United States Department of Labor
Employees' Compensation Appeals Board

E.M., Appellant	)	
	)	**Docket No. 06-2060**
and	)	**Issued: January 12, 2007**
DEPARTMENT OF THE NAVY, Beaufort, SC, Employer	)	

Appearances:
Lester L. Bates, Jr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 8, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 13, 2006 which denied his claim for a traumatic injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained a ruptured disc while in the performance of duty.

FACTUAL HISTORY

On June 5, 2000 appellant, then a 53-year-old material handler, filed a traumatic injury claim alleging that on November 10, 1999 he was moving a computer into his truck and felt pain in his back. His supervisor, Vaughn Hill, noted on the CA-1 form that he had no knowledge about the facts of appellant's injury. Mr. Hill indicated that appellant failed to report the injury for eight months after it allegedly occurred.

In support of his claim, appellant submitted treatment notes from Dr. Hugh O. Pearson, a family practitioner, dated November 17 and 29, 1999. Dr. Pearson indicated that appellant was treated and would be out of work for one week. In a February 1, 2000 work excuse slip, Dr. Thor Robert Rhodin, a Board-certified internist, advised that appellant would be off work from December 1, 1999 to February 22, 2000 due to back and leg pain. Appellant also came under the treatment of Dr. Randolph C. Bishop, Board-certified in physical medicine and rehabilitation. Dr. Bishop noted in reports dated May 1 and 31, 2000, that appellant was under his care from February 22 to June 1, 2000 and would be off work until June 14, 2000.

Mr. Hill submitted a statement dated June 6, 2000 and indicated that appellant mentioned that he aggravated his back in November 1999, but did not believe the injury was serious. He advised that on November 17, 1999 appellant was moving furniture to another facility and he noticed that appellant was wearing a back support belt. Appellant indicated that his back was bothering him and that he was going to seek medical treatment. Mr. Hill advised that appellant's job required him to move property and he could not definitively state whether his current back injury was work related, but indicated that it was possibly related to moving computers on November 17, 1999 or to the many other times that appellant had moved property.

In a letter dated June 26, 2000, the Office advised appellant of the factual evidence needed to establish his claim and requested that he submit such evidence.

Appellant submitted statements dated July 18 and July 19, 2000, indicating that he reported his back injury to his supervisor on the same day that it occurred. He noted that Mr. Hill inquired as to whether he was wearing his back belt and appellant responded affirmatively. Appellant delayed in seeking medical attention because he believed it was just a pulled muscle and would resolve. The pain become worse and his symptoms persisted and he sought medical treatment from Dr. Pearson on November 17, 1999. In a November 29, 1999 report, Dr. Pearson noted that appellant continued to experience pain and developed paresthesias extending into the right thigh and knee with urge incontinence. In reports dated December 13, 1999 and January 25, 2000, he noted that appellant complained of paresthesias. In a December 3, 1999 report, Dr. Rhodin noted that appellant had an onset of back pain one to two weeks ago which caused numbness and weakness in his legs. He indicated that his work duties included lifting property. Dr. Rhodin diagnosed low back pain with findings in the lower extremities consistent with myelopathy. In reports dated December 9 and 15, 1999, he noted that appellant's pain was improved but he still experienced abnormal sensation and numbness in his legs. Dr. Rhodin diagnosed low back pain with abnormal findings in the lower extremity secondary to a ruptured disc or sprain. Reports dated January 11 to April 18 2000, noted improvement in appellant's back pain but an abnormal sensation in the saddle distribution of his buttocks and peroneal area. Dr. Rhodin diagnosed improving low back pain with abnormal sensation in the saddle distribution.

Dr. Robb Snider, a Board-certified neurologist and psychiatrist, treated appellant for bilateral lower extremity paresthesias. Appellant reported awakening in mid November 1999 with right lower extremity numb paresthesias and back pain which progressed into the lower extremities, buttocks and perineum. Dr. Snider diagnosed progressive bilateral lower extremity paresthesias which was most pronounced over the saddle distribution with accompanying urinary urgency, constipation and sexual dysfunction. From February 8 to April 13, 2000, Dr. Rhodin

noted that appellant underwent a T7-8 discectomy; however, appellant still experienced persistent sensory disturbances from his waist down. He diagnosed thoracic myelopathy and status post T7-8 discectomy and bilateral tardy ulnar palsies and early right carpal tunnel syndrome. A magnetic resonance imaging (MRI) scan of the thoracic spine dated February 3, 2000 revealed an extruded disc fragment to the left at T7-8.

