United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
and	)	**Docket No. 18-1544**
	)	**Issued: March 4, 2019**
DEPARTMENT OF THE INTERIOR, FISH & WILDLIFE SERVICE, Atlanta, GA, 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 August 9, 2018 appellant filed a timely appeal from a July 3, 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 a traumatic injury causally related to the accepted December 12, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the July 3, 2018 decision, OWCP received additional evidence. 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 12, 2017 appellant, then a 27-year-old forester, filed a traumatic injury claim (Form CA-1) alleging that, while assisting a hunter with a deer at a check station on December 10, 2017, he sustained a lower back injury in the performance of duty. He did not stop work.

By development letter dated December 18, 2017, OWCP advised appellant of the type of medical and factual evidence needed to establish his claim, including a detailed statement explaining how the injury occurred and a comprehensive medical report addressing the causal relationship between a diagnosed condition and the employment incident. It afforded him 30 days to respond.

The record contains an authorization for examination and/or treatment (Form CA-16) dated December 20, 2017 from the employing establishment, which related that appellant was authorized to receive treatment for a back condition. On the reverse side of the form, titled "Attending Physician's Report," no findings or diagnoses were listed. A box was marked "yes" to the question of whether appellant's conditions were caused or aggravated by the employment activity described. Appellant's period of total disability was from December 12 to 17, 2017, and appellant's period of partial disability was from December 18 to 22, 2017.[3]

By decision dated January 22, 2018, OWCP found that appellant had established that the December 10, 2017 employment incident occurred as alleged, but denied the claim as the evidence of record was insufficient to establish that he sustained an injury causally related to the accepted incident.

On April 12, 2018 appellant requested reconsideration and submitted additional medical evidence.

In a chart note dated December 27, 2017, Dr. Charles Mayfield, a chiropractor, noted that appellant sought treatment for sharp pain and tightness in the low back, discomfort in the back of the neck, and discomfort in the mid back. He noted that x-rays had been obtained of appellant's cervical, thoracic, and lumbar spine. Dr. Mayfield did not note x-ray findings. In a section of his report titled, "Daily Objective Findings" he listed "spinal restrictions/subluxations: C2, C5, T4, T8, [and] L5 and right pelvis." Dr. Mayfield diagnosed segmental and somatic dysfunction of the pelvic region, segmental and somatic dysfunction of the lumbar region, low back pain, muscle spasm of the back, segmental and somatic of the thoracic region, pain in the thoracic spine, segmental and somatic dysfunction of the cervical region, and cervicalgia.

An unsigned x-ray report dated December 27, 2017 related that cervical, thoracic and lumbar views had been taken of appellant's spine. The only positive findings regarding the cervical spine were decreased lordotic curve, and listing at C2, C5, and C6. Regarding the thoracic spine, listing at T3, T8 was noted. The lumbar spine findings were listed as decreased lordotic curve and listing at L4-5.

[3] The signature contained in the physician's box on the form is illegible.

In a clinic form dated January 4, 2018, received by OWCP on April 12, 2018, Jessica Sharp, a family nurse practitioner, noted that appellant complained of right sciatic pain. She indicated that appellant was on a trip when he experienced pain in the same place as the recent injury. Ms. Sharp related that her impression was lower back pain with radiculitis.

In an MRI scan report dated February 1, 2018, received by OWCP on April 12, 2018, Dr. Warren John Green, Board-certified in diagnostic radiology, noted that appellant had a central disc protrusion at L4-5 and a prominent right paracentral disc herniation at L5-S1.

In discharge instructions dated February 14, 2018, Dr. Anthony Sin, Board-certified in neurosurgery, noted that appellant had a surgical wound to his right back, and that he was not to perform heavy lifting, pushing or pulling of heavy objects, driving, and to shower only.

In a letter dated March 28, 2018, Ms. Sharp indicated that appellant had pain with flexion and over the SI joint. She noted that he was given a steroid injection, Toradol shot, and prescription on December 12, 2017. Ms. Sharp noted that appellant returned to the clinic on January 4, 2018. She related that he indicated that his condition improved from the previous treatment. However, Ms. Sharp indicated that appellant went on a trip and the pain returned with worsened symptoms. She indicated that an MRI scan was ordered and he was referred to a neurosurgeon based on those results.

By decision dated July 3, 2018, OWCP denied modification of the January 22, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 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, that an injury was sustained in the performance of duty as alleged, and that any disability or specific 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 on a traumatic injury or an occupational disease.[6]

In order to determine whether an employee actually 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[7] The second component is whether the

[4] *Supra* note 1.

