United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 19-0791**
	)	**Issued: October 9, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Laurinburg, NC, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 27, 2019 appellant filed a timely appeal from a November 6, 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 lumbar strain causally related to the accepted August 30, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the November 6, 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 September 6, 2018 appellant, then a 41-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 30, 2018 he experienced lower back pain after heavy lifting while in the performance of duty. He stopped work on September 4, 2018.

In a supplemental statement, received on September 13, 2018, appellant explained that on August 30, 2018 he performed his normal duties, including breaking down packages and loading tubs of circulars into a truck. He indicated that, prior to his shift ending, he sat down in the breakroom and noticed pain in his lower back. When appellant awoke the following morning, the pain was more severe. He reported to work and advised a coworker that he had pain in his back and she broke down packages for him while he performed her role of sorting letters, in hopes that this would help his back. When he reported to work the following day, appellant used a back brace to break down packages and flats; however, the next morning, the pain was unbearable and he notified the postmaster of his condition.

In a witness statement dated September 8, 2018, H.M. indicated that she reported to work on August 31, 2018 and noticed that appellant was walking slowly. Appellant advised that he had pain in his back. He accepted H.M.'s offer to switch tasks so that he could rest his back.

In a statement dated September 10, 2018, A.C., a supervisor, indicated that appellant called-in on September 6, 2018 and alleged that he sustained an injury on August 30, 2018 and was going to seek medical attention. He advised that the alleged date of injury was actually August 29, 2018 and that appellant never mentioned to him or gave any inclination that he was experiencing any type of pain.

In a separate statement of even date, Postmaster S.R., related that on September 4, 2018 appellant advised her that his back was hurting and he needed to leave. When she asked what happened, he advised that he injured his back on August 30, 2018. Appellant explained that he did not report the injury initially because he was not sure when exactly he injured his back and he thought the pain would subside with rest. S.R. further advised that he seemed to be working fine and without pain on the alleged date of injury and did not report the injury to management until five days after it allegedly occurred.

Appellant also submitted two physical therapy treatment notes dated September 6, 2018 and a September 6, 2018 duty status report (Form CA-17) from a nurse practitioner.

In a September 14, 2018 development letter, OWCP requested that appellant provide additional factual and medical information in support of his claim, including a detailed factual statement and a report from his attending physician addressing causal relationship between any diagnosed condition(s) and the claimed August 30, 2018 work incident. It afforded him 30 days to respond.

In response, appellant submitted physical therapy treatment notes dated September 6 to October 11, 2018.

Appellant further submitted a narrative statement indicating that his federal duties required breaking down packages that could weigh up to 70 pounds and this process involved frequent and

repetitive bending, kneeling, twisting, and lifting. The process typically took approximately two to four hours to complete depending on the volume for that day. Appellant related that, on August 30, 2018, the date of injury, he was working at his duty station starting at 5:00 a.m. for the distribution of incoming mail and he was injured while lifting tubs of mail from the floor of the dock and placing them on a "boat cart." The tubs weighed an estimated 30 to 40 pounds and he stacked the tubs at three levels on the cart, which was chest-high.

In a reports dated September 20, and 27, 2018, Dr. Martin Berger, a Board-certified family practitioner, diagnosed lumbar strain. He related that appellant was seen for a follow up for his back pain that had greatly improved, but he had some pain with standing or sitting for extended periods of time.

In an October 4, 2018 report, Dr. Berger indicated that appellant began working limited duty on September 26, 2018 and his symptoms were improving. He increased appellant's work tolerance to 35 pounds maximum lifting.

On October 18, 2018 Dr. Berger reported that appellant had not had physical therapy since his last visit and released him from care and returned him to regular duty.

By decision dated November 6, 2018, OWCP found that appellant had established the August 30, 2018 employment incident occurred as alleged. It determined, however, that the medical evidence of record was insufficient to establish that he sustained a diagnosed condition causally related to the accepted work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 of FECA, 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.[4] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

[3] *Supra* note 1.

[4] *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[5] *K.V.* and *M.E.*, *id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

time, place, and in the manner alleged.[6] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[9] 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).[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lumbar strain causally related to the accepted August 30, 2018 employment incident.

Dr. Berger consistently diagnosed lumbar strain, but he did not explain how the diagnosed condition was causally related to the accepted employment incident. As the attending physician failed to address causal relationship, his reports are insufficient to meet appellant's burden of proof.[11] Dr. Berger's opinion is therefore insufficient to establish the claim.

Appellant further submitted a duty status report (Form CA-17) dated September 6, 2018 from a nurse practitioner. He also provided physical therapy treatment notes. The Board has held that medical reports signed solely by a nurse practitioner or physical therapist are of no probative value as such health care providers are not considered physicians as defined under FECA and are therefore not competent to provide medical opinions.[12] Consequently, this evidence is also insufficient to establish appellant's claim.

[6] *G.C.*, Docket No. 18-0506 (issued August 15, 2018).

[7] *Id*.

[8] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[10] *Id*.; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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

[12] *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). *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA); *J.M.*, 58 ECAB 448 (2007) (physical therapists are not considered physicians under FECA).

As appellant has not submitted rationalized medical evidence sufficient to establish an injury causally related to the accepted employment incident, the Board finds that he has not met his burden of proof.

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 a lumbar strain causally related to the accepted August 30, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 9, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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