

**United States Department of Labor
Employees' Compensation Appeals Board**

M.C., Appellant)	
)	
and)	Docket No. 21-1254
)	Issued: February 4, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Boston, MA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 18, 2021 appellant filed a timely appeal from an April 15, 2021 merit decision and a May 12, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issue are: (1) whether appellant has met his burden of proof to establish neck and back conditions causally related to the accepted July 13, 2020 employment incident; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 31, 2020 appellant, then a 44-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 13, 2020 he injured his lower back and the right side of his neck

¹ 5 U.S.C. § 8101 *et seq.*

when he fell while getting in and out of his truck to load outgoing mail while in the performance of duty. He did not stop work.

On August 3, 2020 the employing establishment controverted appellant's claim.

In an August 3, 2020 attending physician's report (Form CA-20), Michael R. Spenard, a certified physician assistant, noted that appellant experienced a twinge of lower back pain while getting out of his truck on July 13, 2020. He diagnosed trapezius muscle spasm.

In an August 7, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a July 31, 2020 medical note, Dr. Michael N. Fehm, a Board-certified orthopedic surgeon, diagnosed trapezius muscle spasm, lumbar strain, and cervical sprain. He prescribed physical therapy and indicated that appellant could return to work without restrictions.

In a July 31, 2020 report, Mr. Spenard noted that appellant presented with right-sided neck pain and lower back pain. He diagnosed trapezius muscle spasm and lumbar strain.

OWCP received a physical therapy report dated August 24, 2020 from Kalliope A. Micalizzi, a physical therapist. Ms. Micalizzi noted that appellant experienced lower back pain while getting out of his van at work on July 13, 2020 and diagnosed trapezius muscle spasm.

In an August 26, 2020 medical note, Dr. Fehm diagnosed cervical sprain and trapezius muscle spasm, and again prescribed physical therapy.

By decision dated October 6, 2020, OWCP accepted that the July 13, 2020 employment incident occurred as alleged. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted employment incident. Consequently, OWCP concluded that he had not met the requirements to establish an injury as defined by FECA.

On November 6, 2020 appellant requested reconsideration.

By decision dated December 2, 2020, OWCP modified the October 6, 2020 decision to find that the medical evidence of record was sufficient to establish diagnoses of cervical sprain and lumbar strain. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted July 13, 2020 employment incident.

In a January 21, 2021 report, Dr. Fehm noted that appellant had been under his care for his work-related injury. He opined that his injury was a result of unloading heavy packages several times a day for prolonged hours of getting into and out of his vehicle and driving for 10 to 13 hours a day, which caused lumbar and cervical sprain. Dr. Fehm further explained that appellant's muscle spasms were caused by remaining in the seated position for long periods of time as he was working the extended shifts for six to seven days a week due to the COVID-19 pandemic. He concluded that his injuries were directly correlated with the increased physical stress placed upon his spine.

On February 2, 2021 appellant requested reconsideration.

By decision dated April 15, 2021, OWCP denied modification of its December 2, 2020 decision.

On May 4, 2021 appellant requested reconsideration. In an attached statement dated April 25, 2021, he explained that, during the January 21, 2021 conversation, he realized that he was experiencing lower back pain from getting in and out of his truck over an extended period of time. Appellant asserted that he had been experiencing slight pain for weeks leading up to July 13, 2020. He explained that he only discussed the alleged July 13, 2020 date of injury because that was the day his pain significantly increased and he required medical assistance. Appellant noted that Dr. Fehm agreed that his injury was attributed to prolonged work duties and that on July 13, 2020 his back finally gave out.

By decision dated May 12, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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 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.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 sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁶ 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.⁷ The second component is whether the employment incident caused a personal injury.⁸

² *Supra* note 1.

³ *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).

⁴ *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).

⁵ *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).

⁶ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

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

⁸ *E.M., id.*; *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ 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.¹⁰ 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.¹¹

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

OWCP's procedures provide the proper steps required for the conversion of a claim for FECA benefits when it determines that a claimant has filed an improper claim form.¹² It notes that if upon review of an incorrect form that was filed, the actual benefits claimed by the claimant can be determined, OWCP should convert the claim to the correct type and notify the claimant and employing establishment (and any representative, if applicable) *via* letter that the claim has been converted to a different type of injury than what was originally claimed.¹³ Likewise, if OWCP cannot determine the actual benefits claimed, it is instructed to develop the claim based upon the claim form filed and direct questions to the claimant to determine the type of benefits claimed.¹⁴

In this case, appellant filed a Form CA-1 on July 31, 2020 for a traumatic injury. However, based upon the description of injury in the Form CA-1 and a subsequent statement by appellant, dated April 25, 2021, he clarified that his injuries arose from performing his work duties over a prolonged period of time. Appellant explained that, due to the COVID-19 pandemic, he was not able to have an in-depth conversation with his treating physician, Dr. Fehm, until January 21, 2021 when he realized the nature of his lower back pain. He asserted that he had been experiencing slight pain for weeks leading up to July 13, 2020 and noted that Dr. Fehm agreed that his injury was attributed to prolonged work duties. Based on this new statement and the medical evidence of record, including Dr. Fehm's January 21, 2021 report, OWCP should have further developed

⁹ *S.S., supra* note 6; *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *Id.*

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(c)(2) (June 2011); *Richard D. Wray*, 45 ECAB 758 (issued July 8, 1994) (if the actual benefits claimed by the claimant cannot be determined from review of the form, OWCP should develop the claim based upon the claim form filed and direct questions to the claimant to determine the type of benefits claimed. Based upon the response to the development letter, it should make a determination as to whether the correct claim was established and, if not, OWCP should convert the claim to the proper type of claim and notify the claimant and employing establishment of the conversion). *See also C.C.*, Docket No. 20-0451 (issued August 24, 2020).

¹³ *Id.*

¹⁴ *Id.*

the claim to determine whether appellant was claiming a traumatic injury or an occupational disease.¹⁵

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁶ OWCP has an obligation to see that justice is done.¹⁷ Consequently, the Board will remand the case for OWCP to properly develop the case in order to determine the actual benefits claimed by appellant. On remand OWCP shall follow its procedures and issue a development letter to appellant with direct questions in order to determine the type of benefits claimed.¹⁸ After this and such further development as may be deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.¹⁹

¹⁵ A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease, however, is defined as a condition produced by the work environment over a period longer than a single workday or shift. *Id.* at § 10.5(q).

¹⁶ *See, e.g., M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹⁷ *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁸ *Supra* note 12.

¹⁹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the April 15 and May 12, 2021 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 4, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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