United States Department of Labor
Employees' Compensation Appeals Board

P.G., Appellant	)	
and	)	**Docket No. 23-0195**
	)	**Issued: August 15, 2023**
U.S. POSTAL SERVICE, CHURCHILL POST OFFICE, Churchill, TN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On November 21, 2022 appellant filed a timely appeal from a September 29, 2022 merit decision and a June 24, 2022 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 her burden of proof to establish a diagnosed medical condition in connection with the accepted August 17, 2021 employment incident; and (2) whether OWCP properly denied appellant's request for review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On August 19, 2021 appellant, then a 59-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 17, 2021 she was involved in a motor vehicle accident while in the performance of duty. She stopped work on August 17, 2021. Appellant went to the emergency room that day. She indicated that nothing was broken but she had soreness in her neck and back.

On August 20, 2021 the employing establishment issued a Form CA-16, authorization for examination and/or treatment, of neck/back conditions.

In an August 23, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence needed to establish her claim. OWCP afforded appellant 30 days to submit the necessary evidence.

Diagnostic testing dated August 17, 2021 was received by OWCP. An August 17, 2021 computerized tomography (CT) scan of appellant's neck noted a large mildly complicated colloid cyst, nonspecific straightening of the normal cervical lordosis; and multilevel degenerative changes of the cervical spine. A cervical spine x-ray reported degenerative changes lower cervical spine with no acute appearing abnormality. A thoracic spine x-ray noted degenerative spurring thoracic spine with no acute osseous abnormality, slight deviation of the trachea to the right which may be related to a thyroid mass, and minor scoliosis in the lower thoracic spine with no fracture seen in the visualized osseous structures. A lumbar spine x-ray found no acute or chronic fracture but moderate degeneration of the L5-S1 disc with moderate multilevel facet joint degeneration.

In a September 3, 2021 note, Dr. Kacey Charles, a chiropractor, reported that appellant was seen for pain in thoracic/lumbar region which radiated to the right side. She indicated that after examination and x-ray review, appellant had severe loss of range of motion and could not lift or perform her job duties.

By decision dated October 7, 2021, OWCP accepted that the August 17, 2021 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a medical diagnosis from a qualified physician in connection with the accepted August 17, 2021 employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

OWCP received notes dated September 10 and 24, 2021 from Dr. Charles verifying that appellant had been seen that day. In a note dated September 24, 2021, Dr. Charles related that appellant would be seen twice a week for the next nine weeks to address her structural issues arising from her motor vehicle accident.

A billing statement noted the dates appellant was seen by Dr. Charles through October 18, 2021 and the charges.

On June 1, 2022 appellant requested review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a September 3, 2021 report, Dr. Charles noted the history of appellant's August 17, 2021 employment incident. She noted that x-rays had been taken at an area hospital on the day of the motor vehicle accident and that appellant had undergone x-ray examination at her office on September 3, 2021. The report included a new patient examination form wherein appellant indicated that she had not received treatment for her injury as she could not find a physician in the area that accepted federal workers' compensation claimants. The form defined chiropractic treatment as the treatment of subluxation and listed five main factors of subluxations, for which Dr. Charles noted her findings of limited flexion and severe decreased range of motion for appellant's cervical and thoracic spine. Dr. Charles indicated that appellant's x-rays taken in her office on September 3, 2021 revealed cervical facet syndrome at C3-C7, with decreased cervical disc space at C5-T1; thoracic sclerosis at T5-T8, with facet syndrome at T5-T8, and decreased disc space at T5-T8; lumbar facet syndrome at L4-L5, lumbar sclerosis at L3-L5; and decreased lumbar disc space at L3-L6. She indicated that the underlying chiropractic problems in appellant's case were loss of cervical curve, unlevel shoulders, decreased disc space at C5-C6, C6-C7, and C7-T1; canal stenosis at C3-C7, loss of lumbar curve, decreased disc spacing at L3-L4, L4-L5, L5-S1, high right pelvis, closing of L5-S1 joint, and lumbar canal stenosis at L1-L5. Dr. Charles indicated, at the bottom on the form, that appellant's x-rays revealed dislocation and subluxations of the vertebrae. She also opined that the precipitating causes of appellant's condition were trauma from car accident and wear and tear from job.

By decision dated June 24, 2022, OWCP's Branch of Hearings and Review denied appellant's request for a review of the written record, finding that it was untimely filed. It further exercised its discretion and determined that the issue in the case could equally well be addressed through a reconsideration request with the submission of new evidence.

On August 31, 2022 appellant requested reconsideration. OWCP received statements from her dated July 15 and August 29, 2022. In her August 29, 2022 statement, appellant alleged that the records she had sent from Dr. Charles showed subluxation. OWCP also received a Congressional inquiry dated August 3, 2022.

By decision dated September 29, 2022, OWCP denied modification of its October 7, 2021 decision.

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 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 of FECA,[3] 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

[2] *Supra* note 1.

[3] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.[4] 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.[5]

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. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[6]

Section 8101(2) of FECA 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 regulation by the Secretary.[7] OWCP's implementing federal regulation at 20 C.F.R. § 10.5(bb) defines subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray.

ANALYSIS -- ISSUE 1

The Board finds that appellant has established a diagnosed medical condition in connection with the accepted August 17, 2021 employment incident.

In her September 3, 2021 report, Dr. Charles reviewed x-rays taken in her office on September 3, 2021 and noted examination findings, which included decreased disc spacing of appellant's cervical, thoracic, and lumbar spine. She also concluded that the x-rays showed spinal subluxation. As Dr. Charles diagnosed subluxation based on x-rays taken in her office on September 3, 2021, she is a qualified physician under FECA and her opinion constitutes competent medical evidence.[8] Accordingly, the Board finds that appellant has established a diagnosed medical condition. In her September 3, 2021 report, Dr. Charles also opined that the precipitating causes of appellant's dislocation and subluxations of the vertebrae were the trauma from motor vehicle accident and wear and tear from job.

Consequently, the case must be remanded for consideration of the medical evidence as to whether appellant has met his burden of proof to establish that his diagnosed medical conditions are causally related to the accepted October 24, 2022 employment incident. Following this and

[4] *L.C.,* Docket No. 19-1301 (issued January 29, 2020); *J.H.,* Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *P.A.,* Docket No. 18-0559 (issued January 29, 2020); *K.M.,* Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *T.H.,* Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone,* 41 ECAB 354 (1989).

[7] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.311.

[8] *Id.*; *see R.A.,* Docket No. 19-0650 (issued January 15, 2020); *see also Jay K. Tomokiyo*, 51 ECAB 361 (2000).

other such further development as deemed necessary, it shall issue a *de novo* decision on the issue of causal relationship.[9]

CONCLUSION

The Board finds that the case is not in posture for decision.[10]

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board. The June 24, 2022 nonmerit decision of the Office of Workers' Compensation Programs is rendered moot.

Issued: August 15, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

[9] In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

[10] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).