United States Department of Labor
Employees' Compensation Appeals Board

F.V., Appellant	)	
and	)	**Docket No. 22-0138**
	)	**Issued: October 27, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Hartford, CT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On November 1, 2021 appellant filed a timely appeal from a September 23, 2021 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.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted April 30, 2021 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the September 23, 2021 decision, OWCP received additional evidence. 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 May 4, 2021 appellant, then a 46-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on April 30, 2021 he injured his right shoulder and neck when lowering a dock door while in the performance of duty. He stopped work on the date of the alleged injury.

In emergency room notes dated April 30, 2021, Matthew W. Musco, a physician assistant, noted that appellant related complaints of right-sided neck pain, which he attributed to reaching up to pull down a garage door. He performed a physical examination and noted mild tenderness in the right cervical paraspinal muscles. Mr. Musco diagnosed a cervical strain; recommended muscle relaxers and rest; and advised that appellant remain off work for three days.

In a note dated May 5, 2021, Dr. Renika McLeod-Labissiere, a Board-certified family physician, diagnosed a cervical sprain, recommended that appellant undergo x-rays of his cervical spine, and held appellant off work until May 24, 2021.

A May 10, 2021 report of x-rays of the cervical spine revealed mild spondylosis at C4-5 and C5-6.

OWCP received physical therapy notes dated May 12, 2021, from Kevin P. Berghorn, a physical therapist, who noted that appellant related complaints of pain at the top of his right shoulder, neck, scapula, and upper trapezius which he attributed to reaching for a garage door and attempting to pull it down on April 30, 2021. He noted a diagnosis of right-sided spine sprain and recommended ongoing physical therapy treatments. Appellant continued physical therapy on May 14 and 21, 2021.

In a letter dated May 24, 2021, Dr. McLeod-Labissiere recommended that appellant remain out of work until June 24, 2021. She indicated that he could thereafter return to work with restrictions of no lifting, carrying, pushing, pulling or reaching above shoulder height.

OWCP received physical therapy reports dated May 26 through June 23, 2021.

In a duty status report (Form CA-17) dated June 24, 2021, Dr. McLeod-Labissiere released appellant to return to full-duty work. She noted a diagnosis of cervical sprain "due to using doors."

Appellant continued physical treatment from June 28 through July 9, 2021.

In an August 16, 2021 development letter, OWCP informed appellant of the deficiencies of his claim, requested additional medical evidence, and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received only the certification page of its development questionnaire, which appellant had signed and dated August 27, 2021.

By decision dated September 23, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between the accepted April 30, 2021 employment incident and his diagnosed cervical condition.

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. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident 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 the specific employment incident identified by the claimant.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted April 30, 2021 employment incident.

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[3] *Supra* note 1.

[4] *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] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *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).

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 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] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

In a Form CA-17 dated June 24, 2021, Dr. McLeod-Labissiere noted a diagnosis of cervical sprain "due to using doors" on April 30, 2021. She did not, however, provide medical rationale, explaining the nature of the relationship between the diagnosed condition and the accepted employment incident. As noted above, 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.[10] Therefore, Dr. McLeod-Labissiere's June 24, 2021 Form CA-17 is insufficient to meet appellant's burden of proof.

In her May 5, 2021 note, Dr. McLeod again noted a diagnosis of cervical sprain and recommended that appellant remain out of work. She did not, however, offer an opinion as to the cause of the diagnosed condition. 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.[11] Therefore, Dr. McLeod's May 5, 2021 note is insufficient to establish appellant's claim.

The evidence of record also consists of emergency room notes by a physician assistant, and notes from a physical therapist. The Board has held that certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.[12] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[13] Thus, this evidence is insufficient to establish appellant's claim.

The remaining evidence of record consists of a report of x-rays of the cervical spine. As the Board has held, diagnostic studies, standing alone, lack probative value and are insufficient to establish the claim.[14] Consequently, this additional evidence is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted April 30, 2021 employment incident, the Board finds that he has not met his burden of proof.

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[10] *Supra* note 9.

[11] *See S.S.*, Docket No. 21-0837 (issued November 23, 2021); *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *L.D.*, Docket No. 20-0894 (issued January 26, 2021); *T.F.*, Docket No. 18-0447 (issued February 5, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *C.G.*, Docket No. 20-0957 (issued January 27, 2021) (physician assistants are not considered physicians as defined under FECA); *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).

[13] *C.G., id.*; *David P. Sawchuk, id.*

[14] *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

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 April 30, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 23, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 27, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board