United States Department of Labor
Employees' Compensation Appeals Board

D.W., Appellant **and** **FEDERAL RESERVE BOARD, Washington, DC, Employer**	))))))))	**Docket No. 18-1256** **Issued: January 3, 2019**

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 June 5, 2018 appellant filed a timely appeal from an April 24, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 an injury causally related to the accepted January 17, 2017 employment incident.

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[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that appellant submitted additional evidence on appeal. 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 March 15, 2018 appellant, then a 47-year-old carpenter, filed a traumatic injury claim (Form CA-1) alleging that on January 17, 2017 he sustained a muscle strain/pinched nerve while lifting overhead shelving in the performance of duty. He explained that when lifting the shelving he felt a "twinge" in his back/shoulder area. On the reverse side of the claim form, the employing establishment acknowledged that appellant had injured himself while in the performance of duty, but noted that he had no lost time from work. Appellant reportedly first received medical treatment on February 27, 2018. No additional factual information or medical evidence accompanied appellant's Form CA-1.

In a March 19, 2018 development letter, OWCP advised appellant that the documentation received to date was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed, including a narrative medical report from a qualified physician explaining causal relationship between his diagnosed conditions and the alleged January 17, 2017 incident. OWCP provided a factual questionnaire for appellant's completion and afforded him 30 days to submit the necessary evidence.

In a March 20, 2018 note, Dr. Warren D. Yu, a Board-certified orthopedic surgeon, prescribed physical therapy for appellant's cervical spine. OWCP also received a March 21, 2018 request for authorization for physical therapy for cervical spine spondylosis (ICD-10 Code M47.81). The physical therapy authorization request form identified January 17, 2017 as the date of injury.[3]

In a March 28, 2018 response to OWCP's factual development questionnaire, appellant indicated that he and two coworkers were lifting overhead "NuCraft" cabinet units weighing approximately 150 pounds. When lifting the cabinets, he felt something tweak in his neck and shoulder area. However, appellant was able to complete lifting the cabinets and setting them in place.[4] He also explained the more than one-year delay in seeking medical treatment for his injury, noting that he gave the injury time to heal. Appellant initially thought it might only be a muscle tweak, but because he continued to feel the same a year later, he consulted with Dr. Yu on February 6, 2018, who referred him for a magnetic resonance imaging scan on February 27, 2018. He confirmed that he had not missed time from work due to the claimed injury and indicated that he had not sustained similar injuries either before or since the January 17, 2017 injury.

By decision dated April 24, 2018, OWCP denied appellant's traumatic injury claim. It found that he had established that the January 17, 2017 employment incident occurred as alleged. However appellant failed to submit medical evidence containing a diagnosis in connection with the accepted employment incident. OWCP explained that the documents regarding physical therapy were insufficient to establish the claim.

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[3] P. Kromhout submitted the request, and identified Dr. Yu as the provider.

[4] Appellant provided undated statements from two coworkers, N.P. and J.W., who indicated that they assisted him in lifting a "large shelving unit" when appellant experienced pain in his "shoulder/back" area.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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, 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.[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. 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.[7] The second component is whether the employment incident caused a personal injury.[8]

To establish causal relationship between the diagnosed condition, as well as any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[9] Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 employee.[11] 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.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted January 17, 2017 employment incident.

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[5] *Supra* note 1.

[6] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[7] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *John J. Carlone*, 41 ECAB 354 (1989).

[9] *J.I., id., I.J.,* 59 ECAB 408 (2008); *Victor J. Woodhams,* 41 ECAB 465 (2005).

[10] *L.D.,* Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[11] *L.D., id.; see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[12] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

The Board finds that appellant has not submitted medical evidence from a physician containing a diagnosis in connection with the January 17, 2017 employment incident.[13] The only medical evidence of record is a prescription note dated March 20, 2018 from Dr. Yu, in which he prescribed physical therapy for appellant's cervical spine. Because Dr. Yu's March 20, 2018 prescription note did not contain a specific diagnosis or date of injury, it is insufficient to establish that appellant sustained a medical condition in causally related to the accepted January 17, 2017 employment incident.[14] There is no other medical evidence of record.[15] As such, the Board finds that appellant has not submitted sufficient medical evidence to establish his claim for compensation.

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 an injury causally related to the accepted January 17, 2017 employment incident.

[13] *See E.B.*, Docket No. 18-0014 (issued July 12, 2018); *L.F.*, Docket No. 17-1511 (issued November 28, 2017); *J.P.*, Docket No. 14-0087 (issued March 14, 2014).

[14] Although the March 21, 2018 physical therapy authorization request form included an ICD-10 diagnosis code and a date of injury, it does not bear Dr. Yu's signature. A medical report should bear the physician's signature or signature stamp. 20 C.F.R. § 10.331(a). OWCP may require an original signature on the report. *Id.*

[15] *See supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 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