United States Department of Labor
Employees' Compensation Appeals Board

GREGORY T. McCURDY, Appellant	)	
and	)	**Docket No. 05-742**
	)	**Issued: July 6, 2005**
TRANSPORTATION SECURITY ADMINISTRATION, Jamaica, NY, Employer	)	

Appearances:
Gregory T. McCurdy, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On February 6, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 20, 2005, which denied modification of a September 15, 2004 decision finding that he failed to establish that he sustained an injury as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On July 7, 2004 appellant, then a 38-year-old transportation security screener, filed an occupational disease claim alleging that the constant pulling, lifting, pushing and bending caused lower back, mid back, left shoulder and neck pain as well as right leg numbness. He indicated

that he first became aware of the injury and its relation to his work on July 2, 2004. Appellant stopped work from July 7 to 24, 2004.[1]

By letter dated July 20, 2004, the Office advised appellant that additional factual and medical evidence was needed to support his claim. Appellant was requested to describe what work factors caused his injuries and to submit records from his physician which would include, dates of examination and treatment, a history of injury given by him to the physician, a detailed description of findings, the results of all x-rays and laboratory tests, a diagnosis, prognosis and course of treatment followed and the physician's opinion supported by a medical explanation as to how his employment caused or aggravated the claimed injury. The Office explained that the physician's opinion was crucial to his claim and allotted 30 days to submit the requested information.

Appellant then submitted a July 7, 2004 report from Dr. David Rosenthal, appellant's treating chiropractor advising that appellant had a recurrence of increased low back pain. He indicated that appellant was not fit for duty. In a separate report also dated July 7, 2004, Dr. Rosenthal diagnosed spasm of the lumbar paraspinals and advised no work due to a recurrence of low back pain due to lifting. In an undated attending physician's report, he advised that appellant had history of preexisting lumbar disc herniation and that he had a recurrence of low back pain from lifting bags. Dr. Rosenthal checked a box "yes" that inquired as to whether or not he believed the condition was caused or aggravated by an employment activity and added that the constant lifting caused the spasm in his back.

Additionally, he submitted an April 7, 2004 magnetic resonance imaging (MRI) scan of the cervical spine, read by Dr. Robert Diamond, a Board-certified diagnostic radiologist, that revealed an L3-4 posterior disc bulge, an L4-5 posterior disc herniation with ventral thecal sac and foraminal narrowing. Additionally, he noted an L5-S1 posterior disc herniation with foraminal narrowing and ventral thecal sac impression as well as impression on the exiting right L5 root. In a separate MRI scan of the lumbar spine, also dated April 7, 2004, Dr. Diamond noted an L3-4 posterior disc bulge, and an L4-5 posterior disc herniation with ventral thecal sac impression and foraminal narrowing.

On August 24, 2004 the Office received numerous treatment notes from Dr. Rosenthal dating from February 25 to July 19, 2004. These treatment notes contained diagnoses of lumbar subluxation, lumbar neuritis/radiculitis, muscle spasm, lumbosacral sprain/strain, thoracic and sacroiliac subluxation. Dr. Rosenthal indicated that x-rays were taken of the lumbar spine. In a June 18, 2004 treatment note, he diagnosed lumbar subluxation, lumbar disc herniation, and lumbar sprain/strain and muscle spasm. Dr. Rosenthal also saw appellant on July 2, 2004 and advised that appellant was feeling better although he had some pain over the mid back. In a July 7, 2004 treatment note, he noted that appellant was treated for increased pain in his low back and related that his pain increased at work when he did repetitive lifting and bending. Dr. Rosenthal advised that appellant was not fit for duty and referred him to Dr. Howard Adelglass, Board-certified in physical medicine and rehabilitation.

[1] On July 21, 2004 the Office received an undated Form CA-7 for leave without pay from July 7 to 10, 2004. CA-7 for July 11 to 24, 2004.

In an August 19, 2004 statement, appellant described his duties, which included screening checked luggage and moving heavy baggage. He also described his previous employment history, which included an injury in 1997 which caused a herniated disc at L5 and a bicep tear in his left arm.

By decision dated September 15, 2004, the Office denied appellant's claim finding that he had not submitted sufficient factual evidence to establish that he sustained a work-related injury as alleged.

The Office received additional treatment notes from Dr. Rosenthal dating from July 7 to September 23, 2004.

