United States Department of Labor
Employees' Compensation Appeals Board

R.D., Appellant	)	
	)	**Docket No. 19-1528**
and	)	**Issued: January 17, 2020**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Ybor City, FL, 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 July 10, 2019 appellant filed a timely appeal from a June 10, 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 a medical condition causally related to the accepted April 13, 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 April 13, 2019 appellant, then a 60-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he was involved in a motor vehicle accident while in the performance of duty. He claimed that this resulted in neck and low back pain with radiculopathy, headache, pain in the mid-back and left shoulder, sleep disturbance, anxiety, and abrasion of the left leg.

The employing establishment issued an authorization for examination and medical treatment (Form CA-16). In an April 16, 2019 attending physician's report, Part B of the Form CA-16, a chiropractor with an illegible signature noted a history of injury that appellant was involved in a motor vehicle accident. The chiropractor provided examination findings and diagnosed chronic periodontitis, other cervical disc displacement, acute post-traumatic headache, sacroilitis not elsewhere classified, and pain in the thoracic spine. The chiropractor checked a box marked "yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. He also indicated that appellant was totally disabled from work from April 15 through 22, 2019 and could resume regular work on April 22, 2019.

In an April 16, 2019 duty status report (Form CA-17), a chiropractor with an illegible signature reiterated appellant's history of injury, the prior diagnoses, and opinion on causal relationship. The chiropractor provided an additional diagnosis of low back pain and noted that appellant was unable to perform his regular work duties.

OWCP, in a development letter dated May 1, 2019, advised appellant of the deficiencies of his claim, informed him of the type of medical and factual evidence needed, and provided a questionnaire for his completion. Appellant was afforded 30 days to submit the necessary evidence.

In an April 13, 2019 report, Dr. Lindsay A. Freeman, an emergency medicine physician, noted a history of injury that on that date appellant was a restrained driver of a postal truck that was struck on the front passenger side by a sport utility vehicle. She discussed physical examination findings and reviewed diagnostic test results. Dr. Freeman diagnosed neck pain, and acute pain of the left shoulder.

In a statement dated May 12, 2019, appellant responded to OWCP's development questionnaire. He noted that he was headed to lunch in a postal van at approximately 12:15 p.m. at the time of the motor vehicle accident. Appellant reiterated that he sustained neck, back, left shoulder, left, left leg, and headache injuries as a result of the April 13, 2019 motor vehicle accident. He also claimed that he experienced pain in both knees, and a burning sensation and numbness in his legs, arms, hands, and feet resulting from the accident.

April 13, 2019 discharge instructions from Tampa General Hospital indicated that appellant was seen by Dr. Freeman on that date and was diagnosed with neck pain, and acute pain of the left shoulder, following a motor vehicle accident.

In an April 15, 2019 patient information form, appellant again attributed his neck, back, shoulders, and legs to the April 13, 2019 motor vehicle accident.

On April 18, 2019 Dr. Cecilio Torres-Ruiz, an internist, reported a history of injury that on April 13, 2019 appellant was a restrained driver of a vehicle that was struck on the front right side by another vehicle. He noted appellant's chief complaints of pain in the cervical and lower back regions, left leg wound and pain, and recurrent headaches. Dr. Torres-Ruiz provided a review of systems, and discussed findings on physical examination. He provided impressions of pain in the cervical, thoracic, and lumbar regions, left leg healed wound, and muscle spasm. Dr. Torres-Ruiz opined that, based on appellant's history and physical examination, his symptomatology was directly attributed to the aforementioned motor vehicle accident. He indicated that his subjective complaints correlated well with both the mode of injury and objective clinical findings.

Diagnostic testing reports dated April 24, 2019 were received from Dr. Heather Kahan, a Board-certified diagnostic radiologist. In an April 24, 2019 lumbar spine magnetic resonance imaging (MRI) scan, Dr. Kahan provided impressions of grade 1 retrolisthesis of L4 on L5, and a broad-based bulging annulus and dorsal osteophytic ridging related to the spondylolisthesis defect with compression on the thecal sac, disc desiccation, and moderate bilateral facet hypertrophy at the L4-5 level. She also provided an impression of a three-millimeter left posterolateral disc herniation extending into the left neural foramen with severe left-sided neural foraminal stenosis and compression on the exiting left L5 nerve root. Dr. Kahan indicated that the herniated disc material also compressed the left S1 nerve root. There was diffuse disc desiccation and asymmetric hypertrophy of the left facet joint. There was also a small right-sided facet effusion.

