United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 17-0932**
	)	**Issued: September 15, 2017**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Hartford, CT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 23, 2017 appellant filed a timely appeal from a November 4, 2016 merit decision and a December 27, 2016 nonmerit 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]

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish a back injury causally related to the accepted August 26, 2016 employment incident; and (2) whether OWCP's

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its December 27, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final merit decision. Therefore, this additional evidence cannot be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely.

FACTUAL HISTORY

On August 26, 2016 appellant, then a 54-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he injured his back after lifting a tray of mail. He stopped work on August 26, 2016. The employing establishment on August 26, 2016 authorized medical treatment by Village Medical Associates, P.C. *via* an authorization for examination and/or treatment (Form CA-16).

In a note dated August 29, 2016, Dr. Bjorn Ringstad, a Board-certified internist with Village Medical Associates, P.C., checked a box marked "yes" indicating that appellant's illness was work related. In an attending physician's report (Form CA-16) of the same date, he diagnosed left sciatica.

In a diagnostic report dated September 8, 2016, Dr. Neil Tishkoff, a Board-certified diagnostic radiologist and neuroradiologist, observed the results of x-rays of appellant's lumbar spine. He reported his impression of mild rightward curvature; slight anterolisthesis at L5 on S1, possibly secondary to spondylolysis; facet arthropathy at L4-5 and to a lesser extent L3-4, worse on the right; and a questionable incomplete fusion of the posterior arch of the L5/bifid spinous process.

By letter dated October 4, 2016, OWCP informed appellant of the evidence needed to establish his claim. It noted that he had not submitted sufficient factual and medical evidence to establish his claim. He was afforded 30 days to submit the additional evidence.

In an undated attending physician's report (Form CA-20), Dr. Michael Connair, a Board-certified orthopedic surgeon, noted that appellant's x-rays demonstrated degenerative changes. He diagnosed lumbar strain, noting that it occurred after appellant lifted a tray of mail at work. Dr. Connair checked a box marked "yes" noting that appellant's injury was due to an employment activity, explaining that appellant had no pain prior to lifting the tray of mail despite degenerative changes in his spine.

In a narrative statement dated October 27, 2016, appellant stated that, on the date of injury, he bent down to pick up and lift a tray filled with mail, weighing approximately 40 pounds, when he felt a sharp pain in his lower back. He requested to go home at that time due to his back pain, and he did so after filling out an incident report.

By decision dated November 4, 2016, OWCP denied appellant's claim. It found that the employment incident had occurred as alleged and that a medical condition was diagnosed in relation to the incident. However, OWCP further found that appellant had not submitted any rationalized medical evidence which established causal relationship between the incident of August 26, 2016 and his diagnosed conditions.

By form dated December 2, 2016, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The request was postmarked

December 6, 2016. With his request, appellant included several reports from physical therapists and work excuse notes from his physician.

By decision dated December 27, 2016, a representative of the Branch of Hearings and Review denied appellant's request for an oral hearing as it was untimely. She noted that OWCP had issued its decision on November 4, 2016, while appellant's hearing request was postmarked December 6, 2016. Consequently, the hearing representative found that appellant was not entitled to a review of the written record as a matter of right, as the request was submitted more than 30 days after OWCP's decision. She also considered whether to grant appellant a discretionary hearing, but determined that the issue in appellant's case could equally well be addressed by his requesting reconsideration before OWCP.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[3] 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, that an injury[4] 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]

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. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[6]

The claimant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[7] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that

[3] *Supra* note 1.

[4] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[5] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[7] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[9] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors.[10] 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 factors identified by the employee.[11]

ANALYSIS -- ISSUE 1

Appellant alleged that on August 26, 2016 he sustained a back injury as a result of picking up a tray of mail. The Board finds that he has not submitted sufficient medical evidence to establish that the accepted incident of August 26, 2016 caused or aggravated his diagnosed conditions.

In a note dated August 29, 2016, Dr. Ringstad checked a box marked "yes" indicating that appellant's illness was work related. In an attending physician's report of the same date, he diagnosed left sciatica. Dr. Ringstad did not provide a history of injury and did not explain how lifting trays of mail would have resulted in appellant's left sciatica. Without any medical explanation or reasoning in support of his opinion of causal relationship, based upon an accurate history of injury, his reports are insufficient to establish that the accepted incident resulted in the diagnosed conditions.[12] The Board has also held that an opinion on causal relationship which consists only of a physician checking a box marked "yes" to a medical form report question on whether the claimant's diagnosed condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusions reached, such opinion is of limited probative value.[13]

In a diagnostic report dated September 8, 2016, Dr. Tishkoff, related the results of x-rays of appellant's lumbar spine, stated his impression of mild rightward curvature; slight anterolisthesis at L5 on S1, possibly secondary to spondylolysis; facet arthropathy at L4-5 and to a lesser extent L3-4, worse on the right; and a questionable incomplete fusion of the posterior arch of the L5/bifid spinous process. In an undated attending physician's report, Dr. Connair

[8] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[9] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[10] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[11] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[12] *See K.W.*, Docket No. 17-0205 (issued June 12, 2017).

