United States Department of Labor
Employees' Compensation Appeals Board

G.C., Appellant	)	
and	)	**Docket No. 18-0506**
	)	**Issued: August 15, 2018**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Roanoke, VA, 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 January 12, 2018 appellant filed a timely appeal from an August 28, 2017 merit decision and November 1 and December 14, 2017 nonmerit decisions 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a lumbar strain causally related to the accepted February 7, 2017 employment incident; and (2) whether OWCP, in its November 1 and December 14, 2017 decisions, properly denied his requests for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 13, 2017 appellant, then a 39-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 7, 2017 he experienced low back pain on the left side after lifting a tray of letters from an all-purpose container while in the performance of duty. He stopped work on February 12, 2017.

A physician with an illegible signature completed a February 15, 2017 duty status report (Form CA-17). The physician diagnosed low back strain and provided work restrictions.

In a March 3, 2017 development letter, OWCP requested that appellant provide additional factual and medical information in support of his claim, including a detailed factual statement and a report from his attending physician addressing the causal relationship between any diagnosed condition and the claimed February 7, 2017 work incident. It afforded him 30 days to respond to its request for additional evidence.

OWCP thereafter received a February 24, 2017 disability certificate from Dr. Elvis Ramon Pagan, a Board-certified internist. Dr. Pagan related that he began treating appellant on February 15, 2017 and indicated that he could resume work with limitations on March 1, 2017. It also received a February 28, 2017 CA-17 form from a physician with an illegible signature. On March 21 and 27, 2017 OWCP received additional CA-17 forms, but the date and signature are not visible on the imaged form.

By decision dated April 4, 2017, OWCP denied appellant's traumatic injury claim after finding that he had not established the occurrence of the February 7, 2017 employment incident. It determined that he had not provided a detailed statement describing the circumstances surrounding the alleged work incident.

Subsequent to OWCP's decision, appellant submitted a March 1, 2017 report from Dr. Hetzak Hartley, Board-certified in occupational medicine. Dr. Hartley noted that he experienced low back pain radiating down the left lower extremity after he picked up mail about three weeks earlier. On examination he found tenderness to touch and pain in the left S1 joint. Dr. Hartley diagnosed a work-related injury, lumbar strain, and acute low back pain on the left side with left sciatica. He provided work restrictions.

In a March 14, 2017 progress report, Dr. Hartley related that appellant had a history of degenerative disc disease with intermittent significant back pain for seven years. He diagnosed low back strain, a work-related injury, and sciatica on the left side.

On March 22, 2017 Dr. Hartley obtained a history of appellant injuring his low back four weeks earlier after lifting a heavy container causing symptoms of left sciatica. He found tenderness at L2-3 on the posterior lumbar spine and a normal straight leg raise on examination. Dr. Hartley diagnosed lumbar strain.

Dr. Hartley completed work restriction forms on February 28, and March 14 and 22, 2017. On the forms he provided the date of injury as February 7, 2017, diagnosed low back strain with left sciatica, and found that appellant could perform modified duty.

A March 31, 2017 magnetic resonance imaging (MRI) scan study of appellant's lumbar spine revealed a disc bulge at L3-4 with osteophytes, mild bilateral facet arthropathy with a disc bulge and central annular tear at L4-5, and mild bilateral facet arthropathy and a disc bulge at L5-S1.

In an April 3, 2017 CA-17 form, Dr. Chand Singh, a Board-certified internist, diagnosed lumbar strain and checked a box marked "yes" that the history provided by appellant corresponded to that on the form of him feeling a pop and pinch in his back on the left side after lifting a tray. He provided work restrictions. In an April 3, 2017 report, Dr. Singh noted that appellant had not been able to work recently due to pain. He diagnosed lumbar back strain and found that he should continue modified employment. At the end of the report, Dr. Singh diagnosed chronic bilateral low back pain without sciatica and a work-related injury.

Dr. Hartley, in an attending physician's report (Form CA-20) dated April 13, 2017, diagnosed lumbar back strain and checked a box marked "yes" that the condition resulted from the employment activity of picking up a box of mail. He found that appellant could work as of February 27, 2017 with restrictions.

Appellant, on May 31, 2017, requested reconsideration. In a May 24, 2017 statement, he described the claimed February 7, 2017 work incident and his subsequent medical treatment.

By decision dated August 28, 2017, OWCP modified its April 4, 2017 decision to find that appellant had established the occurrence of the February 7, 2017 employment incident. It determined, however, that the medical evidence of record was insufficient to establish that he sustained a diagnosed condition causally related to the accepted work incident. OWCP noted that Dr. Hartley did not explain his causation finding on the April 13, 2017 CA-20 form.