Appellant was seen in consultation with Dr. Stephen M. Scionti, a Board-certified urologist, on February 4, 2000. Dr. Scionti noted that appellant experienced back pain which commenced eight to nine months ago with intermittent paresthesias, numbness and altered sensation down both legs. He diagnosed spinal nerve root irritation causing bladder irritative symptoms such as urgency and paresthesias in the saddle region. In treatment notes from Dr. Bishop dated February 9, 2000, it was noted that appellant was a material handler who was injured at work on November 17, 1999 and experienced pain radiating from his thoracic region into his flank and lower extremities causing bowel and bladder dysfunction. Dr. Bishop diagnosed progressive thoracic myelopathy and recommended transthoracic discectomy. In an operative report dated February 22, 2000, Dr. Bishop performed a transthoracic exposure of T7-8 vertebral bodies, discectomy at T7-8, allograft fusion, T7-8 and internal fixation at T7-8 and diagnosed T7-8 herniated disc.

In a decision dated July 28, 2000, the Office denied appellant's claim finding that the evidence was not sufficient to establish that his back condition was related to the accepted incident of November 10, 1999.

On August 16, 2000 appellant requested an oral hearing before an Office hearing representative. The hearing was held on December 22, 2000. Appellant testified that in November 1999 he sustained a work-related back injury when lifting a computer. He immediately reported the injury to his supervisor. Appellant indicated that he delayed in seeking medical attention because he believed his condition was just a pulled muscle which would resolve. In an attending physician's report dated February 8, 2000, Dr. Bishop noted that on November 17, 1999 appellant sustained a thoracic disc herniation with radiculopathy. He noted with a checkmark "yes" that his condition was caused or aggravated by an employment activity.

By decision dated April 20, 2001, the hearing representative affirmed the July 28, 2000 decision finding that appellant failed to establish that he sustained an injury on November 10, 1999.

On June 21, 2001 appellant, through his attorney, appealed the claim to the Board. Appellant submitted a report from Dr. Bishop dated February 2, 2001. Dr. Bishop noted that appellant injured his back on November 17, 1999 while lifting equipment or computers when his symptoms began. He opined that he sustained a herniated disc at T7-8 secondary to his lifting injury at his job site in November 1999. On October 22, 2002 the director of the Office requested that the Board set aside the decision of the hearing representative and remand the case for further development. By order dated November 1, 2002, the Board granted the Director's motion.[1] It noted that appellant submitted additional medical evidence prior to the issuance of

[1] Docket No. 0-1780 (issued November 1, 2002).

the hearing representatives decision which should be considered by the Office prior to issuing a decision.

In a decision dated December 31, 2002, the Office denied appellant's claim as the evidence was not sufficient to establish that he sustained the alleged injury on November 10, 1999. It determined that the decision dated December 31, 2002 had not been properly issued because appellant's authorized representative was not sent a copy and, therefore, the decision was reissued on December 8, 2004.

On December 5, 2005 appellant, through his attorney, requested reconsideration. Appellant asserted that Dr. Bishop's report of February 2, 2001 established that he sustained a work-related lifting injury to his back. He submitted an MRI scan of the lumbar spine dated December 1, 1999 which revealed broad diffuse disc bulging at L2-3, L3-4 and L4-5, annular tears at L2-3 and L3-4 and a broad central subligamentous disc protrusion noted at L5-S1.

By decision dated June 13, 2006, the Office denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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. 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]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[3] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[4]

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

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

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

[4] *Id*.

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.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS

