United States Department of Labor
Employees' Compensation Appeals Board

F.B., Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Willimantic, CT, Employer**	))))))))	**Docket No. 13-1052** **Issued: October 24, 2013**

Appearances:
Richard Daniels, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 20, 2013 appellant filed a timely appeal from a February 21, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for compensation. 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 merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a back condition causally related to a February 20, 2010 work incident or factors of his employment.

FACTUAL HISTORY

On February 23, 2010 appellant, through his attorney, then a 43-year-old mail carrier, filed a traumatic injury claim alleging that he injured his back on February 20, 2010 when he turned to exit his truck and step down. He also noted that he had "bounced around" in his truck

[1] 5 U.S.C. § 8101 *et seq.*

all week. Appellant did not submit any evidence with the claim. The employing establishment controverted the claim.

In a February 26, 2010 letter, OWCP advised appellant of the deficiencies in his claim and requested additional factual and medical evidence. He was advised that, under FECA, the term "physician" included chiropractors only to the extent that their reimbursable services were limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray.

In a statement received March 29, 2010, appellant advised that he returned to work on Tuesday, February 16, 2010 after being out for a long weekend and the President's Day holiday. Because there was a major snow event and the back-up of mail, he was forced to use the RD19 Truck, which had a worn driver's seat with no support and a knotted shoulder harness, which could not be adjusted. Appellant indicated that he had to drive on poorly plowed roads and experienced many bumps, jolts and dismounts throughout the day. He stated that the road conditions remained bad the entire delivery week following the snowstorm, from February 17 to 20, 2010. Appellant experienced his first back spasm on February 20, 2010 while getting out of the truck to change a flat tire. He continued to work the remainder of the day, without taking lunch. The next day, appellant awoke with disabling back pain and could hardly get out of bed. He went to his chiropractor on February 22, 2010. Appellant informed his supervisor on February 23, 2010 filled out a Form CA-1 and went home.

Appellant provided the March 5 and 23, 2010 treatment notes from Dr. Thomas Gray, a chiropractor, who stated that appellant presented to his office on February 22, 2010 with complaint of severe back pain radiating into his left leg primarily and intermitted proximal right leg pain. The onset occurred after progressively "hitting ice pockets." The examination was suggestive of lumbosacral plexus disorder sprain/sprain and the diagnostic study was confirmed for lumbar IVD disorder. Dr. Gray noted that appellant was referred to Dr. Gordon D. Donald, a Board-certified orthopedic surgeon, who confirmed the diagnosis. Dr. Donald stated that appellant had a preexisting low back condition unrelated to his current injury as confirmed by pre and post magnetic resonance imaging (MRI) scans.

Appellant also provided a March 4, 2010 letter from the employing establishment to Dr. Gray; a February 24, 2010 workers' compensation questionnaire filled out by appellant; a March 5, 2010 MyoVision Dynamic Report; one page of undated patient examination; and a March 5, 2010 lumbar spine rehabilitation assessment form.

By decision dated March 31, 2010, OWCP denied appellant's claim finding that the fact of injury had not been established. It found that none of the chiropractic reports provided a diagnosis of spinal subluxation as confirmed on x-ray.

On April 8, 2010 appellant's representative requested an oral hearing, which was held on July 1, 2010. He submitted additional treatment notes from Dr. Gray, who diagnosed disc displacement, lumbosacral neuritis, sacroiliac sprain, pelvic and sacrum strains, muscle spasms, difficulty in walking, back ache and pain in limb. A February 24, 2010 MRI scan showed osteopenia and mild osteophytosis with no evidence of fracture, subluxation, bone destruction, spondylolysis or spondylolisthesis. There was also no intervertebral disc space narrowing. No additional medical evidence was received, despite the record left open for 30 days.

By decision dated August 24, 2010, an OWCP hearing representative denied the claim on the grounds that there was no diagnosed medical condition causally related to the employment incident.

On August 26, 2010 appellant's representative requested reconsideration and submitted an August 16, 2010 report from Dr. Donald who stated that appellant was evaluated on March 2, 2010 and provided a history that he had been driving a mail truck during a snowstorm. Appellant bounced around in the truck due to ice and snow and felt a jolt of low back pain. Although he was able to finish the day at work, he could not stand the next day secondary to low back pain and spasm. Dr. Donald opined that appellant sustained a herniated disc at L4-5 causing moderate spinal stenosis and symptoms consistent with neurogenic claudication. He stated that the pathology was causally related to trauma from his February 20, 2010 work accident.

In a September 14, 2010 letter, OWCP requested that Dr. Donald further address how riding in a truck on snowy roads with a seat belt that could not be adjusted caused or aggravated appellant's herniated disc. Dr. Donald responded on a copy of the September 14, 2010 letter that the activity of riding in a truck on snowy days with a seat belt that could not be adjusted was an activity that could easily result in high axial loading and torsional stresses that were well corroborated with the mechanism of annular tearing and disc herniation. Additional chiropractic treatment reports from Dr. Gray were also received.

By decision dated November 26, 2010, OWCP denied modification of its August 24, 2010 decision.

On July 11, 2011 appellant's representative requested reconsideration and provided arguments as to why Dr. Donald's reports were well rationalized.