On October 3, 2017 appellant requested reconsideration. In a September 27, 2017 statement, he asserted that he did not have a history of back pain for seven years, but rather had experienced low back pain seven years earlier that had resolved until the occurrence of the February 7, 2017 employment incident. Appellant related that Dr. Hartley clarified the CA-20 form that he completed.

By decision dated November 1, 2017, OWCP denied appellant's request to reopen the case for further review of the merits under section 8128(a). It found that he had not provided any new evidence or argument in support of his reconsideration request.

Subsequent to OWCP's November 1, 2017 decision, appellant resubmitted the April 13, 2017 Form CA-20 from Dr. Hartley. The form included an addition specifying that the condition was caused or aggravated by employment as "picking up mail caused LBS [low back strain] shortly after the incident."

On November 12, 2017 appellant again requested reconsideration. He resubmitted his September 27, 2017 statement. Appellant also submitted a report from a March 22, 2017 x-ray of the lumbosacral spine.

By decision dated December 14, 2017, OWCP denied appellant's request to reopen his case for further merit review under section 8128(a). It found that the evidence submitted was cumulative and repetitious.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[2] 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed is 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 first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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.[5] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[6]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[7] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[8] 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 factor(s).[9]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a lumbar strain causally related to the accepted February 7, 2017 employment incident.

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[2] 5 U.S.C. § 8101 *et seq.*

[3] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[4] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *See Bonnie A. Contreras*, 57 ECAB 364 (2006); *Gary J. Watling*, 52 ECAB 278 (2001).

[6] *See T.H.*, 59 ECAB 388 (2008); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[7] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 2006.

[8] *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

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

OWCP accepted that the employment incident of February 7, 2017 occurred as alleged. It denied his claim because he had not submitted sufficient medical evidence which contained a medical diagnosis causally related to the claimed February 7, 2017 employment injury.

The record contains a February 15, 2017 CA-17 form from a physician with an illegible signature and additional CA-17 forms where the date and the signature are not visible. A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in section 8101(2) of FECA,[10] and reports lacking proper identification do not constitute probative medical evidence.[11]

In a February 24, 2017 disability certificate, Dr. Pagan indicated that appellant could work with restrictions beginning March 1, 2017. As he did not provide a history of injury, examination findings, a firm diagnosis of a particular medical condition, or address whether the accepted February 7, 2017 work incident caused or aggravated appellant's condition and resultant disability, his opinion is of little probative value.[12]

On March 1, 2017 Dr. Hartley reviewed appellant's history of low back pain with left radiculopathy after he picked up mail around three weeks earlier. He provided examination findings and diagnosed a work-related injury, lumbar strain, and left low back pain with left sciatica. While Dr. Hartley generally mentioned that appellant had experienced a work injury, he did not specifically relate the lumbar strain and left sciatica to the accepted February 7, 2017 work incident or provide any rationale for his opinion.[13] Medical conclusions unsupported by rationale are of little probative value.[14]

In a March 14, 2017 progress report, Dr. Hartley advised that appellant had a history of degenerative disc disease and had experienced periodical back pain for seven years. He did not address the issue of whether appellant experienced a work injury on February 7, 2017 and thus, the report is insufficient to meet his burden of proof.

Dr. Hartley, on March 22, 2017, discussed appellant's history of an injury to his low back causing left sciatica which occurred four weeks earlier after he lifted a heavy container. He found tenderness at L2-3 and diagnosed lumbar strain. Dr. Hartley, however, did not specifically attribute the diagnosed conditions to the accepted February 7, 2017 work incident. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[15]

[10] 5 U.S.C. § 8101(2).

[11] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Richard F. Williams*, 55 ECAB 343 (2004).

[12] *See D.M.*, Docket No. 16-1885 (issued February 15, 2017).

[13] *See C.C.*, Docket No. 08-0017 (issued September 2, 2008).

[14] *See Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmy H. Duckett*, 52 ECAB 332 (2001).

[15] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009).

