United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 15-417**
	)	**Issued: May 20, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Plainview, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 15, 2014 appellant filed a timely appeal of a November 10, 2014 nonmerit decision and an August 20, 2014 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.

ISSUES

The issues are whether: (1) appellant has met his burden of proof to establish a traumatic injury in the performance of duty; and (2) whether OWCP properly denied appellant's request for reconsideration without a merit review of his claim pursuant to 5 U.S.C. § 8128(a).

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On March 11, 2014 appellant, then a 29-year-old letter carrier, filed a Form CA-1, traumatic injury claim, alleging that on February 18, 2014, while performing his usual duties, he felt pain in his lower back. He stopped work on February 18, 2014.

Appellant submitted a return to work slip dated February 24, 2014 from Dr. David Zitner, a Board-certified orthopedic surgeon, who noted seeing appellant that day for low back pain and that he would be off work for two weeks. In a March 10, 2014 duty status report, Dr. Zitner diagnosed lumbar strain and advised that appellant could return to work full time with restrictions.

By letter dated March 28, 2014, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

In a March 10, 2014 report, Dr. Zitner noted treating appellant for a work-related low back injury from February 18, 2014. Appellant believed his condition was a re-sprain of a previous work-related back injury caused by bending and lifting at work. He noted findings on examination of diffuse lower lumbar tenderness and tightness, normal range of motion, negative straight leg rises and no neurologic deficit. Dr. Zitner diagnosed improving work related lumbar strain. He noted that appellant was partially disabled and could return to light duty with no lifting or prolonged standing or walking.

In a decision dated April 28, 2014, OWCP denied the claim as the evidence was insufficient to establish the events occurred as described.

On May 19, 2014 appellant requested reconsideration. He indicated that on February 18, 2014 after casing mail, he pulled the mail down, placed it in a hamper, pushed the hamper near the supervisor's desk, and felt severe pain in his back. Appellant submitted a February 24, 2014 report from Dr. Zitner which noted that appellant injured his lower back on February 18, 2014 while working as a postal worker. He reported setting up his mail and doing bending and lifting, and as he was going on his mail route he developed severe pain in his lower back. Appellant noted spraining his back at work 10 years prior. Dr. Zitner's examination of the back showed mild-to-moderate diffuse lower lumbar muscular tenderness, tightness with spasm, and limited range of motion. X-rays revealed mild degenerative disc disease. Dr. Zitner diagnosed lumbar strain and found appellant unable to work as a mail carrier. On April 7 and 18, 2014 he reported treating appellant as follow-up to a work-related injury to his low back. Dr. Zitner noted that appellant was moderately improved with diffuse lumbar tenderness and normal range of motion. He diagnosed work-related lumbar strain resolving. On April 18, 2014 Dr. Zitner cleared appellant for full duty as a mail carrier. In a duty status report dated April 18, 2014, he diagnosed lumbar strain and returned appellant to work regular duty.

In a decision dated August 20, 2014, OWCP denied appellant's claim as modified. It noted that he had established the employment incident, but denied the claim because the medical evidence was insufficient to establish that the claimed condition was causally related to the employment incident.

On October 13, 2014 appellant requested reconsideration. In an undated statement, he indicated that he had submitted sufficient evidence to prove he had sustained a work-related injury. Appellant noted being treated by an emergency room physician on February 18, 2014 who advised his injury was work related. He reported having injured his back on June 3, 1991 while lifting trays of flats into his van. Appellant submitted part of a Form CA-1 from 1991. He submitted reports from Dr. Zitner dated February 24, March 10, April 7, and 18, 2014, all previously of record. Also submitted were physical therapy reports dated March 24 to April 16, 2014.

In a decision dated November 10, 2014, OWCP denied appellant's request for reconsideration as the evidence was insufficient to warrant a merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing 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 of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[2]

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 actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[3]

Rationalized medical opinion evidence is generally 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 factors identified by the claimant.[4]

ANALYSIS -- ISSUE 1

It is not disputed that on February 18, 2014 appellant pulled down cased mail and placed the mail in a hamper and pushed the hamper. It is also not disputed that he was diagnosed with a lumbar strain. However, appellant has not submitted sufficient medical evidence to establish that his diagnosed condition was caused or aggravated by this incident.

