United States Department of Labor
Employees' Compensation Appeals Board

R.R., Appellant	)	
and	)	**Docket No. 18-1093**
	)	**Issued: December 18, 2018**
U.S. POSTAL SERVICE, WEST SCRANTON POST OFFICE, Scranton, PA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 7, 2018 appellant filed a timely appeal from a March 28, 2018 merit decision and an April 17, 2018 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a back condition causally related to the accepted February 7, 2018 employment incident; and (2) whether OWCP properly denied appellant's request 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 9, 2018 appellant, then a 48-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 7, 2018 he pulled muscles in his mid-back when he slipped on a patch of ice while in the performance of duty. He stopped work on the date of injury and returned to work on February 10, 2018.[2]

In a February 9, 2018 narrative statement, appellant reiterated his history of injury. He also related that, when he returned to his employing establishment at the end of the workday, he related that he might not come to work the next day, depending on how his back felt.

Appellant submitted a February 8, 2018 urgent care work assessment report from Dr. Donna M. Eget, an attending Board-certified emergency medicine physician, who diagnosed lumbar strain and advised that he could perform light-duty work with restrictions. In a subsequent February 8, 2018 urgent care report, Dr. Eget indicated that he presented with mid-back pain, a work-related injury. She related a history that appellant had fallen on ice the previous day. Dr. Eget discussed physical examination findings, assessed low back pain, and addressed his physical restrictions. She excused appellant from work and indicated that he would be rechecked before returning to modified-duty work.

In a February 8, 2018 e-mail, appellant's supervisor, C.N., related that when appellant returned from his route on February 7, 2018 she discussed complaints that she had received from other carriers and customers about him. Appellant denied the allegations and she informed him that they would continue the conversation on the next day. C.N. noted that as he left the workroom floor he complained about being sent to the main office to assist another carrier. She maintained that he neither complained about nor reported an on-the-job incident at any time during their conversation.

OWCP received a February 12, 2018 Urgent Care Work Assessment report from Heather E. Okun Demuth, a certified physician assistant. Ms. Okun Demuth diagnosed lumbar strain and indicated that appellant could perform light-duty work with restrictions.

By development letter dated February 17, 2018, OWCP advised appellant of the deficiencies of his claim. It requested that he submit additional factual and medical evidence. OWCP afforded appellant 30 days to respond to its questionnaire and submit additional medical evidence.

Appellant submitted a February 8 and 12, 2018 urgent care reports signed by Dr. Mark Albert, Board-certified in emergency medicine. The reports noted that he presented for a recheck of his workers' compensation lower back injury. A history of injury indicated that appellant sustained this injury when he slipped on ice at work. His medical history was noted and findings on physical examination were discussed. Appellant was assessed with having low back pain and back muscle spasm.

[2] On February 13, 2018 appellant accepted the employing establishment's February 10, 2016 job offer for a modified city carrier assistant position.

Appellant also submitted a February 12, 2018 clinical visit summary from Ms. Okun Demuth who diagnosed low back pain and recommended that he continue to perform light-duty work. In a clinical visit summary dated February 19, 2018, Ms. Okun Demuth related a history that he sustained a work-related injury from a slip. She discussed findings on physical examination and reiterated her prior diagnosis of low back pain. Ms. Okun Demuth also diagnosed back muscle spasm. She released appellant to return to full-duty work with no restrictions.

In an additional urgent care report dated February 12, 2018, Dr. Eget noted that appellant presented for a recheck of his workers' compensation lower back injury. She discussed examination findings and restated her diagnosis of low back pain. Dr. Eget addressed appellant's treatment plan and excused him from work.

A February 19, 2018 urgent care report signed by Ms. Okun Demuth and cosigned by Dr. Mark Evans, a Board-certified internist also Board-certified in hospice and palliative medicine, noted that appellant presented for a follow-up examination of his work-related injury. Appellant's medical history and physical examination findings were discussed. He was assessed with having low back pain and back muscle spasm. Appellant was released to return to full-duty work with no restrictions.

An undated and unsigned work-related injury form indicated that appellant sustained a work-related injury when he slipped on ice while working as a mail carrier on February 7, 2018.

By decision dated March 28, 2018, OWCP accepted that the alleged incident occurred while in the performance of duty as alleged, but denied the claim as the medical evidence of record did not demonstrate that the diagnosed back condition was causally related to the February 7, 2018 employment incident.

In an appeal request form and letter received by OWCP on April 11, 2018, appellant requested reconsideration. In the letter, he reiterated his prior contentions that he sustained a work-related back injury on February 7, 2018 and that he reported his injury to C.N. when he returned to his employing establishment after completing his route.

By decision dated April 17, 2018, OWCP denied further merit review of appellant's claim. It found that his request for reconsideration neither raised substantive legal questions nor included relevant and pertinent new evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[3] including that he or she sustained an injury in the performance of duty and that any

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.[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.[5] There are two components involved in establishing fact of injury. 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.[6]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7]

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing causal relationship between the claimed condition and the identified employment factors.[8] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relationship.[9]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[10] Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[11] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[12] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[8] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[9] *See M.J.*, Docket No. 17-0725 (issued May 17, 2018); *see also Lee R. Haywood*, 48 ECAB 145 (1996); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[10] *J.I., id., I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[11] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[12] *L.D., id.; see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[13]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted employment incident.

