United States Department of Labor
Employees' Compensation Appeals Board

T.F., Appellant	)	
and	)	**Docket No. 21-0384**
	)	**Issued: August 25, 2021**
U.S. POSTAL SERVICE, RUGBY POST OFFICE, Brooklyn, NY, 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 January 24, 2021 appellant filed a timely appeal from an October 13, 2020 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 to consider the merits of this case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted August 28, 2020 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence to OWCP following the October 13, 2020 decision. 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 4, 2020 appellant, then a 32-year-old truck driver, filed a traumatic injury claim (Form CA-1) alleging that on August 28, 2020 he sustained a left rotator cuff tear, right elbow contusion, and neck pain when exiting his delivery vehicle which was struck by another vehicle while in the performance of duty. He stopped work on August 28, 2020.

In a development letter dated September 8, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a September 23, 2020 attending physician's report (Form CA-20) by Dr. David Kesselman, a chiropractor. Dr. Kesselman noted the August 28, 2020 employment incident and diagnosed cervical segmental dysfunction, cervical radiculitis, and muscle spasm of the left shoulder. He checked a box marked "No" indicating that he did not believe that the diagnosed conditions were caused by the August 28, 2020 employment incident. Dr. Kesselman indicated that he provided spinal manipulation, trigger point therapy, manual traction, massage, and chiropractic adjustment.

By decision dated October 13, 2020, OWCP accepted that the August 28, 2020 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a diagnosis in connection with the accepted 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, it first must be determined whether fact of injury has been established. First,

[3] *Supra* note 1.

[4] *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *C.H.*, Docket No. 20-1212 (issued February 12, 2021); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[7]

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.[8] 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 specific employment incidents identified by the employee.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted August 28, 2020 employment incident.

The record contains a September 23, 2000 Form CA-20 report from Dr. Kesselman, a chiropractor, diagnosing cervical segmental dysfunction, cervical radiculitis, and muscle spasm of the left shoulder. Chiropractors, however, are only considered physicians for purposes of FECA if they diagnose spinal subluxation based upon x-ray evidence.[10] Dr. Kesselman did not indicate that he obtained or reviewed x-rays of the cervical spine. Therefore, his report is of no probative value and is insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence establishing causal relationship between a diagnosed medical condition and the accepted August 28, 2020 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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.

[7] *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodh*ams, 41 ECAB 345, 352 (1989).

[10] Section 8101(2) of FECA provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary. 5 U.S.C. § 8101(2); *K.W.*, Docket No. 20-0230 (issued May 21, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *George E. Williams*, 44 ECAB 530 (1993).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted August 28, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 13, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2021
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