United States Department of Labor
Employees' Compensation Appeals Board

L.M., Appellant	)	
and	)	**Docket No. 19-0638**
	)	**Issued: May 29, 2020**
DEPARTMENT OF DEFENSE, DEFENSE FINANCE & ACCOUNTING SERVICES, Indianapolis, IN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On January 28, 2019 appellant filed a timely appeal from a November 19, 2018 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury due to the accepted June 8, 2018 employment incident.

FACTUAL HISTORY

On June 15, 2018 appellant, then a 38-year-old lead military pay technician, filed a traumatic injury claim (Form CA-1) alleging that on June 8, 2018 he sustained back and foot injuries while in the performance of duty. He indicated that while he was moving furniture on that date, one of the desks fell and hit his foot, causing him to strain his back.[3] Appellant stopped work on June 11, 2018.

In support of his traumatic injury claim, appellant submitted a June 11, 2018 report from Patty Cockman, a nurse practitioner, who advised that appellant could return to work without restrictions on June 14, 2018. In a June 13, 2018 report, Laurie Szoka, a nurse practitioner, indicated that appellant could return to work without restrictions on June 23, 2018.

In a June 18, 2018 development letter, OWCP requested that appellant submit additional evidence in support of his traumatic injury claim, including a physician's opinion supported by a medical explanation as to how the reported June 8, 2018 employment incident caused or aggravated a medical condition. It provided a questionnaire for his completion which posed questions regarding the reported employment incident and his receipt of medical treatment. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a June 18, 2018 report from Ms. Cockman who advised that he could return to work after being evaluated by a neurosurgeon. In a June 26, 2018 report, Dr. Andrey Belayev, a Board-certified neurosurgeon, noted that he could not work from June 26, 2018 until approximately August 7, 2018 while he underwent treatment for a spinal injury.

By decision dated July 24, 2018, OWCP accepted that the June 8, 2018 employment incident occurred as alleged; however, it denied his traumatic injury claim finding that he had not established the medical component of fact of injury. It indicated that the medical evidence of record did not include a specific diagnosis in connection with the accepted June 8, 2018 employment incident.

On August 13, 2018 appellant requested reconsideration of the July 24, 2018 decision and submitted a completed questionnaire in which he discussed the medical treatment he received for his back and right foot in connection with his claimed June 8, 2018 employment injury. He maintained that he did not have any similar "disability or symptoms" prior to the June 8, 2018 incident. OWCP also received an August 8, 2018 statement in which an employing establishment official advised that appellant reported injuring himself at work on June 18, 2018 when a desk he was moving slipped from a hand truck to the floor.

[3] Although appellant indicated in the Form CA-1 that he injured his left foot on June 8, 2018, this reference appears to have been inadvertent as the medical evidence of record indicates that he injured his right foot on that date.

In support of his reconsideration request, appellant submitted a June 9, 2018 report from Ms. Szoka who indicated that he reported that furniture hit his right foot on June 8, 2018. Ms. Szoka noted appellant's chief complaint of low back pain and detailed the physical examination findings, including right-sided low back spasm and 5/5 strength in the lower extremities. In a separate June 9, 2018 report, she diagnosed acute low back pain, muscle spasm, right foot injury, and "struck by furniture without fall."

In two reports dated June 11, 2018, Ms. Cockman noted that appellant reported that a desk fell on his right foot, and she provided findings for the physical examination of his back and lower extremities. On the same date, Dr. Raymond Gaskins, Board-certified in family medicine, advised that appellant could return to work without restrictions on June 14, 2018. The findings of a June 11, 2018 x-ray of appellant's right foot, read by Dr. Terry L. Zacco, a diagnostic radiologist, contained an impression of "unremarkable appearance of the right foot."

Appellant was seen by Ms. Szoka again on June 13, 2018 and, in two reports from that date, she provided further physical examination findings regarding his back and lower extremities. In a June 13, 2018 report, Dr. Gaskins indicated that appellant could return to work without restrictions on June 23, 2018. The findings of a June 14, 2018 magnetic resonance imaging (MRI) scan of appellant's lumbar spine contained an impression of central protrusion at L4-5 with tendency for caudal migration, mild-combined stenosis at L4-5, degenerative disc disease at L4-5 and L5-S1, disc bulge at L5-S1 with annular fissure, and narrowing of the thecal sac secondary to spinal epidural lipomatosis.