The Office denied appellant's claim on the grounds that he failed to establish that he sustained injury on November 10, 1999. The Board finds that the evidence supports that on or about November 10, 1999 appellant did in fact lift property in his employment. Appellant has provided a consistent history of the injury as reported on medical reports and in his testimony. He submitted a report from Dr. Bishop dated February 9, 2000, who noted a history of injury and indicated that appellant was a material handler who was injured at work on November 17, 1999 and experienced pain radiating from his thoracic region into his flank and lower extremities causing bowel and bladder dysfunction. Other reports from Dr. Bishop dated February 2, 2001 noted that appellant injured his back on November 17, 1999 when he was lifting equipment and computers. He indicated that appellant sustained a herniated nucleus pulposus at T7-8 while moving heavy objects at work. Additionally, Mr. Hill, appellant's supervisor, noted on June 6, 2000 that appellant mentioned that he aggravated his back in November 1999 but the injury did not appear too serious. He indicated that appellant was required to move property and that on November 10, 1999 he was moving furniture to another facility. Mr. Hill indicated that on November 17, 1999 he noticed that appellant was wearing his back support belt. Appellant indicated that his back was bothering him and that he was going to seek medical treatment. His testimony at the oral hearing on December 22, 2000 further supports his history of injury noting that in November 1999 he experienced back pain after lifting equipment. Appellant indicated that he delayed in seeking medical attention because he believed it was just a pulled muscle and his condition would resolve. He sought medical treatment from Dr. Pearson on November 17, 1999. The Board finds that appellant's statements are consistent with the surrounding facts and circumstances and thus, has established that he experienced the employment incident on November 10, 1999.

The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a ruptured disc on November 10, 1999 causally related to his employment duties. Appellant submitted notes from Dr. Pearson dated November 17 and 29, 1999, who indicated that he was treated and advised to remain at home for three to five days. Dr. Pearson noted that appellant developed paresthesias extending into the right thigh and knee with urge incontinence. Other reports dated December 13, 1999 and January 25, 2000 noted appellant's complaints of paresthesias. However, Dr. Pearson failed to provide a history of injury,[7] nor did

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

[6] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[7] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

he provide a rationalized opinion regarding the causal relationship between appellant's paresthesias and ruptured disc and the factors of employment believed to have caused or contributed to such condition.[8]

The December 3 to 28, 1999 reports from Dr. Rhodin noted that appellant did lifting at work and had an onset of back pain one to two weeks prior which caused numbness and weakness in his legs. Dr. Rhodin diagnosed low back pain with findings in the lower extremities consistent with myelopathy. In reports dated January 11 to April 18, 2000, he noted that appellant continued to experience abnormal sensation in the saddle distribution of his buttocks and peroneal area and diagnosed status post thoracic spine disc herniation with generalized abnormality of sensation in the lower extremities. However, none of Dr. Rhodin's reports specifically addressed the November 10, 1999 incident, nor did he provide a rationalized opinion regarding the causal relationship between appellant's thoracic spine disc herniation or myelopathy and the factors of employment believed to have caused or contributed to such condition.[9] Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant submitted a report from Dr. Bishop dated February 9, 2000. He noted that appellant was a material handler and was injured at work on November 17, 1999 and experienced pain radiating from his thoracic region into his flank and lower extremities. In a report dated February 2, 2001, Dr. Bishop opined that appellant sustained a herniated thoracic disc at T7-8 secondary to his lifting injury at his job site in November 1999. Although Dr. Bishop generally supported causal relationship, he did not provide medical rationale explaining the basis of his stated conclusion regarding the causal relationship between appellant's T7-8 herniated nucleus pulposus condition and the factors of employment.[10] Dr. Bishop did not explain the process by which lifting would cause the diagnosed condition and why such condition would not be due to any nonwork factors. Appellant submitted an attending physician's report prepared by Dr. Bishop dated February 8, 2000. Dr. Bishop noted that on November 17, 1999 appellant sustained a thoracic disc herniation with radiculopathy. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[11] Therefore, this report is insufficient to meet appellant's burden of proof.

Other reports from Dr. Snider and Dr. Scionti, noted treating appellant for bilateral lower extremity paresthesias and back pain and diagnosed thoracic myelopathy and status post T7-8 discectomy, bilateral tardy ulnar palsies, early right carpal tunnel syndrome and spinal nerve root irritation. However, neither Dr. Snider nor Dr. Scionti provided a history of injury, nor did they

[8] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[9] *Id*.

[10] *See Jimmie H. Duckett*, *supra* note 8.

[11] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

provide a rationalized opinion regarding the causal relationship between appellant's thoracic myelopathy, bilateral tardy ulnar palsies, early right carpal tunnel syndrome and spinal nerve root irritation and ruptured disc and the factors of employment believed to have caused or contributed to such conditions.[12]

The remainder of the medical evidence failed to provide an opinion on the causal relationship between appellant's job and his diagnosed bilateral lower extremity paresthesias, back pain, thoracic myelopathy and T7-8 discectomy conditions. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

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.[13]

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a ruptured disc at T7-8 condition causally related to his November 10, 1999 employment incident.[14]

[12] *See Jimmie H. Duckett*, *supra* note 8.

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

[14] With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board