

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

_____)	
R.P., Appellant)	
)	
and)	Docket No. 19-0271
)	Issued: July 24, 2019
U.S. POSTAL SERVICE, NEW YORK)	
PERFORMANCE CLUSTER, New York, NY,)	
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 19, 2018 appellant filed a timely appeal from a June 25, 2018 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 that his lumbar conditions were causally related to the accepted December 18, 2017 employment incident.

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 December 18, 2017 appellant, then a 63-year-old parcel post carrier and driver, filed a traumatic injury claim (Form CA-1) alleging that on that date he bent his knees while lifting a parcel and sustained a back spasm while in the performance of duty. He stopped work on December 18, 2017.

In a December 18, 2017 report, Dr. Steven H. Lin, a Board-certified neurologist, noted that appellant was injured that day, when he “lifted a typical box not excruciatingly heavy or awkward in a typical manner that he would anytime, using good ergonomic form, and felt pulling in the left lower left back.” Dr. Lin determined that appellant had a muscle pull. He placed appellant off work and noted that appellant would follow-up on January 8, 2018.

A December 20, 2017 lumbar magnetic resonance imaging (MRI) scan, read by Dr. Adam Lanshkowsky, a Board-certified diagnostic radiologist, demonstrated multiple lumbar herniated discs.

In a December 21, 2017 report, Dr. Melinda Keller, a chiropractor, noted that appellant was seen for severe low back pain resulting from an injury while lifting at work on December 18, 2017. She indicated that an examination and x-rays revealed a “lumbar disc diagnosis.” Dr. Keller advised that appellant was referred for a lumbar MRI scan which revealed multiple lumbar herniated discs. She indicated that appellant should remain sedentary and stay out of work for the next three weeks.

In a January 10, 2018 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. In particular, it noted that there was no diagnosis of any condition resulting from an injury at work. OWCP advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. It afforded appellant 30 days to provide the necessary information.

Thereafter, OWCP received a December 18, 2017 note from Dr. Nakul Mahajen, Board-certified in pain medicine.³

A number of reports, including duty status reports (Form CA-17) and attending physician reports (Form CA-20) were received from Dr. Laurie Lamarre, a chiropractor, dated December 21, 26, and 29, 2017, and January 2, 3, 9, 11, 16, 22, 24, and 31, 2018. Dr. Lamarre diagnosed lumbar degenerative disc disease, lumbar degenerative spondylosis, lumbar disc displacement, lumbar disc herniation, lumbar stenosis, and lumbar radiculopathy. She opined that appellant’s diagnoses were the result of post-traumatic injury.

OWCP also received January 17, 2018 nerve conduction studies performed and interpreted by Kevin McPartland, a chiropractor.

By decision dated February 14, 2018, OWCP denied appellant’s traumatic injury claim. It accepted that the December 18, 2017 employment incident occurred as alleged, but denied the

³ The note indicated 2017; however, this is a typographical error.

claim because the evidence of record did not establish a valid medical diagnosis in connection with the accepted employment incident. OWCP noted that appellant had a preexisting back condition and his physician had not provided a detailed and well-rationalized medical report based on a complete and accurate history, explaining the mechanism of his claimed back injury, and how the diagnosed condition resulted from the claimed work incident. It also noted that the medical evidence from chiropractors did not diagnose a subluxation of the spine, and, therefore, appellant had not met the requirements to establish an injury as defined by FECA.

In a January 18, 2018 statement, appellant described the incident at work. He indicated that he was lifting a 35-pound parcel and had not experienced any similar disability or symptoms before the injury on December 18, 2017.

On March 27, 2018 OWCP received appellant's March 17, 2018 request for reconsideration.

OWCP received additional chiropractic notes from Dr. Lamarre, dated February 7, 15, and 19, March 12, 14, and 28, April 19, and May 9 and 30, 2018. Dr. Lamarre noted that appellant was lifting a package on December 18, 2017, when he experienced pain in his lower back. She provided examination findings, including a diagnosis of spinal subluxation at L3-4, L4-5, and L5-S1, revealed in radiographic examination x-rays of the lumbar spine taken on March 12, 2018. Dr. Lamarre further diagnosed lumbar segmental dysfunction, lumbar radiculopathy, lumbosacral radiculopathy, lumbar intervertebral disc displacement (IVD) disorder with myelopathy, lumbar disc displacement and/or lumbar IVD, spondylosis with myelopathy and/or lumbar spondylosis with radiculopathy, lumbar stenosis, and myalgia. She opined that lifting a parcel on December 18, 2017 caused the diagnosed conditions.

