

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

A.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Millersville, PA, Employer)

Docket No. 19-0266
Issued: May 28, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 16, 2018 appellant filed a timely appeal from an October 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that his diagnosed conditions are causally related to the accepted October 28, 2017 employment incident.

FACTUAL HISTORY

On October 31, 2017 appellant, then a 61-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that at approximately 1:20 p.m. on October 28, 2017, his service vehicle was struck horizontally by another driver who ignored a red traffic light, injuring his neck, right shoulder, and left ankle while in the performance of duty. On the reverse side of the claim

¹ 5 U.S.C. § 8101 *et seq.*

form, the employing establishment indicated that appellant stopped work on the date of the injury and had not yet returned.

Appellant was transported to the emergency department by ambulance. In an October 28, 2017 report, emergency medical technician (EMT), Dustin Mosher, recorded that appellant “complain[ed] of right shoulder pain possibly from seatbelt ... [and] reported that a maroon colored sedan struck the rear left side of the vehicle [causing] the mail truck to go up onto two wheels and then landed. The mail truck had minor damage.... The maroon vehicle had minor/moderate damage.”

A note from registered nurse Mickey McDonough reflects that appellant was evaluated in the Lancaster General Health Emergency Department on October 28, 2017. He ordered appellant to remain off work pending further evaluation.

In a development letter dated November 13, 2017, OWCP advised appellant of the need for additional factual information and medical evidence in support of his claim for FECA benefits. It specifically inquired about the circumstances of the alleged causative employment incident, including witnesses and the immediate effect of the injury. The attached factual questionnaire also included queries as to the existence of any related preexisting conditions. OWCP also requested that appellant provide a narrative report from his attending physician, which was required to include a diagnosis and a medical explanation as to how the reported work incident either caused or aggravated a medical condition. It afforded him 30 days to submit the requested information.

A computerized tomography (CT) scan of appellant’s cervical spine on October 28, 2017 revealed a reversal of the cervical curvature and degenerative changes, but no acute fracture. An October 28, 2017 left ankle x-ray showed no left ankle fracture or dislocation.

Emergency department notes dated October 28, 2017 and countersigned by Dr. Seth M. Katz, a Board-certified specialist in emergency medicine, reflect that “[appellant] is a local [letter carrier] who was driving his vehicle ... when he was T-boned on the passenger side by another vehicle.... Arrives to the emergency room with some right lateral neck pain that radiates into his right shoulder. He is also having some pain to his left ankle.” The notes document patient’s diagnosis history, which included arthritis, asthma, bronchitis, a broken right arm of unknown year, and rheumatoid arthritis. The notes then detailed appellant’s surgical history and listed appellant’s conditions, including: (1) hyperlipidemia; (2) asthma; (3) bone loss; (4) Raynauds’ syndrome; (5) carpal tunnel syndrome; (6) ulnar neuropathy of right upper extremity; and (7) rheumatoid arthritis involving multiple sites with positive rheumatoid factor. After noting the negative results of the CT scan and the x-ray, Dr. Katz concluded that appellant’s examination was overall benign. Appellant was discharged and informed when to return.

By decision dated December 15, 2017, OWCP denied appellant’s claim. It accepted that the October 28, 2017 incident occurred as alleged and that a medical condition(s) had been diagnosed. OWCP denied the claim, however, as causal relationship had not been established between the diagnosed condition(s) and the accepted October 28, 2017 employment incident.

On April 30, 2018 OWCP received additional copies of the emergency department notes. Also submitted was the Millersville Borough Police Department report of the accident.

Visit notes dated October 31, 2017 from registered nurse Kara Doberstein repeated the patient history contained in the emergency department triage, and noted that appellant continues to have right shoulder and neck soreness without relief from the muscle relaxants. Ms. Doberstein diagnosed neck muscle strain.

On July 27, 2018 appellant requested reconsideration of the December 15, 2017 decision based on the new evidence submitted.

By decision dated October 25, 2018, OWCP denied modification of its December 15, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 of FECA,³ 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 to the employment injury.⁴ 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.⁵

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.⁶ 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 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.⁹

² *Id.*

³ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁷ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *J.P.*, *supra* note 3; *L.T.*, *supra* note 7; *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹¹ 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).¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his diagnosed conditions are causally related to the accepted October 28, 2017 employment incident.

The emergency department notes of October 28, 2017 by Dr. Katz reflect that appellant visited the emergency department after the accepted incident. The list of appellant's conditions included: (1) hyperlipidemia; (2) asthma; (3) bone loss; (4) Raynauds' syndrome; (5) carpal tunnel syndrome; (6) ulnar neuropathy of right upper extremity; (7) rheumatoid arthritis involving multiple sites with positive rheumatoid factor. While appellant's visit to the emergency department was prompted by the accepted incident of October 28, 2017, Dr. Katz does not offer an opinion on causal relationship. 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.¹³ This report, therefore, is insufficient to establish appellant's claim.

In addition to the report by Dr. Katz, OWCP received various treatment records authored by registered nurses and EMTs. As these providers are not considered "physician[s]" as defined by FECA, their respective reports are insufficient for purposes of establishing entitlement to FECA benefits.¹⁴

Appellant's October 28, 2017 diagnostic studies are also insufficient to establish causal relationship. The Board has held that diagnostic studies lack probative value as they do not provide

¹⁰ *E.M.*, *supra* note 6; *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² *Id.*

¹³ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ Under FECA a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See* 5 U.S.C. § 8102(2); *D.B.*, Docket No. 16-1219 (issued November 8, 2016) (an EMT is not considered a physician under FECA); *M.M.*, Docket No. 16-1617 (issued January 24, 2017); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA); *see also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

an opinion on causal relationship between appellant's employment incident and a diagnosed condition.¹⁵

Consequently, the Board finds the medical evidence of record is insufficient to meet appellant's burden of proof to establish causal relationship between the diagnosed condition(s) and the accepted October 28, 2017 employment incident.

Appellant may submit new evidence and/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 that his diagnosed conditions are causally related to the accepted October 28, 2017 employment incident.

ORDER

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

Issued: May 28, 2019
Washington, DC

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

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

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

¹⁵ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).