By letter dated November 16, 2004, appellant requested reconsideration. He described his employment duties and submitted additional evidence including an October 25, 2004 report in which Dr. Adelglass advised that he treated appellant on March 12, 2004 for an injury sustained on February 17, 2004. He noted that appellant was seen again on July 7, 2004 for recurring pain that resulted from heavy lifting at work on July 2, 2004. Dr. Adelglass advised that appellant was given trigger point injections and could return to work in a restricted-duty position on October 27, 2004.

By decision dated January 20, 2005, the Office denied modification of the September 15, 2004 decision. The Office found that the report of Dr. Adelglass was based on a history of injury which was inconsistent with the history provided by appellant, and thus of limited probative value.[2]

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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 are causally related to the 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the

[2] The record reflects that appellant has a prior claim for a February 17, 2004 injury which was accepted for contusions to the knees and cervicolumbar strains. The prior claim is not before the Board on the present appeal.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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.[6]

Section 8101(2) of the Act[7] 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.[8] Without a diagnosis of a subluxation from x-ray, a chiropractor is not a physician under the Act and his or her opinion on causal relationship does not constitute competent medical evidence.[9]

ANALYSIS

Appellant has established that he performed pulling, lifting, pushing and bending duties during the course of his employment as a transportation security screener. The issue, therefore, is whether the medical evidence establishes that these employment activities caused or contributed to any diagnosed condition. Appellant has submitted insufficient medical evidence to establish that his back condition was caused or aggravated by pulling, lifting, pushing and bending with heavy suitcases walking up and down steps at work or any other specific factors of his federal employment.

Appellant submitted medical records which indicated that he was treated for low back pain and a recurrence on July 7, 2004. However, there is no discussion explaining how factors of appellant's employment would have caused or contributed to his back condition or aggravated a preexisting medical condition. The record contains no rationalized medical opinion explaining how the implicated employment factors causes appellant's low back pain and the role of his preexisting back condition in his current condition.

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[6] *Id.*

[7] 5 U.S.C. § 8101(2).

[8] *See* 20 C.F.R. § 10.311.

[9] *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

For example, he submitted an October 25, 2004 report in which Dr. Adelglass advised that he treated appellant for an injury that he sustained on February 17, 2004. The Board notes that the February 17, 2004 injury is not before the Board on this appeal. Further, Dr. Adelglass did not otherwise provide medical reasoning to explain how specific employment factors caused or aggravated a particular condition or occupational disease. While the doctor noted "heavy lifting" at work, he did not indicate a familiarity with what appellant was lifting nor did he discuss the pathophysiological processes by which lifting would cause or aggravate a specific condition.

The record contains several reports from appellant's chiropractor, Dr. Rosenthal; some of which predated the claimed period of disability and were apparently prepared in connection with his prior accepted injury of February 17, 2004. As noted above, he may only be considered a physician to the extent that he treated appellant for a spinal subluxation as demonstrated by x-ray to exist. While the record contains reports from Dr. Rosenthal noting a review of x-rays and diagnosing a spinal subluxation, his reports are insufficient to establish appellant's claim as he has not provided sufficient rationale to explain how specific employment factors caused or aggravated a spinal subluxation. For example, in his July 7, 2004 treatment note, Dr. Rosenthal noted that appellant came in for increased pain in his low back and advised that appellant was not fit for duty. However, he did not offer a rationalized opinion or explain why appellant's condition was caused or aggravated by factors of his employment. Furthermore, Dr. Rosenthal, in an undated attending physician's report, advised that appellant had a recurrence of low back pain from lifting bags and checked the box "yes" in response to whether the condition was caused or aggravated by an employment activity. However, checking of the box "yes" that the disability was causally related to employment is insufficient without further explanation or rationale, to establish causal relationship.[10] Dr. Rosenthal did not offer a reasoned medical opinion as to how appellant's employment caused or aggravated a spinal subluxation.

Appellant also submitted several diagnostic reports from Dr. Diamond. However, these reports are insufficient because he did not provide an opinion on the causal relationship of the conditions found on the MRI scan. Therefore, these reports have no probative value in establishing causal relationship.[11]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[12] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[13] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

[10] *Barbara J. Williams*, 40 ECAB 649 (1989).

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

[12] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[13] *Id.*

As there is no probative, rationalized medical evidence addressing and explaining why appellant's back condition was caused and/or aggravated by factors of his employment, appellant has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of employment.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 20, 2005 and September 15, 2004 are affirmed.

Issued: July 6, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member