In work restriction forms dated February 28 and March 14, and 27, 2017, Dr. Hartley diagnosed low back strain with left sciatica and opined that appellant could perform limited-duty employment. While on the forms he indicated the date of injury as February 7, 2017, he did not provide a history of injury or specifically relate the diagnosed condition to the accepted work incident. As Dr. Hartley failed to offer a definite opinion on causal relationship between the diagnosed low back strain with left sciatica and the February 7, 2017 employment incident, his reports are of diminished probative value.[16]

Dr. Singh, in an April 3, 2017 CA-17 form, diagnosed lumbar strain and checked a box marked "yes" that the history provided on the form corresponded to that told by appellant of experiencing a pop and pinch in his back on the left side after lifting a tray. The Board has 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 condition was related to the history given is of little probative value. Without an explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[17]

On April 3, 2017 Dr. Singh diagnosed chronic low back pain without sciatica. The history provided by appellant corresponded to that on the form of him feeling a pop and pinch in his back on the left side after lifting a tray. He did not, however, specifically identify the diagnosed condition resulting from an employment injury or provide any rationale for his opinion. Without a firm diagnosis supported by medical rationale, the report is of little probative value.[18]

In an April 13, 2017 CA-20 form, Dr. Hartley diagnosed lumbar back strain and checked a box marked "yes" that the condition resulted from the employment activity of picking up a box of mail. As noted, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[19]

On appeal appellant asserts that OWCP denied his claim as Dr. Hartley failed to explain his causation finding on the CA-20 form. He relates that he took the form to Dr. Hartley, who provided an explanation for his finding. Appellant questions why OWCP continues to deny his claim. Appellant has the burden of proof to submit rationalized medical evidence establishing that he sustained an injury causally related to the accepted February 7, 2017 employment incident.[20] For the reasons set forth above, he failed to submit such evidence and thus did not meet his burden of proof.[21]

[16] *See P.R.*, Docket No. 16-1666 (issued January 13, 2017).

[17] *See R.H.*, Docket No. 18-0021 (issued March 22, 2018).

[18] *See Samuel Senkow*, 50 ECAB 370 (1999) (finding that, because a physician's opinion of Legionnaires disease was not definite and was unsupported by medical rationale, it was insufficient to establish causal relationship).

[19] *Deborah L. Beatty*, *supra* note 6.

[20] *See D.T.*, Docket No. 17-1734 (issued January 18, 2018).

[21] *See D.S.*, Docket No. 18-0061 (issued May 29, 2018).

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 and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.[22]

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.[23]

A request for reconsideration must also be received by OWCP within one year of the date of OWCP's decision for which review is sought.[24] If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.[25] If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.[26]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's timely requests for reconsideration of the merits of his claim under section 8128(a). The underlying issue is whether he submitted sufficient medical evidence to establish an injury causally related to the accepted February 7, 2017 employment incident.

In support of his October 3, 2017 request for reconsideration, appellant did not allege that OWCP erroneously applied or interpreted a specific point of law or submit pertinent new and relevant evidence. He related that he had not experienced back pain for seven years, but instead had experienced back pain seven years earlier that had resolved until the time of the February 7, 2017 work incident. However, the underlying issue in this case is whether the medical evidence is sufficient to demonstrate that appellant sustained low back pain with left sciatica causally related to the accepted February 7, 2017 work incident. His lay opinion regarding his condition is not relevant to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician.[27] As appellant did not meet any of the necessary

[22] 5 U.S.C. § 8128(a).

[23] 20 C.F.R. § 10.606(b)(3); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010).

[24] *Id.* at § 10.607(a).

[25] *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

[26] *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

[27] *See C.N.*, Docket No. 17-1475 (issued May 23, 2018).

regulatory requirements, he was not entitled to further merit review based on his October 3, 2017 reconsideration request.

Appellant again requested reconsideration on November 12, 2017. He did not contend that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered. Appellant submitted an updated April 13, 2017 CA-20 form which provided a notation that his condition was caused or aggravated by employment as he experienced low back strain after the incident. Dr. Hartley, however, did not initial the addition on the form or otherwise provide an updated signature to attest to his opinion and thus the updated report does not constitute relevant medical evidence.[28] Additionally, while the notation indicated that appellant experienced low back strain after the incident, it did not clearly address the relevant issue of how the accepted employment incident of February 7, 2017 caused a diagnosed condition.

Appellant also submitted a March 22, 2017 x-ray of the lumbar spine. Diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[29] As this evidence is not relevant to the issue of the cause of his back condition, it is insufficient to constitute a basis for reopening the case.[30]

The Board accordingly finds that appellant, in his October 3 and November 12, 2017 requests for reconsideration, did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.[31]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an injury causally related to an accepted February 7, 2017 employment incident. The Board further finds that OWCP, in its November 1 and December 14, 2017 decisions, properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[28] A report that lacks proper identification cannot be considered probative medical evidence. *See K.B.*, Docket No. 17-1363 (issued February 14, 2018).

[29] *See R.S.*, Docket No. 17-1139 (issued November 16, 2017); *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

[30] *See E.R.*, Docket No. 17-0540 (issued July 26, 2017).

[31] *See R.C.*, Docket No. 17-1314 (issued November 3, 2017) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the December 14, November 1, and August 28, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 15, 2018
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