United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 21-0183**
	)	**Issued: December 7, 2021**
DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE OF IMMIGRATION REVIEW, Falls Church, VA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 15, 2020[1] appellant filed a timely appeal from a February 18, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the Federal

[1] Under the Board s *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from February 18, 2020, the date of OWCP's last decision was August 16, 2020. As this fell on a Sunday, appellant had until the following business day, Monday, August 17, 2020 to file the appeal. Since using August 20, 2020, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is August 15, 2020, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] Appellant submitted a timely oral argument request before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, he asserted that oral argument should be granted because his physicians have failed to provide the necessary paperwork. The Board, in exercising its discretion, denies appellant 's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Employees' Compensation Act[3] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[4]

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted October 18, 2019 employment incident.

FACTUAL HISTORY

On October 30, 2019 appellant, then a 51-year-old legal assistant, filed a traumatic injury claim (Form CA-1) alleging that on October 18, 2019 he experienced pain in his knee and back and numbness in his back and legs when his left knee gave out and he fell down the stairs while in the performance of duty. He explained that he twisted his right knee and rolled onto his shoulder and back when he fell. Appellant stopped work on October 18, 2019. The employing establishment indicated that he was in the performance of duty at the time of the alleged incident.

On November 20, 2019 Dr. Eric Schadler, an internist, advised that appellant should be excused from work on November 19, 2019 and could return to work as tolerated on November 25, 2019. An after visit summary of even date indicated that appellant had received treatment for lumbar pain after a fall on stairs.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated November 22, 2019 showed mild degenerative changes in the lower lumbar spine and mild neural foraminal stenosis on the left at L4-5 and on the right at L5-S1. In a November 22, 2019 note, Dr. Schadler reviewed the MRI scan and advised that appellant had degenerative changes in his low back likely causing his sciatic nerve pain.

An after visit summary dated November 27, 2019 provided that appellant had been seen on that date for right lower leg arthralgia, lumbar spinal stenosis, possible neurogenic claudication, and chronic midline low back pain with bilateral sciatica.

Appellant submitted physical therapy reports dated November and December 2019.

An MRI scan of the right knee dated December 4, 2019 revealed a complex tear of the medial meniscus. In a December 4, 2019 note, Dr. Juan Alban, an internist, indicated that the MRI scan showed a complex tear.

In a development letter dated January 2, 2020, OWCP requested that appellant submit additional factual and medical information in support of his claim, including a detailed report from

[3] 5 U.S.C. § 8101 *et seq*.

[4] The Board notes that, following the February 18, 2020 decision, OWCP received additional evidence. Appellant also 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*.

his attending physician explaining how the identified employment incident caused or aggravated a diagnosed condition. It afforded him 30 days to provide the requested information.

Thereafter, OWCP received a December 11, 2019 computerized tomography (CT) scan of appellant's head and neck showing mild degenerative changes of the cervical spine with moderate-disc narrowing at C4-5.

In an nerve conduction velocity (NCV) study and electromyogram (EMG) dated December 30, 2019 Dr. Shuja Sheikh, a neurologist, and Dr. Helene Rubeiz, a Board-certified neurologist, obtained a history of appellant experiencing chronic low back pain since 2000 radiating into the lower extremities that had worsened after surgery on appellant's left knee in February 2019. The physicians noted that appellant had also experienced neck pain radiating into his upper extremities bilaterally after a fall in October 2019. Dr. Sheikh and Dr. Rubeiz diagnosed likely bilateral distal deep peroneal neuropathies that might be an incidental finding and mild chronic neurogenic changes possibly representing bilateral mild chronic lower cervical radiculopathy.

A February 10, 2020 after visit summary indicated that Dr. Aravind Athiviraham, a Board-certified orthopedic surgeon, had evaluated appellant for a complex tear of the right medial meniscus.

By decision dated February 18, 2020, OWCP denied appellant's traumatic injury claim. It found that he had not submitted evidence sufficient to establish that he sustained the diagnosed condition of a complex tear of the right medial meniscus causally related to the accepted October 18, 2019 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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 filed within the applicable time limitation of FECA,[6] that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[7] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[8]

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.[9]

[5] *Supra* note 3.

[6] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

[8] *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

Generally, 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.[10] The second component is whether the employment incident caused a personal injury.[11]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[12] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.[13] 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 the specific employment incident.[14]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted October 18, 2019 employment incident.

Appellant has not submitted medical evidence establishing causal relationship between a diagnosed condition and the accepted October 18, 2019 employment incident. A December 30, 2019 report by Dr. Sheikh and Dr. Rubeiz included a history of the accepted employment incident and interpreted the results of electrodiagnostic testing. The physicians noted that appellant had experienced neck pain and radiculopathy into the upper extremities after an October 2019 fall. Dr. Sheikh and Dr. Rubeiz interpreted an EMG/NCV study performed on that date as showing bilateral distal deep peroneal neuropathies and mild chronic neurogenic changes possibly showing mild chronic lower cervical radiculopathy bilaterally. While the physicians provided a history of the accepted employment incident, they failed to sufficiently address 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.[15]

On November 20, 2019 Dr. Schadler found that appellant could not work on November 19, 2019 and could resume work on November 25, 2019. As he failed to provide a diagnosis or address causation, his opinion is of no probative value and is insufficient to establish the claim.[16]

[10] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[11] *Id*.

[12] *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *T.H.*, *supra* note 9.

[13] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[14] *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[15] *C.S.*, Docket No. 18-1633 (issued December 30, 2019); *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

[16] *T.S.*, Docket No. 19-0717 (issued May 22, 2020); *J.H.*, Docket No. 19-0838 (issued October 1, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Appellant submitted after visit summaries from Dr. Schadler and Dr. Alban including physical examination findings and results of diagnostic testing. However, these reports did not contain an opinion relative to causal relationship between the accepted October 18, 2019 employment incident and the diagnosed conditions. Therefore, these reports have no probative value and are insufficient to establish appellant's traumatic injury claim.[17]

Appellant submitted physical therapy reports dated November and December 2019. However, reports signed solely by a physical therapist are of no probative value as physical therapists are not considered physicians as defined under FECA.[18] These notes are, therefore, insufficient to establish appellant's traumatic injury 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted October 18, 2019 employment incident.

[17] *Id*.

[18] Section 8101(2) of FECA provides that physician includes 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); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013); *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); *see also R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the February 18, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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