27, 2018. The Board has held that a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence.[14] For this reason, these reports are insufficient to establish the claim.

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition causally related to the accepted July 15, 2018 employment incident.[15] Appellant, therefore, has not met his burden of proof.

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 diagnosed medical condition causally related to the accepted July 15, 2018 employment incident.

[12] *Supra* note 7.

[13] *See 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) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law). *T.A.*, Docket No. 19-1030 (issued November 22, 2019) (nurse practitioners are not considered physicians under FECA); *M.G.*, Docket No. 19-0918 (issued September 20, 2019) (nurse practitioners are not considered physicians under FECA).

[14] *See L.M.*, Docket No. 18-0473 (issued October 22, 2018); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[15] *See T.J.*, Docket No. 18-1500 (issued May 1, 2019); *see D.S.*, Docket No. 18-0061 (issued May 29, 2018).

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2019
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