United States Department of Labor
Employees' Compensation Appeals Board

P.L., Appellant	)	
and	)	**Docket No. 19-0268**
	)	**Issued: July 9, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Anaheim, CA, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 19, 2018 appellant filed a timely appeal from an October 10, 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish cervical and lumbar conditions causally related to the accepted July 18, 2018 employment incident.

FACTUAL HISTORY

On August 14, 2018 appellant, then a 65-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging that on July 18, 2018 he sustained neck and low back injury when he was backing his vehicle up from a parked position and he struck another vehicle while in the

[1] 5 U.S.C. § 8101 *et seq.*

performance of duty. On the reverse side of the form the employing establishment controverted the claim. R.M., a supervisor, indicated that appellant "never mentioned [that] he sustained any injury as a result of the accident." He also asserted that the injury was caused by appellant's willful misconduct and added that appellant had backed the vehicle into a busy street. Appellant did not stop work.

In a development letter dated August 31, 2018, OWCP advised appellant that additional medical evidence was needed to establish his claim. It informed appellant that he should submit a medical report, which contained a diagnosis and a rationalized opinion explaining how the diagnosed condition was caused by the alleged employment incident. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received a January 31, 2018 report from Dr. Chin Se Kim, an osteopathic physician specializing in sports and internal medicine, who indicated that appellant had been under his care, since February 8, 2005, for temporomandibular joint pain syndrome, thoracalgia, and neck pain with arm paresthesia associated with cervical radiculopathy. Dr. Kim reported that appellant was evaluated for exacerbation of severe thoracic pain and low back pain due to his job duties and noted that appellant indicated that his low back pain worsened when standing in one place for prolonged periods of time. He recommended restrictions including no standing longer than five hours at a time.

In a September 6, 2018 attending physician's report (Form CA-20), Dr. Kim checked the box marked "yes" in response to whether appellant had a preexisting condition, noting "lumbar radiculopathy, cervical radiculopathy, cervicalgia, [and] lumbago." He diagnosed lumbar radiculopathy, cervical radiculopathy, and exacerbation of lumbago, cervicalgia. Dr. Kim checked the box marked "yes" indicating that he believed the diagnosed conditions were caused or aggravated by an employment activity. He further indicated, "MVA [motor vehicle accident] aggravated preexisting condition" and that appellant was totally disabled from work for the period July 19 to 28, 2018, and recommended light-duty work commencing July 29, 2018.

By decision dated October 10, 2018, OWCP found that appellant had established that the July 18, 2018 employment incident occurred as alleged, but denied the claim, finding that the evidence of record was insufficient to establish that his medical conditions were causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 period of FECA,[2] 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

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

related to the employment injury.[3] 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.[4]

To determine if an employee has 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.[5] The second component is whether the employment incident caused a personal injury.[6]

To establish causal relationship between the 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.[7] Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] 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.[9] 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.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish cervical and lumbar conditions causally related to the accepted July 18, 2018 employment incident.

OWCP received a January 31, 2018 report from Dr. Kim, who indicated that he had treated appellant, since February 8, 2005, for multiple conditions to include thoracalgia, neck pain,

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

[4] *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).

[5] *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

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

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

[10] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

cervical radiculopathy, severe thoracic pain, and low back pain. This report predates the July 18, 2018 employment incident, while it is relevant to support that appellant had preexisting conditions, the report does not offer any opinion as to whether the July 18, 2018 employment incident caused any cervical or lumbar conditions. The Board has held that medical evidence which predates the date of a traumatic injury has no probative value on the issue of causal relationship.[11] It is, therefore, irrelevant to establish a current work-related injury.

In a September 6, 2018 attending physician's report (Form CA-20), Dr. Kim checked the box marked "yes" indicating that he believed the diagnosed conditions were caused or aggravated by an employment activity and noted "MVA aggravated preexisting condition." The Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, is of diminished probative value and insufficient to establish causal relationship.[12] Other than to indicate that the motor vehicle accident aggravated a preexisting condition, Dr. Kim failed to offer medical rationale explaining how appellant's diagnosed lumbar and cervical conditions and disability status were caused or aggravated by the accepted work incident on July 18, 2018. Thus, the Board finds that the report is insufficient to establish appellant's burden of proof.[13]

Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.[14] The Board finds that the record lacks rationalized medical evidence establishing causal relationship between the July 18, 2018 employment incident and the diagnosed cervical and lumbar conditions.[15]

As appellant has not submitted sufficiently rationalized medical evidence to support his claim that he sustained cervical and lumbar conditions causally related to the accepted July 18, 2018 employment incident, he has not met his burden of proof.[16]

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.

[11] *D.B., supra* note 5; *V.N.*, Docket No. 16-1427 (issued December 13, 2016).

[12] *See S.G.*, Docket No. 18-0209 (issued October 4, 2018); *R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[13] *M.C.*, Docket No. 18-0361 (issued August 15, 2018).

[14] *See A.S.*, Docket No. 17-2010 (issued October 12, 2018); *Louis R. Blair, Jr.*, 54 ECAB 348 (2003).

[15] *See J.S.*, Docket No. 17-0507 (issued August 11, 2017).

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

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish cervical and lumbar conditions causally related to the accepted July 18, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 10, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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