In an April 24, 2019 cervical spine MRI scan report, Dr. Kahan provided impressions of: straightening and reversal of the normal cervical lordosis consistent with marked torticollis/ cervical strain; a two-millimeter (mm) posterior osteophyte/herniated disc complex with compression of the thecal sac, intervertebral disc space narrowing, dessiccation, and moderately severe left-sided neural foraminal stenosis at the C3-4 level; a one-to-two-mm broad-based diffuse posterior disc herniation with compression of the thecal sac and mild intervertebral disc space narrowing at the C4-5 level; less than one-mm focal right paracentral disc herniation with compression of thecal sac and visualization with a small annular tear/fissure at the C5-6 level; and a one-to-two-mm broad-based left posterolateral/foraminal disc herniation resulting in severe left-sided neural foraminal stenosis with intervertebral disc space narrowing and visualization of a small paracentral annual tear/fissure at the C6-7 level.

An April 15, 2019 diagnostic imaging report indicated that a cervical spine imaging study performed on that day revealed ligament laxity, grade 1 anterolisthesis upon flexion at C2-3, and grade 1 retrolisthesis upon extension at C4-5. The report also indicated that a lumbar spine imaging study performed on even date revealed a deficient high pelvis.

By decision dated June 10, 2019, OWCP accepted that the April 13, 2019 employment incident occurred as alleged, but denied the claim finding that the medical evidence submitted was insufficient to establish a diagnosed medical condition causally related to the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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 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] and 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 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.[7] There are 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.[8] The second component is whether the employment incident caused a personal injury.[9]

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 causal relationship between the diagnosed condition and the implicated employment incident 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 incident.[12]

[3] *Supra* note 1.

[4] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *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] *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *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] *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *E.M., id.*; *John J. Carlone*, 41 ECAB 354 (1989).

[10] *S.S., supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

[11] *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[12] *Id.*

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted April 13, 2019 employment incident.

In an April 13, 2019 report, Dr. Freeman noted a history of the accepted April 13, 2019 employment incident. She addressed physical examination findings and reviewed diagnostic test results. Dr. Freeman diagnosed motor vehicle collision, initial encounter, neck pain, and acute pain of the left shoulder. However, these reports do not contain a specific opinion as to the cause of the diagnosed conditions. 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] These reports therefore are insufficient to establish appellant's claim.

In an April 18, 2019 report, Dr. Torres-Ruiz noted a history of the accepted April 13, 2019 employment incident. He discussed findings on physical examination and provided impressions of pain in the cervical, thoracic, and lumbar regions, left leg healed wound, and muscle spasm. Dr. Torres-Ruiz opined that, based on appellant's history and physical examination, his symptomatology was directly attributable to the accepted work incident. He noted that his subjective complaints correlated well with the mechanism of injury and objective clinical findings. The Board has held that "pain" and "spasm" are symptoms and not diagnoses.[14] As Dr. Torres-Ruiz did not diagnose an actual medical condition causing appellant's symptoms, his report lacks probative value and is insufficient to establish appellant's claim.

The April 16, 2019 reports from a chiropractor offered an opinion on causal relationship between appellant's diagnosed periodontal, cervical, thoracic, and lumbar spine, headache, and pelvis conditions and the accepted April 13, 2019 employment incident. However, chiropractors are only considered physicians under FECA, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist, 5 U.S.C. § 8101(2).[15] The Board finds that these submitted reports are of no probative value because the chiropractor did not treat spinal subluxations as demonstrated by x-ray to exist.

Appellant also submitted diagnostic testing reports dated April 15 and 24, 2019. The Board has held that diagnostic studies lack probative value as they do not address whether the

[13] *A.L.*, Docket No. 18-1756 (issued April 15, 2019); *K.E.*, Docket No. 18-1357 (issued March 26, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

[14] *J.S.*, Docket No. 19-0863 (issued November 4, 2019); *V.B.*, Docket No. 19-0643 (issued September 6, 2019).

[15] Section 8101(2) of FECA provides that medical opinion, in general, can only be given by a qualified physician. This section 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. 5 U.S.C. § 8101(2). Section 8101(3) of FECA, which defines services and supplies, limits reimbursable chiropractic services 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. 5 U.S.C. § 8101(3). *See H.K.*, Docket No. 19-0429 (issued September 18, 2019); *K.J.*, Docket No. 18-1520 (June 13, 2019); *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

employment incident caused any of the diagnosed conditions.[16] Such reports are therefore insufficient to establish appellant's claim.

As there is no well-reasoned medical opinion establishing causal relationship, the Board finds that appellant has not met his burden of proof.[17]

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.[18]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted April 13, 2019 employment incident.

[16] *See F.D.*, Docket No. 19-0932 (issued October 3, 2019); *B.C.*, Docket No. 18-1735 (issued April 23, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[17] *See F.D., id.*; *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

[18] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form 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. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 17, 2020
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