[13] *See J.C.*, Docket No. 16-1724 (issued April 20, 2017).

noted that appellant's x-rays demonstrated degenerative changes. Although these physicians provided medical diagnoses, neither of these physicians provided any rationalized explanation on whether the August 26, 2016 employment incident caused or contributed to the diagnosed conditions. Because these diagnostic reports do not establish a causal relationship between the employment incident and appellant's alleged conditions, they are insufficient to establish appellant's traumatic injury claim.[14]

The Board further notes that Dr. Connair diagnosed appellant with lumbar strain that occurred after lifting a tray of mail at work. Dr. Connair checked a box marked "yes" indicating that appellant's injury was due to an employment activity, explaining that appellant had no pain prior to lifting the tray of mail despite degenerative changes in his spine. While he did note appellant's history of injury and he did check a box marked "yes" to relate appellant's diagnosed condition to the accepted incident, checking a box "yes" does not provide sufficient rationale to establish causal relationship.[15] Similarly, the fact that pain began after an incident does not establish causal relationship. The fact that work activities produced pain or discomfort revelatory of an underlying condition does not raise an inference of an employment relationship.[16]

The record is devoid of a rationalized opinion from a qualified physician on the issue of the causal relationship between appellant's lower back conditions and the incident of August 26, 2016. None of the medical reports of record provide a sufficient explanation regarding the mechanism of how the August 26, 2016 incident caused appellant's diagnosed conditions.[17] As such, the Board finds that appellant did not submit sufficient evidence to establish his claim for a work-related traumatic injury causally related to the accepted August 26, 2016 employment incident.[18]

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.

LEGAL PRECEDENT -- ISSUE 2

A claimant, injured on or after July 4, 1966, who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision.[19] The hearing

[14] *See B.B.*, Docket No. 16-0262 (issued April 25, 2016).

[15] *Supra* note 13.

[16] *See D.R.*, Docket No. 16-0528 (issued August 24, 2016).

[17] *See G.M.*, Docket No. 14-2057 (issued May 12, 2015).

[18] The record contains a Form CA-16 dated August 26, 2016 and signed by the employing establishment. A properly executed CA-16 form can form a contractual agreement for payment of medical expense, even if the claim is not accepted. *See* 20 C.F.R. § 10.300; *Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (February 2012). Upon return of the case record, OWCP should address this issue.

[19] 20 C.F.R. § 10.616(a).

request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought. The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision. If the request is not made within 30 days, a claimant is not entitled to a hearing as a matter of right. However, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing.[20]

ANALYSIS -- ISSUE 2

Appellant's December 2, 2016 request for an oral hearing before an OWCP hearing representative was postmarked as having been sent on December 6, 2016. OWCP issued its last merit decision on November 4, 2016. The regulations provide that "[t]he hearing request must be sent within 30 days […] of the date of the decision for which a hearing is sought."[21] Because appellant's request postmarked November 4, 2016 was untimely, he was not entitled to a review of the written record as a matter of right. The Branch of Hearings and Review also denied appellant's request because it found that the issue of causal relationship could be equally well-addressed by requesting reconsideration before OWCP. The Board finds that the hearing representative properly exercised her discretionary authority in denying appellant's request for a hearing.[22]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a back injury causally related to the accepted August 26, 2016 employment incident. The Board further finds that the Branch of Hearings and Review properly denied appellant's request for an oral hearing as untimely.

[20] 5 U.S.C. §§ 8124(b)(1) and 8128(a); *Hubert Jones, Jr*., 57 ECAB 467, 472-73 (2006); *Herbert C. Holley*, 33 ECAB 140 (1981).

[21] 20 C.F.R. § 10.616(a).

[22] *Mary B. Moss*, 40 ECAB 640, 647 (1989). Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts. *See André Thyratron*, 54 ECAB 257, 261 (2002).

ORDER

IT IS HEREBY ORDERED THAT the December 27 and November 4, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 15, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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