By decision dated February 9, 2012, OWCP denied modification of the November 26, 2010 decision. It noted that, as there was a delay in rendering the decision, appellant was being accorded a merit review in order to preserve his appeal rights.

On September 13, 2012 appellant's representative requested reconsideration and noted that he previously sent a letter and a medical report from Dr. Donald. No additional evidence was received.

In a nonmerit decision dated September 28, 2012, OWCP denied appellant's reconsideration request. It found that his letter did not raise any substantive legal questions or include new and relevant evidence.

On October 31, 2012 appellant's representative again requested reconsideration. In an April 23, 2012 report, Dr. Donald noted appellant's examination findings. He stated that appellant had persistent lumbar radiculitis and low back pain causally related to a lumbar disc herniation secondary to his work injury of driving and bouncing around in his truck while delivering mail. The injury occurred on February 20, 2010 and it was clear that the axial loading and torsional activities experienced while driving a truck in adverse weather conditions, on snowy icy roads and other types of activities may physically induce lumbar disc herniation. Dr. Donald stated that the injury was without question causally secondary to the work-related event.

By decision dated February 21, 2013, OWCP denied modification of its February 9, 2012 decision.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[2] An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.[3]

Causal relationship is a medical issue[4] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,[5] must be one of reasonable medical certainty[6] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[7]

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.[8] A spinal subluxation is an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae.[9] If the diagnosis of a subluxation as demonstrated by x-ray is not established, the chiropractor is not a physician under FECA and the report of the chiropractor is of no probative value to the medical issue presented.[10]

ANALYSIS

OWCP accepted that the employment incident of February 20, 2010 occurred at the time, place and in the manner alleged. Appellant alleged that he experienced back pain when he turned and stepped out of his truck, after being bounced around in his truck due to inclement

---

[2] 5 U.S.C. § 8102(a).

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] *Mary J. Briggs,* 37 ECAB 578 (1986).

[5] *William Nimitz, Jr.,* 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[8] 5 U.S.C. § 8101(2).

[9] *See* 20 C.F.R. § 10.5(bb).

[10] *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

weather during the past week. The issue is whether his back condition resulted from the accepted employment incident. The Board finds that appellant did not meet his burden of proof to establish a causal relationship between the condition for which compensation is claimed and the employment incident.

In an August 16, 2010 report, Dr. Donald noted a history of appellant being bounced around in his mail truck due to ice and snow conditions. He opined, without providing adequate medical rationale, that appellant sustained a herniated disc at L4-5 due to the February 20, 2010 employment incident. Medical reports not providing rationale to support causal relation are of diminished probative value and are generally insufficient to meet an employee's burden of proof.[11] In a September 14, 2010 letter, OWCP requested Dr. Donald to further explain how the activity of riding in a truck on snowy days with a seat belt that could not be adjusted caused or aggravated appellant's herniated disc. Dr. Donald responded, both on a copy of OWCP's September 14, 2010 letter and in an April 23, 2012 report, that the axial loading and torsional activities appellant experienced while driving a truck in adverse weather conditions, on snowy icy roads and other types of activity, were well corroborated with the mechanism of annular tearing and disc herniation and could physically induce lumbar disc herniation. The Board finds that Dr. Donald's opinion is speculative and equivocal in nature.[12] Dr. Donald failed to explain the nature of the axial loading and torsional activities appellant experienced while driving a truck in adverse weather conditions or how such activity caused or aggravated the disc herniation.[13] Lacking thorough medical rationale on the issue of causal relationship, his reports are of limited probative value and insufficient to establish that appellant sustained an employment-related injury in the performance of duty on February 20, 2010.

A medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician.[14] Before the evidence can be considered for its probative value, the chiropractor must be established as a physician under FECA. Under FECA 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. Dr. Gray did not refer to any obtained x-rays or provide a diagnosis of spinal subluxation. The evidence of record does not establish Dr. Gray as a physician under 5 U.S.C. § 8101(2).[15]

As there is no medical evidence which offers a well-reasoned explanation of how the February 20, 2010 incident or other work-related activities caused his lumbar condition. Appellant has not met his burden of proof to establish his claim for compensation benefits. The Board will affirm the February 21, 2013 OWCP decision.

---

[11] *Albert C. Brown*, 52 ECAB 152 (2000).

[12] *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

[13] *See K.W.*, Docket No. 10-98 (issued September 10, 2010).

[14] *Gloria J. McPherson*, 51 ECAB 441 (2000).

[15] An MRI scan would not be sufficient to establish a subluxation, as FECA specifically provides the diagnosis must be demonstrated by x-ray. The Board notes that the MRI scan of record did not provide a diagnosis of a spinal subluxation. *See Jay K. Tomokiyo,* 51 ECAB 361 (2000).

On appeal, appellant's representative contended that Dr. Donald's reports provide a well-rationalized opinion supporting causal relationship. For the reasons stated, Dr. Donald failed to provide thorough medical rationale on the issue of causal relationship.

Appellant may submit new evidence or argument as part of a formal 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 that his back condition is causally related to the February 20, 2010 work incident or employment factors.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board