United States Department of Labor
Employees' Compensation Appeals Board

E.R., Appellant	)	
	)	
and	)	**Docket No. 20-0880**
	)	**Issued: December 2, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer	)	
	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 12, 2020 appellant filed a timely appeal from an October 25, 2019 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 cervical conditions causally related to the accepted February 12, 2019 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 February 22, 2019 appellant, then a 28-year-old sales and service distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on February 12, 2019 he strained his upper back while in the performance of duty. He stopped work that day. In a February 12, 2019 statement, appellant recounted that, while in parcel post, he was picking up a package and suddenly felt sharp pain and significant discomfort in his back. He indicated that when the pain continued after a break, he left his work assignment early and sought medical treatment from health professionals.

In a February 15, 2019 work status note, Benjamin Anderson, a certified physician assistant, reported a diagnosis of strain of the cervical spine ligaments. He opined that appellant was unable to work from February 12 to March 18, 2019.

In a March 19, 2019 development letter, OWCP informed appellant that, when his claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time from work and; therefore, payment of a limited amount of medical expenses was administratively approved without formal consideration of the merits of his claim. It, however, reopened his claim for consideration of the merits because he had not yet returned to full-time work, and that his claim would now be formally adjudicated. OWCP advised appellant of the deficiencies of his claim, requested additional factual and medical evidence, and provided a questionnaire for his completion. It afforded him 30 days to respond.

In a March 20, 2019 duty status form report (Form CA-17), an unknown provider with an illegible signature noted clinical findings of neck and upper back pain and limited range of motion. Appellant was advised to not work.

By decision dated May 29, 2019, OWCP accepted that the February 12, 2019 employment incident occurred, as alleged, but denied appellant's traumatic injury claim because the evidence of record did not include medical evidence containing a diagnosis in connection with the accepted employment incident.

On August 12, 2019 appellant requested a review of the written record by a representative from OWCP's Branch of Hearings and Review.

OWCP received a February 15, 2019 report from Dr. Theodore J. Fisher, a Board-certified orthopedic surgeon. Dr. Fisher recounted that on February 12, 2019 appellant was working as a clerk for the employing establishment when he leaned forward to lift a package and experienced sharp pain in the posterior area of his neck radiating into his right shoulder blade. Upon examination of appellant's cervical spine, he observed tenderness over the C5 through C7 cervical paraspinous muscles and over the bilateral upper trapezius and right medial scapular border. Spurling's and Lhermitte's maneuver revealed increased neck pain. Dr. Fisher reported that sensory examination of the bilateral upper extremities was within normal limits. He also indicated that x-ray films taken that day revealed mild collapse of disc height at the C5-6 cervical disc level and mildly reversed lordosis. Dr. Fisher diagnosed strain of the cervical spine. He advised that appellant remained off work.

In progress notes dated March 20 and April 24, 2019, Dr. Fisher indicated that appellant was seen for reevaluation of his neck pain and noted that his pain had improved, but he still complained of difficulty looking down. He provided examination findings and diagnosed strain of the ligaments of the cervical spine and thoracic back pain. In the April 24, 2019 note, Dr. Fisher indicated that appellant could return to modified-duty work on April 29, 2019.

Appellant also provided physical therapy treatment records dated February 18 through March 11, 2019.

By decision dated August 29, 2019, OWCP's Branch of Hearings and Review denied appellant's request for a review of the written record. It determined that the request was untimely filed as it was postmarked on August 12, 2019, more than 30 days after its May 29, 2019 decision. After exercising its discretion, OWCP further found that the issue in the case could equally well be addressed through the reconsideration process.

On September 17, 2019 appellant requested reconsideration of the May 29, 2019 decision and resubmitted Dr. Fisher's February 15, March 20, and April 24, 2019 progress notes.

By decision dated October 25, 2019, OWCP modified the August 29, 2019 decision and found that the medical evidence of record was sufficient to establish diagnosed cervical conditions. However, it denied appellant's claim, finding insufficient medical evidence to establish that appellant's conditions were causally related to the accepted February 12, 2019 employment 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, including 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,[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 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 whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.[7]

[3] *Supra* note 1.

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

[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] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

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 time, place, and in the manner alleged.[8] Second, the employee must submit evidence, in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[9]

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.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 factor(s) identified by the employee.[11] 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.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish cervical conditions causally related to the accepted February 12, 2019 employment incident.

In his reports of February 15, March 20, and April 24, 2019, Dr. Fisher described the February 12, 2019 history of injury and provided examination findings. He diagnosed strain of the ligaments of the cervical spine and thoracic back pain. Dr. Fisher did not, however, 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 or disability is of no probative value on the issue of causal relationship.[13] As such, the Board finds that these reports are insufficient to establish appellant's claim.

[8] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *See S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

[11] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[12] *James Mack*, 43 ECAB 321 (1991).

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

Appellant also received treatment from Mr. Anderson, a certified physician assistant. Mr. Anderson's February 15, 2019 work status note is of no probative value because physician assistants are not considered physicians as defined under FECA.[14]

Additionally, OWCP received a Form CA-17, dated March 20, 2019, from an unknown provider. The Board has previously held, however, that reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.[15] This report, therefore, is insufficient to establish appellant's claim.

As the medical evidence of record does not contain rationalized medical evidence establishing causal relationship between appellant's diagnosed cervical conditions and the accepted February 12, 2019 employment incident, the Board finds that appellant 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 cervical conditions causally related to the accepted February 12, 2019 employment incident.

[14] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also 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); 20 C.F.R. § 10.5(t). *George H. Clark*, 56 ECAB 162 (2004) (physician assistant are not considered physicians under FECA).

[15] *G.N.*, Docket No. 19-0184 (issued May 29, 2019); *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

ORDER

IT IS HEREBY ORDERED THAT the October 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board