On March 27 and April 2, 2018 OWCP also received physical evidence including environmental studies and photographs.

By decision dated June 25, 2018, OWCP affirmed the February 14, 2018 decision with modification. It found that the medical evidence of record was sufficient to establish diagnoses of spinal subluxation. However, OWCP denied appellant's claim due to insufficient medical evidence to establish causal relationship between his diagnosed conditions and the accepted December 18, 2017 employment 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,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

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 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.⁷ The second component is whether the employment incident caused a personal injury.⁸

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.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his lumbar conditions were causally related to the accepted December 18, 2017 employment incident.

In a December 18, 2017 report, Dr. Lin determined that appellant had sustained a pulled muscle. He did not opine regarding the cause of appellant's diagnosed condition. 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.¹⁰ This report, therefore, is insufficient to establish appellant's claim.

A December 18, 2017 note from Dr. Mahajen indicated that appellant was seen on that day. Since this report did not provide a factual and medical background, did not relate a diagnosis, and did not provide medical rationale explaining the nature of the relationship between the diagnosed condition and the employment incident, it is of no probative medical value.¹¹

Appellant also submitted reports from chiropractors. Under FECA the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment

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 *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).

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

⁸ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

¹⁰ *See K.S.*, Docket No. 18-1781 (issued April 8, 2019); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *Supra* note 9.

consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. OWCP's regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on an x-ray film to an individual trained in the reading of x-rays. If the diagnosis of a subluxation as demonstrated by x-ray is not established, the chiropractor is not a physician as defined under FECA and his or her report is of no probative value to the medical issue presented.¹²

The Board notes that Dr. Keller did not relate that her subluxation diagnosis was based on x-ray evidence. The Board also notes that Dr. Lamarre's initial reports from December 21 to February 19, 2018, did not contain a diagnosis by x-ray of a subluxation of the spine. Accordingly, Dr. Keller's opinion and Dr. Lamarre's earlier reports are of no probative value to establish appellant's claim.

The Board notes that Dr. Lamarre diagnosed lumbar degenerative disc disease, lumbar degenerative spondylosis, lumbar disc displacement, lumbar disc herniation, lumbar stenosis, and lumbar radiculopathy. She also diagnosed a subluxation of the spine in her March 12, 2018 report, based upon x-ray evidence. Dr. Lamarre also noted the history of injury, and opined that lifting a parcel on December 18, 2017, caused the diagnosed conditions. However, she did not provide an affirmative opinion explaining how the described work incident resulted in the diagnosed medical conditions. The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident caused or contributed to appellant's diagnosed medical conditions.¹³ Because Dr. Lamarre did not provide a reasoned opinion explaining how the June 28, 2017 employment incident physiologically caused or contributed to appellant's conditions, her reports are insufficient to establish appellant's claim.

The December 20, 2017 lumbar MRI scan also is of limited probative value. The Board has held that reports of diagnostic tests lack probative value, as they do not provide an opinion on causal relationship between the employment incident and a diagnosed condition.¹⁴

As appellant has not submitted reasoned medical evidence explaining how a diagnosed lumbar condition was causally related to his accepted December 18, 2017 employment incident, he has not met his burden of proof.¹⁵

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.

¹² *R.P.*, Docket No. 18-0860 (issued December 4, 2018); *Mary A. Ceglia*, 55 ECAB 626 (2004); *Jack B. Wood*, 40 ECAB 95, 109 (1988).

¹³ *See K.S.*, Docket No. 18-1781 (issued April 8, 2019); *see V.J.*, Docket No. 17-0358 (issued July 24, 2018); *John W. Montoya*, 54 ECAB 306 (2003).

¹⁴ *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

¹⁵ *See A.J.*, Docket No. 18-1116 (issued January 23, 2019); *E.C.*, Docket No. 17-0902 (issued March 9, 2018).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his lumbar conditions were causally related to the accepted December 18, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board