United States Department of Labor
Employees' Compensation Appeals Board

J.V., Appellant	)	
and	)	**Docket No. 19-1726**
	)	**Issued: March 23, 2020**
DEPARTMENT OF THE INTERIOR, FISH & WILDLIFE SERVICE, Bloomington, MN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 14, 2019 appellant filed a timely appeal from an August 12, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a cervical condition causally related to the accepted February 8, 2019 employment incident.

FACTUAL HISTORY

On February 19, 2019 appellant, then a 38-year-old park ranger, filed a traumatic injury claim (Form CA-1) alleging that on February 8, 2019, when removing snow in a government

[1] 5 U.S.C. § 8101 *et seq.*

parking area, he slipped on ice while maneuvering a snow blower and strained his left shoulder, lower-middle back and neck while in the performance of duty. He further alleged that he fell backwards from his left foot, catching himself with his left hand and "rear" on the ground. Appellant did not stop work.

In a February 22, 2019 report, David Winecoff, a physician assistant, noted that appellant suffered an injury on February 8, 2019 when he slipped on ice at work and fell on his left side. Appellant initially reported persistent pain and tingling in his left arm, posterior shoulder and arm pit that radiated down to his fingers, as well as intermittent weakness in his left hand. Mr. Winecoff referenced an x-ray of appellant's cervical spine that demonstrated no acute pathologies, fractures or dislocations. He opined that appellant's fall caused a new onset of acute C6-7 cervical radiculopathy and referred appellant to physical therapy for rehabilitation.

In a March 13, 2019 medical report, Dr. Eric Deal, a Board-certified orthopedic surgeon, recounted appellant's history of falling at work on February 8, 2019 while snow blowing and catching himself with his left arm. Appellant indicated that he experienced pain on the left side of his neck and left shoulder, with numbness down his left arm to his hand. On evaluation Dr. Deal provided his findings, stating that based on appellant's six-week history of cervical radiculopathy, his symptoms were most consistent with C6 radiculopathy. He requested that appellant undergo a magnetic resonance imaging (MRI) scan for further evaluation.

In a development letter dated April 9, 2019, OWCP informed appellant that his claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment, and thus, limited expenses had therefore been authorized. However, a formal decision was now required. OWCP advised him of the type of factual and medical evidence required to establish his traumatic injury claim and requested a narrative medical report from appellant's physician which contained a diagnosis and provided the physician's rationalized medical explanation as to how the alleged employment incident caused his diagnosed condition. It afforded appellant 30 days to respond. No further evidence was received. No response was received.

By decision dated May 17, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the employment incident. Thus, it found that he had not established the medical component of fact of injury. OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In a June 6, 2019 narrative medical report, Dr. Deal detailed appellant's history of treatment with regard to the February 8, 2019 employment incident and noted that appellant denied any history of injury for his neck prior to the date of injury. He explained that, based on his objective physical examination, appellant's symptoms of C6 radiculopathy "likely" indicated neurological impingement in his cervical spine. Dr. Deal indicated that he would be unable to identify a specific diagnosis without a cervical MRI scan.

In a July 3, 2019 witness statement, C.S., the assistant visitor service manager, explained the events of the February 8, 2019 employment incident in which appellant fell on a patch of ice while utilizing a snow blower.

On July 11, 2019 appellant requested reconsideration of OWCP's May 17, 2019 decision.

By decision dated August 12, 2019, OWCP affirmed its decision, as modified, finding that the medical evidence of record established that appellant was diagnosed with cervical radiculopathy. It denied the claim, however, finding that he had not established that his diagnosed condition was causally related to the accepted February 8, 2019 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,[2] 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.[3] 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.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[5] First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[6] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[7]

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 sufficient to establish such causal relationship.[8] The opinion of the physician must be based on a complete factual and medical background, 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 claimant.[9]

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

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

[4] *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).

[5] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[6] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[8] *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

[9] *I.J.*, 59 ECAB 408 (2008).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a cervical injury causally related to the accepted February 8, 2019 employment incident.

In narrative medical report dated June 6, 2019, Dr. Deal detailed appellant's history of treatment in relation to the February 8, 2019 employment incident and noted that appellant had no history of a cervical injury prior to this date. He explained that based on his objective physical examination, appellant's symptoms of C6 radiculopathy "likely" indicated neurological impingement in his cervical spine. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.[10] Without explaining how, physiologically, the movements involved in the employment incident caused or contributed to the diagnosed condition, Dr. Deal's opinion is of limited probative value and insufficient to establish causal relationship.[11]

In Dr. Deal's March 13, 2019 report, he referenced appellant's history of falling on February 8, 2019 and provided that, based on appellant's six-week history of cervical radiculopathy, his symptoms were most consistent with C6 radiculopathy. While his report generally supports causal relationship, Dr. Deal did not offer any medical rationale sufficient to explain how and why he believes the February 8, 2019 employment incident could have resulted in or contributed to the diagnosed condition. Without explaining how slipping and falling on his left side caused or contributed to appellant's injuries, Dr. Deal's March 13, 2019 medical report is of limited probative value.[12]

The remaining medical evidence consists of a February 22, 2019 medical report from Mr. Winecoff, a physician assistant. The Board has held that health care providers such as physician assistants, nurses, and physical therapists are not physicians under FECA.[13] Thus, Mr. Winecoff's opinions on causal relationship do not constitute a rationalized medical opinion and has no weight or probative value.[14]

As appellant has not submitted rationalized medical evidence establishing that his condition is causally related to the accepted February 8, 2019 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

[10] *M.B.*, Docket No. 19-0840 (issued October 2, 2019); *John F. Glynn*, 53 ECAB 562 (2002).

[11] *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019).

[12] *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

[13] 5 U.S.C. § 8102(2) of FECA provides that the term 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 K.C.*, Docket No. 19-0834 (issued October 28, 2019) and *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

[14] *See A.A.*, Docket No. 19-0957 (issued October 22, 2019); *Jane A. White*, 34 ECAB 515, 518 (1983).

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 cervical injury causally related to the accepted February 8, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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