U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT N. MARTINEZ and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Oklahoma City, OK

Docket No. 03-874; Submitted on the Record;
Issued July 15, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty, as alleged.

On August 3, 2001 appellant, then a 53-year-old supervisory general supply specialist, filed a traumatic injury claim alleging that on August 2, 2001 he was moving boxes and experienced back pain. Appellant stopped work on August 3, 2001 and returned to work on August 6, 2001.

By letter dated September 14, 2001, the Office of Workers' Compensation Programs requested additional information from appellant, including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

A medical report dated September 24, 2001 from the Veterans Administration Hospital stated that appellant had continuing lower back pain despite medical treatment from a work injury and he had lumbosacral strain.

In a supplemental statement dated September 28, 2001, appellant stated that on August 2, 2001 he went down to the warehouse to unload seven pallets. Appellant stated that he normally did not do this himself but felt he had no choice because there was a staff shortage. He stated that, after unloading 5 pallets, he noticed a tightness in his back, and soon after that, while lifting a box weighing approximately 25 pounds, he felt a strong pain on the lower portion of his back. Appellant stated that the pain got worse in the evening and the next day he could "barely" get out of bed. Appellant stated that, on September 5, 2001, while bending over to pick up an object, he felt severe pain again causing him to stay in bed the next day.

By decision dated October 22, 2001, the Office denied appellant's claim, stating that appellant did not meet the requirements for establishing that he sustained an injury as alleged. The Office stated that the initial evidence supported that appellant actually experienced the claimed accident but did not establish that he had a diagnosed injury as a result of the incident.

Appellant requested an oral hearing before an Office hearing representative which was held on July 9, 2002. At the hearing, appellant described how his injury occurred, stating that on August 2, 2001 his boss told him that he had a large shipment of medical supplies in the warehouse. He wanted to wait until the next day when another person could help him, but his boss told him that it could not wait so appellant went down by himself and started unloading the boxes. Appellant stated that, while he was unloading the boxes, he felt a little "needle-point pressure" on the back of his spine between the collar bones. Appellant rested a bit and then continued but the next day his back "was really hurting," from his spine all the way to his shoulders. Appellant stated that, about three weeks to a month after his injury, approximately on September 22, 2001, he went to a seminar in Texas despite being in pain and when he returned to Virginia he hurt his back again loading boxes or "pulling something."

Appellant stated that the employing establishment sent him to Dr. Randy Estep, an osteopath, whose treatment was better than what he previously received. When the Office hearing representative asked him about a claim in 1996, he stated that he could not remember, and if it happened, he took pills and did not receive any treatment. Appellant acknowledged that a physical therapist, Christie Cox, gave him physical therapy treatment in 1996.

Appellant submitted additional evidence. In a disability note dated September 28, 2001, Dr. Estep stated that appellant was on restrictions of no lifting/pushing or pulling more than 15 pounds. Appellant attended physical therapy for treatment of a lumbosacral sprain and lumbar radiculopathy five times from October 2 through October 11, 2001.

In a progress note dated October 4, 2001, Dr. Michael Anderson, a Board-certified family practitioner, noted that appellant's back pain was better and the leg pain had resolved. He stated that appellant had a lumbosacral strain and radiculopathy. In a report dated October 11, 2001, Dr. Anderson stated that appellant's lumbar strain with radiculopathy had improved. In a report dated October 25, 2001, Dr. Anderson stated that appellant felt better but still had some pain in his right thigh. He prescribed medication.

In a report dated September 28, 2001, Dr. Estep noted that appellant had low back pain while lifting boxes of supplies and diagnosed lumbosacral strain and radiculopathy. In another report dated September 28, 2001, Dr. Estep considered appellant's history of injury, performed a physical examination, and diagnosed lumbosacral strain with radiculopathy, right.

In a report dated November 1, 2001, Dr. Anderson stated that appellant stated that he had a relapse when he picked up his grandson and felt pain in his mid-back the next day but Dr. Anderson stated that the lumbar strain and radiculopathy had resolved and appellant was released.

The record also contains a physical therapy report dated October 2, 2001 stating that appellant was receiving physical therapy three times a week for lumbosacral strain with radiculopathy. Appellant submitted disability notes dated August 3 through September 11, 2001 indicating that he required restrictions including lifting, pulling and pushing.

By decision dated November 14, 2002, the Office hearing representative found that the additional evidence appellant submitted contained a diagnosis of a lumbosacral strain with

radiculopathy associated with the August 2, 2001 incident but appellant did not establish that his back condition was causally related to factors of his federal employment. The Office amended its October 22, 2001 decision to reflect that the record contained a diagnosis of lumbosacral strain with radiculopathy but affirmed the decision because appellant did not establish the requisite causal relationship.

The Board finds that appellant has not established that he sustained an injury in the performance of duty as alleged.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, 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.[1] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[2]

The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 claimant.[3]

In this case, as the Office hearing representative found the evidence of record contained a diagnosis of lumbosacral strain with radiculopathy. Appellant, however, did not submit sufficient medical evidence addressing the causal relationship between his lumbosacral strain with radiculopathy and the August 2, 2001 employment injury. The medical reports from Dr. Anderson dated October 4, 11 and 25 and November 1, 2001 and from Dr. Estep dated September 28, 2001 merely describe appellant's condition of lumbosacral strain with right radiculopathy or his treatment but do not address causation. They therefore are of limited probative value.[4] The October 2, 2001 report from the physical therapist does not address causation and is not probative because a physical therapist is not a physician within the meaning of the Act.[5] Appellant has therefore failed to establish his claim.

[1] *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-357 (1989).

[2] *Id*.

[3] *Ern Reynolds*, 45 ECAB 690, 695 (1994); *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

[4] *See Michael E. Smith*, 50 ECAB 313, 316 (1999).

[5] *See Thomas R. Horsfall*, 48 ECAB 180, 182 n.3 (1996).

The November 14, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 15, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member