Appellant returned to Ms. Cockman on June 15, 2018 and, in two reports from that date, she described her physical examination of his back and lower extremities. She also submitted a June 15, 2018 emergency department discharge sheet signed on that date by Robin L. Jackson, a nurse practitioner. In two June 18, 2018 reports, Ms. Cockman detailed examination findings from that date. In a June 18, 2018 report, Dr. Gaskins indicated that appellant could return to work after being evaluated by a neurosurgeon.[4]

In a June 26, 2018 report, Dr. Belayev indicated that he was asked to evaluate appellant for chronic back pain and a new onset of back and leg pain which he reported arose after lifting something heavy at work. He reported that, upon physical examination, the strength of appellant's lower extremities was "limited to pain with giveway weakness" and that appellant had "intact light touch sensation throughout." Dr. Belayev noted that an MRI scan of appellant's lumbar spine displayed left-sided severe neuroforaminal narrowing with some disc bulges compressing the exiting and traversing nerve roots in that area. He recommended lumbar physical therapy, epidural steroid injections, and a follow-up appointment.

In a July 18, 2018 report, Dr. Belayev opined that appellant could return to full-time work on July 30, 2018.

By decision dated November 19, 2018, OWCP denied modification of its July 24, 2018 decision.

[4] The case record also contains an administrative document from a June 20, 2018 visit to an emergency department.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,[5] that an injury 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.[6] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[8] The second component is whether the employment incident caused a personal injury.[9]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 incident.[10] 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 caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted June 8, 2018 employment incident.

Appellant submitted a June 26, 2018 report from Dr. Belayev, who indicated that he was asked to evaluate appellant for chronic back pain and a new onset of back and leg pain which he reported arose after lifting something heavy at work. Dr. Belayev noted that an MRI scan of appellant's lumbar spine displayed left-sided severe neuroforaminal narrowing with some disc

[5] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[11] *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

bulges compressing the exiting and traversing nerve roots in that area. The Board finds, however, that Dr. Belayev's June 26, 2018 report is of no probative value regarding appellant's traumatic injury claim because he did not indicate that appellant developed a specific diagnosed medical condition in connection with the accepted June 8, 2018 employment incident which occurred when a desk he was moving fell and hit his right foot. The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.[12] In a separate June 26, 2018 report, Dr. Belayev noted that appellant could not work from June 26, 2018 until approximately August 7, 2018 while appellant underwent treatment for a spinal injury. This report also is of no probative value on the underlying issue of this case because he failed to provide an opinion of the cause of his referenced spinal injury.[13] Therefore, these reports of Dr. Belayev are insufficient to establish appellant's traumatic injury claim.

Appellant also submitted a June 11, 2018 report from Dr. Gaskins, who advised that appellant could return to work without restrictions on June 14, 2018. On June 13, 2018 Dr. Gaskins indicated that appellant could return to work without restrictions on June 23, 2018. In a June 18, 2018 report, he noted that appellant could return to work after being evaluated by a neurosurgeon. These reports are of no probative value regarding the underlying issue of the present case because Dr. Gaskins failed to provide a medical diagnosis in connection with the accepted June 8, 2018 employment incident.[14] Therefore, Dr. Gaskins' reports are insufficient to establish appellant's claim.

Appellant submitted a series of reports from nurse practitioners, including those dated June 11, 15, and 18, 2018 from Ms. Cockman, June 9 and 13, 2018 from Ms. Szoka, and June 15, 2018 from Ms. Jackson. However, these reports are of no probative value regarding his claim for a June 8, 2018 traumatic injury because nurse practitioners are not considered physicians as defined under FECA and their reports are not considered to be medical evidence.[15]

Appellant submitted a June 11, 2018 x-ray of his right foot and a June 14, 2018 MRI scan of his lumbar spine. However, diagnostic studies standing alone lack probative value as they do

[12] *T.H.*, Docket No. 18-0704 (issued September 6, 2018).

[13] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018) (medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship). Appellant also submitted an administrative document from a June 20, 2018 visit to an emergency department, but such a nonmedical document would not have probative value regarding the underlying medical issue of this case. *See S.M.*, Docket No. 18-0673 (issued January 25, 2019) (finding that medical causal relationship is established by the submission of medical evidence).

[14] *See D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] Section 8101(2) of FECA provides that 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. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners are not considered physicians under FECA); *K.W.*, 59 ECAB 271, 279 (2007).

not address whether employment factors caused the diagnosed condition.[16] For the above-noted reasons, these documents fail to establish appellant's claim.

As appellant has not submitted medical evidence relating a diagnosed medical condition to his accepted June 8, 2018 employment incident, the Board finds that he has not met his burden of proof to establish his traumatic injury claim.

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 due to the accepted June 8, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 29, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

[16] *C.S.*, Docket No. 19-1279 (issued December 30, 2019).