United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 19-0844**
	)	**Issued: May 29, 2020**
DEPARTMENT OF DEFENSE, DEFENSE COMMISSARY AGENCY, Memphis, TN, 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
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 11, 2019 appellant filed a timely appeal from a December 10, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury causally related to the accepted October 14, 2017 employment incident.

FACTUAL HISTORY

On October 24, 2017 appellant, then a 41-year-old meat cutter, filed a traumatic injury claim (Form CA-1) alleging that on October 14, 2017 he injured his left arm and back when he

[1] 5 U.S.C. § 8101 *et seq.*

slipped on water while in the performance of duty. He explained that he slipped on a concrete floor while taking off his meat coat, causing him to fall onto his back, left shoulder, and left arm. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on October 17, 2018.

A certification of visit form with an illegible date and signature indicated that appellant was able to return to work on October 20, 2017.

On October 23, 2017 Dr. Douglas E. Farst, a Board-certified internist, found that appellant should be excused from work until October 30, 2017 because of a recent injury to his back as well as other chronic medical conditions.

In an October 26, 2017 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim, including a physician's report explaining the causal relationship between appellant's claimed condition and specific work factors. OWCP afforded appellant 30 days to submit the requested evidence.

Subsequently, OWCP received an October 17, 2017 emergency department report from Dr. Muhammad Saleem, a Board-certified internist, who indicated that appellant had received treatment on that date for aches and pain due to a fall.

An October 17, 2017 x-ray of appellant's lumbosacral spine revealed stable degenerative disc disease at L5-S1. An x-ray of his chest revealed minor anterior thoracic spine osteophytes. X-rays obtained of appellant's sternum, spinal sacrum, coccyx, and left shoulder were unremarkable.

In an October 17, 2017 report, Dr. Farst advised that appellant had been evaluated after he reported a fall at work. He noted that "[Appellant] has a history of fibromyalgia, chronic low back pain, knee pain, [and] pelvic pain that appears to have been aggravated by the fall." Dr. Farst referred appellant for physical therapy.

In an October 30, 2017 certification of visit form, a nurse advised that appellant had received treatment on that date and that it was unknown if he could return to work.

Appellant attended physical therapy and was evaluated on October 31, 2017.

A health care provider with an illegible signature indicated on a December 4, 2017 certification of visit form that appellant had been evaluated on that date and could not work until January 2, 2018.

On December 4, 2017 a nurse noted that appellant had fallen at work. She advised that appellant had increased abdominal pain and back spasms and severe right hip pain.

By decision dated December 8, 2017, OWCP accepted that the October 14, 2017 employment incident occurred as alleged, but denied the claim finding that the medical evidence of record was insufficient to establish the claim as it did not include a specific diagnosis in

connection with the accepted employment incident. It noted that pain was a symptom, not a valid medical diagnosis.

On December 8, 2017 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

In a statement dated December 14, 2017, appellant asserted that the medical evidence supported that his preexisting hip pain, fibromyalgia, lower lumbar strain, feet pain, spasms, and knee pain were aggravated by his workplace fall.

In a January 23, 2018 note, a nurse indicated that Dr. Farst had evaluated appellant on that date and that he could return to modified light-duty work on February 26, 2018.

In an April 9, 2018 statement, appellant described the employment incident, noting that he was off work from October 14, 2017 to January 3, 2018. He recounted the course of his treatment and use of leave.

By decision dated May 18, 2018, OWCP's hearing representative affirmed the December 8, 2017 decision. She found that the medical evidence of record was insufficient to establish that a medical condition was diagnosed in connection with the accepted employment incident.

Subsequently, OWCP received December 21, 2017 physical therapy reports.

In an August 8, 2018 report, Dr. Farst indicated that appellant had a history of fibromyalgia that had been managed until a fall at work exacerbated his symptoms. He advised that appellant had chronic low back pain and migraines that had begun after his fall, and chronic right hip pain due to osteoarthritis. Dr. Farst discussed appellant's complaints of pain with bilateral weakness of the legs and pain throughout the right lower extremity. He noted that a December 21, 2017 x-ray of appellant's right hip displayed spurring and degenerative changes which also appeared on his left hip. Dr. Farst indicated that an August 3, 2018 lumbar spine magnetic resonance imaging (MRI) scan showed degenerative changes.

On August 10, 2018 appellant requested reconsideration. He described his fall and asserted that it had caused sciatic nerve damage.