Appellant submitted a series of reports from his attending physician, Dr. Eget. In February 8 and 12, 2018 urgent care reports, Dr. Eget related a history that his low back pain developed as a result of his fall on ice on February 7, 2018. She excused appellant from work until he was rechecked before returning to modified-duty work. However, it is not possible to establish the cause of a medical condition if the physician has not provided a diagnosis, but only notes pain.[14] The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.[15] Moreover, Dr. Eget appears merely to repeat the history of injury as reported by appellant without providing her own opinion regarding whether his condition and disability were work related.[16] To the extent that she expressed her own opinion, she failed to provide a rationalized opinion based on objective findings regarding causal relationship between his back injury and disability from work and the accepted employment incident.[17] For these reasons, the Board finds that Dr. Eget's report is insufficient to meet appellant's burden of proof.

In a February 8, 2018 urgent care work assessment form report, Dr. Eget diagnosed appellant as having lumbar strain and advised that he could perform light-duty work with restrictions. However, her report is of limited probative value and insufficient to establish the claim as she did not specifically address whether the diagnosed condition was causally related to the February 7, 2018 employment incident.[18]

Likewise, the February 8 and 12, 2018 urgent care reports of Dr. Albert, and the February 19, 2018 report from Dr. Evans are also insufficient to establish causal relationship. Dr. Albert related a history of the February 7, 2018 employment incident and found that appellant had low back pain and back muscle spasm. Dr. Evans noted that appellant was seen in follow up for low back pain and muscle spasm. As previously noted, the Board has held that pain is generally

[13] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[14] *See C.L.*, Docket No. 18-0363 (issued July 19, 2018); *A.C.*, Docket No. 16-1587 (issued December 27, 2016).

[15] *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

[16] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[17] *C.J.*, Docket No. 18-0148 (issued August 20, 2018); *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[18] *Id.*

considered a symptom and not a firm medical diagnosis.[19] Similarly, a back spasm has been found to be a symptom, not a diagnosis.[20] Furthermore, these reports lack any medical explanation relative to causal relationship.[21] The Board finds, therefore, that these reports are insufficient to establish appellant's burden of proof.

The February 12 and 19, 2018 reports of Ms. Okun Demuth, a certified physician assistant, are of no probative value to establish appellant's claim as physician assistants are not considered physicians as defined under FECA.[22] For this reason, this evidence is insufficient to meet appellant's burden of proof.

The undated and unsigned form report noted that appellant sustained a work-related injury as a result of the February 7, 2018 employment incident. However, the Board has held that unsigned reports and reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification.[23] Thus, this report is of no probative value.

The Board finds that as appellant has not submitted rationalized, probative medical evidence sufficient to establish a back injury causally related to the accepted February 7, 2018 employment incident, he has not met his burden of proof.

On appeal, appellant contends that his physician related that he sustained a work-related injury. However, as discussed above, none of appellant's physicians provided a rationalized medical opinion explaining how or why appellant's diagnosed back conditions were caused or aggravated by the accepted February 7, 2018 employment incident.

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

Section 8128 of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[24] Section 10.608(b) of OWCP's regulations provide that a timely request for

[19] *Supra* note 15.

[20] *See J.G.*, Docket No. 17-1382 (issued October 18. 2017).

[21] *Id.*

[22] *See M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *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); the term 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. § 10.404; *Roy L.Humphrey*, 57 ECAB 238 (2005).

[23] *See R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006); *Richard J. Charot*, 43 ECAB 357 (1991).

[24] 5 U.S.C. § 8128(a).

reconsideration may be granted if OWCP determines that the claimant has presented evidence and/or argument that meet at least one of the standards described in section 10.606(b)(3).[25] This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (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.[26] Section 10.608(b) provides that when a request for reconsideration is timely, but fails to meet at least one of these three requirements, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[27]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim.

On April 11, 2018 appellant disagreed with OWCP's denial of his traumatic injury claim. The underlying issue on reconsideration is medical in nature, whether he had a back condition causally related to the accepted February 7, 2018 employment incident.

The Board finds that, in his April 11, 2018 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered. Appellant asserted that he sustained a work-related back injury on February 7, 2018 and that he immediately reported his injury to his supervisor, C.N., when he returned to the employing establishment after completing his route. The Board finds that these contentions do not show a legal error by OWCP or constitute new and relevant legal argument.[28]

The Board further finds that appellant did not submit relevant or pertinent new evidence not previously considered with his April 11, 2018 request for reconsideration. As noted, the underlying issue in this case is whether appellant submitted sufficient medical evidence establishing a back condition causally related the accepted February 7, 2018 employment incident. That is a medical issue which must be addressed by relevant and pertinent new medical evidence.[29] However, appellant did not submit any new medical evidence with his request for reconsideration showing an employment-related back injury.

[25] 20 C.F.R. § 10.608(a).

[26] *Id.* at § 10.606(b)(3).

[27] *Id.* at § 10.608(b).

[28] *B.G.*, Docket No. 16-1377 (issued November 22, 2016).

[29] *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

The Board accordingly finds that appellant 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.[30]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted February 7, 2018 employment incident. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 17 and March 28, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 18, 2018
Washington, DC

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

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

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

[30] *See A.R.*, Docket No. 16-1416 (issued April 10, 2017); *A.M.*, Docket No. 16-0499 (issued June 28, 2016); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).