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *T.H.*, 59 ECAB 388 (2008).

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

In reports dated February 24 and March 10, 2014, Dr. Zitner noted that appellant had injured his lower back on February 18, 2014 at work and that he had a work-related back sprain about 10 years prior. He noted x-rays revealed mild degenerative disc disease and diagnosed lumbar strain. Similarly, in reports dated April 7 and 18, 2014, Dr. Zitner treated appellant for a work-related injury to his low back while working as a letter carrier. He noted that appellant was moderately improved and diagnosed work-related lumbar strain resolving. On April 18, 2014 appellant was cleared for full duty as a mail carrier. Although Dr. Zitner supported causal relationship, he failed to provide sufficient rationale to explain the basis for appellant's conclusion that the diagnosed conditions were related to his bending and lifting while setting up mail in his workplace. He did not explain how "bending and lifting" would have caused or aggravated the diagnosed conditions or why the lumbar strain and pain was not caused by nonwork-related factors, such as age-related degenerative changes.

Appellant submitted return to work slips from Dr. Zitner dated February 24, March 10, and April 18, 2014 in which he diagnosed lumbar strain and gradually returned appellant to full duty. These reports are insufficient as Dr. Zitner did not provide a history of injury[5] or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition or rendered him disabled.[6]

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.[7] Appellant failed to submit such evidence, and OWCP therefore properly denied appellant's claim for compensation.

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

Under section 8128(a) of FECA,[8] OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may

[5] *Id.*

[6] *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).

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

[8] 5 U.S.C. § 8128(a).

obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(1) Shows that OWCP erroneously applied or interpreted a specific point of law; or
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> (2) Advances a relevant legal argument not previously considered by OWCP; or
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> (3) Constitutes relevant and pertinent new evidence not previously considered by OWCP."[9]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.[10]

ANALYSIS -- ISSUE 2

OWCP denied appellant's traumatic injury claim as the medical evidence did not demonstrate that the claimed medical condition was causally related to the established work-related events. Thereafter, it denied his reconsideration request, without a merit review.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his request for reconsideration, appellant did not submit an argument to show that OWCP erroneously applied or interpreted a specific point of law. He argued that he had submitted sufficient evidence to prove he sustained a work-related injury. Appellant indicated that he had been treated by an emergency room physician on February 18, 2014 who advised his injury was work related. He reported having previously injured his back on June 3, 1991 while lifting trays of flats into his van. These assertions do not show a legal error by OWCP or a new and relevant legal argument. The underlying issue in this case is whether appellant submitted medical evidence establishing that his lumbar strain was causally related to his work duties. That is a medical issue which must be addressed by relevant new medical evidence.[11] However, appellant did not submit any new and relevant medical evidence in support of his claim.

Appellant submitted reports from Dr. Zitner dated February 24, March 10, April 7, and 18, 2014. However, these reports are duplicative of evidence previously submitted and were considered by OWCP in its April 28 and August 20, 2014 ddecisions. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[12]

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[9] 20 C.F.R. § 10.606(b)(2).

[10] *Id*. at § 10.608(b).

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

[12] *See Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

The Board has held that documents from physical therapists do not constitute probative medical evidence as physical therapists are not considered physicians under FECA.[13] Thus, the treatment records from the physical therapist are of no probative medical value in establishing appellant's claim.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not establish that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal appellant disagrees with OWCP's decision denying his claim for compensation and noted that he had submitted sufficient evidence to establish his claim. As noted above; however, the medical evidence does not establish that his diagnosed conditions were causally related to his employment. Reports from appellant's physician's failed to provide sufficient medical rationale explaining why appellant's diagnosed medical conditions were caused or aggravated by particular employment duties.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish conditions causally related to his employment. The Board further finds that OWCP properly denied appellant's request for reconsideration.

[13] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

ORDER

IT IS HEREBY ORDERED THAT the November 10 and August 20, 2014 decisions of Office of Workers' Compensation Programs are affirmed.

Issued: May 20, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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