[5] *M.M.*, Docket No. 17-1522 (issued April 25, 2018); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[6] *Kathryn Haggerty, id.; see also A.R.*, Docket No. 18-1126 (issued December 7, 2018).

[7] *See V.J.*, Docket No. 18-0452 (issued July 3, 2018*); Bonnie A. Contreras*, 57 ECAB 364 (2006).

employment incident caused a personal injury and generally can be established only by medical evidence.[8]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[9] 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.[10] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury causally related to the accepted December 12, 2017 employment incident.

In support of his claim, appellant submitted a chart note dated December 27, 2017 from Dr. Mayfield, a chiropractor. Section 8101(2) of FECA[12] provides that the term physician, as used therein, includes chiropractors 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 to exist and subject to regulation by the Secretary.[13] While Dr. Mayfield noted that x-rays had been performed in his office, he did not report that the x-rays demonstrated subluxations of the vertebrae. He only noted spinal restrictions/ subluxation(s) C2, C5, T4, T8, and L5 and right pelvis under daily objective findings. Dr. Mayfield also diagnosed segmental and somatic dysfunction of the pelvic region, segmental and somatic dysfunction of the lumbar region, segmental and somatic of the thoracic region, segmental and somatic dysfunction of the cervical region; however, these diagnoses do not describe a dislocation of a vertebrae, but rather refer to general regions of the spine. Furthermore, he again did not state that these diagnoses were based upon x-ray evidence. Since Dr. Mayfield did not diagnose subluxation based upon x-ray evidence, he is not a qualified physician under FECA.[14]

OWCP also received an unsigned x-ray report dated December 27, 2017. However, the Board has held that unsigned reports and reports that bear illegible signatures cannot be considered

[8] *J.P.*, Docket No. 18-1165 (issued January 15, 2019); *R.E.*, Docket No. 17-0547 (issued November 13, 2018).

[9] *M.M.*, *supra* note 5; *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *K.R.*, Docket No. 18-1388 (issued January 9, 2019); *I.J.*, 59 ECAB 408 (2008).

[11] *S.H.*, Docket No. 17-1660 (issued March 27, 2018).

[12] 5 U.S.C. § 8101(2).

[13] *See* 20 C.F.R. § 10.311; *M.B.*, Docket No. 17-1378 (issued December 13, 2018).

[14] *M.B.*, *id.*; *Jay K. Tomokiyo*, 51 ECAB 361, 367-68 (2000).

probative medical evidence because they lack proper identification.[15] Thus, this report is of no probative value.

Appellant also submitted a January 4, 2018 clinic form and a March 28, 2018 report signed by Ms. Sharp. She indicated that appellant suffered from lower back pain. The Board has held that medical reports signed solely by a nurse practitioner are of no probative value as a nurse practitioner is not considered a physician as defined under FECA and therefore is not competent to provide a medical opinion.[16]

Appellant also submitted an MRI scan report dated February 1, 2018, from Dr. Green. In his impressions, Dr. Green noted that appellant had a central disc protrusion at L4-5 and a prominent right paracentral disc herniation at L5-S1. However, the diagnostic study does not address the etiology of appellant's back condition. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and a diagnosed condition.[17]

Appellant also submitted discharge instructions dated February 14, 2018 from Dr. Sin. Dr. Sin noted appellant's limitations after surgery. This report neither provides a diagnosis nor a rationalized medical opinion regarding appellant's injury and the employment incident. The Board has held that reports that do not provide an opinion on causal relationship are of no probative value.[18]

Also of record is a Form CA-16 dated December 20, 2017. On the reverse side of the form, titled "Attending Physician's Report," a box was marked "yes" to the question of whether appellant's conditions were caused or aggravated by the employment activity described. The signature contained in the physician's box on the form, however, is illegible. The Board has held that reports which contain an illegible signature have no probative value, as it is not established that the author is a physician.[19]

As appellant has not submitted sufficiently rationalized medical evidence to support his claim that he sustained an injury causally related to the accepted December 12, 2017 employment incident, he has not met his burden of proof.

[15] *See R.R.*, Docket No. 18-1093 (issued December 18, 2018).

[16] *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). *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

[17] *J.M.*, Docket No. 17-1688 (issued December 13, 2018); *see S.G.*, Docket No. 17-1054 (issued September 14, 2017).

[18] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[19] *See D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a traumatic injury causally related to the accepted December 12, 2017 employment incident.[20]

ORDER

IT IS HEREBY ORDERED THAT the July 3, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 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

[20] On December 20, 2017 the employing establishment issued a Form CA-16, authorization for examination and/or treatment. When it properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).