By decision dated September 7, 2018, OWCP modified its May 18, 2018 decision to find that appellant had established the medical component of fact of injury by providing medical evidence indicating that his preexisting fibromyalgia and osteoarthritis had been aggravated by the accepted October 14, 2017 employment incident. However, it found that the medical evidence of record was insufficiently rationalized to establish causal relationship between a diagnosed medical condition and the accepted October 14, 2017 employment incident.

In an October 16, 2018 letter, Dr. Farst advised that appellant's October 2017 fall at work had exacerbated his symptoms of fibromyalgia and his right hip osteoarthritis. He further found that the fall had exacerbated his chronic lumbar pain and migraines.

On October 26, 2018 appellant requested reconsideration. He related that the newly submitted medical report from Dr. Farst addressed the nature and extent of his injuries from his workplace fall.

By decision dated December 10, 2018, OWCP denied modification of the September 7, 2018 decision. It found that the medical evidence of record was insufficient to establish that the accepted October 14, 2017 employment incident aggravated a diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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,[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 has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[6] 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]

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]

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[2] *Id*.

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *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] *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).

[6] *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

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

[8] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *L.D., id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury casually related to the accepted October 14, 2017 employment incident.

In a report dated August 8, 2018, Dr. Farst noted that appellant's fall at work had exacerbated his symptoms of preexisting fibromyalgia. He further noted that he had chronic pain in his right hip due to osteoarthritis, and chronic low back pain and migraines that had begun after his fall. On October 16, 2018 Dr. Farst opined that appellant's fall at work in October 2017 had exacerbated his right hip osteoarthritis, fibromyalgia, chronic lumbar pain, and migraines. He did not, however, provide sufficient rationale explaining how, physiologically, the accepted employment incident either caused or contributed to the diagnosed conditions.[13] Further, the Board has held that medical rationale is particularly necessary where, as here, there are preexisting conditions involving some of the same body parts.[14] In such cases, the Board has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition.[15] Dr. Farst failed to provide this rationale and thus his opinion is insufficient to meet appellant's burden of proof.[16]

In a report dated October 17, 2017, Dr. Farst noted that appellant had a history of fibromyalgia and pain in his back, knee, and pelvis which appeared to have been aggravated by the fall. His opinion that appellant's fall at work appeared to have aggravated his fibromyalgia is speculative in nature, and the Board has held that medical opinions that are speculative or equivocal have little probative value.[17] Thus, Dr. Farst's report is insufficient to meet his burden of proof to establish his claim.[18]

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[11] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[13] *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[14] *A.M.*, Docket No. 19-1138 (issued February 18, 2020); *A.J.*, Docket No. 18-1116 (issued January 23, 2019).

[15] *Id*.

[16] *Id*.

[17] *D.P.*, Docket No. 19-1916 (issued April 29, 2020); *A.C.*, Docket No. 19-1607 (issued April 23, 2020).

[18] *See A.S.*, Docket No. 19-1955 (issued April 9, 2020).

In an emergency treatment report dated October 17, 2017, Dr. Saleem indicated that appellant had received treatment on that date after a fall. On October 23, 2017 Dr. Farst advised that he should not work until October 30, 2017 because of a recent back injury and other conditions. Neither physician, however, addressed causation. 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.[19]

Appellant also submitted form reports containing an illegible signature which addressed appellant's disability from employment. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[20] Therefore these reports are insufficient to establish the claim.

Appellant submitted physical therapy reports dated October 31 and December 21, 2017. He also submitted reports from a nurse dated October 30 and December 4, 2017 and January 23, 2018. However, certain healthcare providers such as physician assistants, nurses, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[21] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[22]

Appellant submitted October 17, 2017 x-rays of his sternum, spinal sacrum, coccyx, chest, lumbosacral spine, and left shoulder. The Board has explained that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[23]

The Board finds that appellant has not submitted sufficient medical evidence to establish an injury causally related to the accepted October 14, 2017 employment incident and thus has failed to meet his burden of proof to establish his claim.[24]

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.

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[19] *See R.C.*, Docket No. 19-0376 (issued July 15, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[20] *M.A.*, Docket No. 19-1551 (issued April 30, 2020).

[21] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[22] Section 8101(2) of FECA provides that medical opinions 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. *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); *see also S.L.*, Docket No. 19-0603 (issued January 28, 2020) (a nurse is not considered a physician as defined under FECA).

[23] *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

[24] *S.H.*, Docket No. 19-1897 (issued April 21, 2020); *C.T.*, Docket No. 20-0020 (issued April 29, 2020).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an injury causally related the accepted October 14, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 29, 2020
Washington, DC

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

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

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