United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 18-1553**
	)	**Issued: February 8, 2019**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, El Segundo, CA, 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 July 30, 2018 appellant filed a timely appeal from a February 1, 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] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from the February 1, 2018 decision, was July 31, 2018. Because using August 6, 2018, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is July 30, 2018, rendering the appeal timely filed. 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a lumbar condition causally related to the accepted September 4, 2017 employment incident.

FACTUAL HISTORY

On December 18, 2017 appellant, then a 36-year-old federal air marshal, filed a traumatic injury claim (Form CA-1) alleging that after a long international flight on September 4, 2017 he experienced low back pain while bending over to retrieve his luggage. He stopped work on December 18, 2017.

In a December 22, 2017 development letter, OWCP notified appellant that it had not received any other documentation in support of his claim. It advised him of the type of factual and medical evidence needed to establish his claim, including a report from a qualified physician containing a medical diagnosis. OWCP afforded appellant 30 days to submit the necessary evidence.

A November 22, 2017 lumbar magnetic resonance imaging (MRI) scan revealed a four millimeter disc protrusion at L4-5 with central canal and biforaminal stenosis.

In a form report dated December 12, 2017, Dr. Misagh Zaker, a chiropractor, advised that appellant could not participate in physical conditioning, defensive tactics, aircraft tactical training, or certain aspects of firearms training. In a treating physician's status report dated December 14, 2017, he diagnosed radiculopathy of the lumbosacral region. Dr. Zaker noted that appellant's history was significant for low back pain due to nerve impingement at L4, L5, and S1. He recommended physical therapy, stretching, myofascial therapy, decompression therapy, and cryotherapy. Dr. Zaker noted that appellant was off duty for 45 days. He indicated that appellant could not sit for long periods of time due to nerve inflammation at L4-5. On December 15, 2017 Dr. Zaker returned him to light duty beginning February 1, 2018. Appellant was not permitted to participate in physical conditioning, defensive tactics, and aircraft tactical training. Dr. Zaker noted restrictions of no sitting for extended periods of time, no answering the telephone while in a seated position, no computer use while in a seated position, no greeting visitors, and no signing for light deliveries.

By decision dated February 1, 2018, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between the accepted September 4, 2017 incident and the diagnosed lumbar condition.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[3] 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,

[3] *Id.*

including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.[4]

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.[5] 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.[6] The second component is whether the employment incident caused a personal injury.[7] 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.[8]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[9] 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.[10] 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).[11]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[12] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[13] Additionally, 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.[14]

[4] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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

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

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

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

[9] *T.H.*, *supra* note 5; *Robert G. Morris*, 48 ECAB 238 (1996).

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

[11] *Id.*

[12] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[13] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[14] 5 U.S.C. § 8101(2); *see Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar condition causally related to the September 4, 2017 employment incident.

Appellant submitted a November 22, 2017 lumbar MRI scan that revealed a disc protrusion at L4-5. Diagnostic studies lack probative value as they do not address whether the employment incident caused a diagnosed condition.[15] For this reason, appellant's November 22, 2017 lumbar MRI scan is insufficient to meet his burden of proof as to causal relationship.

Appellant was treated by Dr. Zaker, a chiropractor, who diagnosed lumbosacral radiculopathy. Dr. Zaker attributed appellant's low back pain to nerve impingement at L4-5, L5, and S1. Although he referred appellant for the November 22, 2017 lumbar MRI scan, he did not specifically reference the diagnostic findings in his December 14, 2017 treating physician status report. Dr. Zaker also did not reference the September 4, 2017 employment incident or otherwise address the cause of appellant's lumbar condition. As noted, 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.[16] As case record, however, does not contain x-rays of appellant's spine and Dr. Zaker did not indicate a diagnosis of spinal subluxations, The Board finds that Dr. Zaker is not considered a physician within the meaning of FECA and his reports do not constitute probative medical evidence.[17]

The Board finds that because appellant has not submitted reasoned medical opinion evidence explaining how his lumbar condition is causally related to his accepted employment incident, he has not met his burden of proof to establish his claim.

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 lumbar condition causally related to the accepted September 4, 2017 employment incident.

[15] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[16] *See supra* note 14.

[17] 5 U.S.C. § 8101(2), *A.L.*, Docket No. 18-0420 (issued August 21, 2018); *Kathryn Haggerty*, 42 ECAB 121, 126 (1990).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2019
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