United States Department of Labor
Employees' Compensation Appeals Board

J.V., Appellant	)	
and	)	**Docket No. 23-0039**
	)	**Issued: May 15, 2023**
U.S. POSTAL SERVICE, POST OFFICE, Pasco, WA, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 16, 2022 appellant filed a timely appeal from a June 6, 2022 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]

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted January 18, 2022 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the June 6, 2022 decision, OWCP received additional evidence. 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*.

FACTUAL HISTORY

On January 18, 2022 appellant, then a 33-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his left wrist when his mail truck was rear-ended while in the performance of duty. He did not stop work.

In support of his claim, appellant submitted February 16, 2022 chart and examination notes from Dr. Adam Evans, a chiropractor, noting that appellant sustained a work injury on January 18, 2022 when his postal truck was rear-ended. He related that he experienced lumbosacral pain and left wrist pain, reported the incident to his supervisor, and went to the emergency room. Dr. Evans performed a chiropractic examination of the low back and diagnosed a sprain of the ligaments of the lumbar spine, segmental and somatic dysfunction of the lumbar region, a muscle spasm of the back, and a sprain/strain of the left wrist. He provided massage and chiropractic manipulative therapy.

In a May 5, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and afforded him 30 days to submit the necessary evidence. No response was received within the time allotted.

By decision dated June 6, 2022, OWCP accepted that the January 18, 2022 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis from a qualified physician in connection with the accepted January 18, 2022 employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] 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.[5] 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.[6]

[3] *Supra* note 1.

[4] *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).

[5] *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).

[6] *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).

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, 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.[7]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted January 18, 2022 employment incident.

Appellant submitted February 16, 2022 chart and examination notes from Dr. Evans noting that he treated appellant for a January 18, 2022 work injury sustained when appellant's postal truck was rear-ended, causing lumbosacral pain and left wrist pain. Dr. Evans diagnosed a sprain of the ligaments of the lumbar spine, segmental and somatic dysfunction of lumbar region, a muscle spasm of the back, and a sprain/strain of the left wrist. Chiropractors, however, are only considered physicians for purposes of FECA if they diagnose spinal subluxation based upon x-ray evidence.[10] Dr. Evans did not indicate that he obtained or reviewed x-rays to diagnose a subluxation of the spine. Therefore, his notes are of no probative value and are insufficient to meet appellant's burden of proof.[11]

[7] *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).

[8] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] Section 8101(2) of FECA provides that the term "physician" 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 regulations by the Secretary. 5 U.S.C. § 8101(2); *see K.W.*, Docket No. 20-0230 (issued May 21, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *George E. Williams*, 44 ECAB 530 (1993).

[11] *Id.*

As appellant has not submitted medical evidence from a qualified physician establishing a diagnosed medical condition in connection with the accepted January 18, 2022 employment incident, the Board finds that he has not met his burden of proof to establish his 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 a diagnosed medical condition in connection with the accepted January 18, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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