United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 15-69**
	)	**Issued: February 11, 2015**
DEPARTMENT OF THE INTERIOR, FISH & WILDLIFE SERVICE, Soldotna, AK, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 14, 2014 appellant filed a timely appeal from a September 16, 2014 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury in the performance of duty on January 16, 2014.

On appeal, appellant asserts that because he did not receive information regarding FECA's requirements for medical evidence in a timely manner, his claim should be accepted.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 24, 2014 appellant, then a 45-year-old law enforcement officer, filed a traumatic injury claim (Form CA-1) alleging that he injured his right hip on January 16, 2014. While unloading a snow machine from a trailer, the skis of the snow machine stuck to the trailer, causing a sled to pivot to the left, which threw him to the ground. Appellant's supervisor checked a box indicating that appellant had been injured in the performance of duty. Appellant did not stop work.

By letter dated February 3, 2014, OWCP informed appellant that the evidence of record was insufficient to support his claim for compensation. It stated that it had not received any medical evidence in his case, and asked that he submit evidence from a qualified physician. OWCP noted, "[U]nder the FECA, a 'physician' includes chiropractors only if there is a diagnosed spinal subluxation and it is demonstrated by x-ray." It afforded appellant 30 days to submit additional evidence.

By decision dated March 10, 2014, OWCP denied appellant's claim for compensation. It found that the medical evidence of record was insufficient to establish that he had been diagnosed with a condition in connection with the incident of January 16, 2014. OWCP noted that appellant had submitted no evidence other than the claim form in support of his claim. It accepted that he was a federal civilian employee who filed a timely claim and that the evidence supported that the incident of January 16, 2014 occurred as described.

On March 26, 2014 appellant requested a review of the written record before OWCP's Branch of Hearings and Review.

In a report dated January 23, 2014, Dr. Brian E. Larson, a chiropractor, diagnosed appellant with an acute mild-to-moderate pelvis and sacroiliac sprain/strain injury with associated pelvis, sacrum, and lumbar subluxation; right buttock and hip contusion; muscle spasm; right medial collateral ligament strain; and right knee sprain/strain. He noted that given negative findings on a fracture screen, he had not taken x-rays of the lumbopelvic or right knee regions, but would do so at a later date if necessary. Attached to this report were progress notes from January 24 through 31, 2014, noting marked improvement.

In a form report dated January 23, 2014, Dr. Larson stated that appellant's diagnoses were related to unloading a snow machine at work. He also checked a box indicating the x-rays had not been taken.

Appellant submitted an undated letter stating that his claim should not be denied, as his paperwork was submitted in a timely manner.

In progress notes dated March 12 and 19, 2014, Dr. Larson stated that appellant was doing "a whole lot better" and reporting "no pain whatsoever." He noted that appellant was able to do all activities for work without any pain occurring.

By decision dated September 16, 2014, OWCP's hearing representative affirmed the decision dated March 10, 2014. She noted that, while appellant submitted new evidence subsequent to the March 10, 2014 decision, it did not suffice to establish his claim, as it was from a chiropractor and lacked a diagnosis of a subluxation demonstrated by x-ray to exist.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing 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; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] 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.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.[5] First, 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.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

ANALYSIS

OWCP accepted that appellant was a federal civilian employee who filed a timely claim and that the evidence supported that the incident of January 16, 2014 occurred as described. The issue is whether appellant provided a diagnosis from a qualified physician in connection with this incident. The Board finds that appellant has not submitted probative medical evidence from a qualified physician in support of his claim.

Section 8101(2) of FECA[8] provides that the term physician, as used therein, 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.[9] Dr. Larson diagnosed appellant with an acute mild-to-moderate pelvis and sacroiliac sprain/strain injury with associated pelvis, sacrum, and lumbar subluxation. Hence, he provided a diagnosis of subluxation. However, Dr. Larson's diagnosis was not based upon an x-ray. He stated that given negative findings on a fracture screen, he had not taken x-rays of appellant's lumbopelvic or right knee regions. Without a diagnosis of a spinal subluxation from x-ray, a chiropractor is not a physician under FECA and

[2] 5 U.S.C. § 8101 *et seq.*

[3] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

[4] *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

[5] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

[6] *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

[7] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 3.

[8] 5 U.S.C. § 8101(2).

[9] *See* 20 C.F.R. § 10.311.

his opinion does not constitute competent medical evidence.[10] As such, Dr. Larson's reports are insufficient to establish a work-related diagnosis from a qualified physician under FECA.

On appeal, appellant asserts that because he did not receive information regarding FECA's requirements for medical evidence in a timely manner, his claim should be accepted. The Board notes that OWCP sent a development letter dated February 3, 2014 informing appellant of the evidence required to establish his claim, and noting the requirement of a subluxation demonstrated by x-ray to exist for reports from chiropractors to be considered probative medical evidence.

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 an injury in the performance of duty on January 16, 2014.

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

[10] *See Jay K. Tomokiyo*, 51 ECAB 361, 367-8 (2000).