United States Department of Labor
Employees' Compensation Appeals Board

E.T., Appellant	)	
and	)	**Docket No. 09-1177**
	)	**Issued: December 9, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 31, 2009 appellant filed a timely appeal from an November 21, 2008 merit decision of the Office of Workers' Compensation Programs denying reconsideration of a July 13, 2007 merit decision. 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 established that he sustained an injury in the performance of duty causally related to his employment.

FACTUAL HISTORY

On April 2, 2007 appellant, a 48-year-old postal employee, alleged that he sustained recurrence of disability (Form CA-2a) on March 23, 2007 causally related to his December 18, 2005 accepted employment-related back injury.[1] He alleged that his light-duty assignment caused his back condition to worsen producing a sore back and an aggravated sciatic nerve.

[1] OWCP File No. xxxxxx954.

Appellant alleged that walking back and forth on concrete floors for four hours a day aggravated his sciatic nerve. The Office converted his claim to a new occupational disease claim.

The employing establishment controverted appellant's claim noting that appellant had returned to work for three four-hour days from March 21 to 23, 2007 following his December 2005 accepted injury. Appellant was placed on limited duty repairing damaged mail, which was a seated position and only required lifting one piece of damaged mail at a time, repairing it with scotch tape and placing the piece of mail in a moving hamper.

In a report dated January 12, 2007, Dr. Michael Cronen, an osteopath, reviewed appellant's medical history noting that appellant had a previous work-related injury which had resulted in a laminectomy at L2-3. He noted that appellant had undergone physical therapy postsurgery, but had not received any medical care since March 2006. Dr. Cronen opined that appellant was "probably having residual neuropathic pain due to L1-2 nerve root pathology."

Appellant also submitted progress notes dated January 11, February 3 and March 5, 2007, signed by Dr. Cronen, and an April 26, 2007 report, signed by Dr. Michael J. Doyle, a Board-certified neurosurgeon, diagnosing low back pain and degenerative disc disease.

In a report dated May 23, 2007, Dr. Rodney Chou, a Board-certified physiatrist, reported findings on examination, reviewed appellant's history of injury and diagnosed lumbago and lumbar postlaminectomy syndrome.

By decision dated July 13, 2007, the Office denied appellant's claim because the evidence of record did not establish that the alleged medical condition was caused by employment factors as required by the Act.

On July 16, 2007 the Office received additional medical evidence. Appellant submitted a January 23, 2007 note, signed by Dr. Doyle, which diagnosed low back pain and degenerative disc disease and provided work restrictions. In a subsequent note dated April 26, 2007, Dr. Doyle reported findings on examination and reviewed appellant's history of injury. He noted that appellant reported standing for four hours at a time worsened his symptoms. In other reports (Form CA-20), Dr. Doyle diagnosed low back pain and degenerative disc disease which he attributed to appellant's employment activities involving lifting trays of mail. He indicated that appellant was required to lift tubs of mail weighing 30 to 45 pounds from the floor to above his head, and that appellant was not allowed to rest. Dr. Doyle noted that appellant could continue to work with some pain or apply for disability.

On July 24, 2007 and September 2, 2008 appellant requested reconsideration.

On July 26, 2007 the Office received a January 18, 2007 report signed by Dr. David Linkous, a radiologist, who reported that a magnetic resonance imaging (MRI) scan of appellant's lumbar spine revealed no evidence of recurrent disc abnormality at the L3-4 level. Dr. Linkous diagnosed disc bulges at the L4-5 and L5-S1 levels.

Appellant submitted a note dated September 19, 2007, signed by a Dr. Sherrell W. Nunnelly, who reviewed appellant's history of injury, presented findings on examination and diagnosed lumbar strain.

By decision dated November 21, 2008, the Office denied modification of its July 13, 2007 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of the 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, that an injury was sustained while 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.[3] These are essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[5]

ANALYSIS

Appellant initially filed this claim as a recurrence of disability. A recurrence of disability is defined as the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the condition.[6]

Appellant returned to work following a December 18, 2005 injury on March 21, 2007. In filing his recurrence claim, appellant did not allege that he sustained a spontaneous change in his medical condition following his return to work, but rather he alleged that walking for four hours a day performing limited duty caused an aggravation of his back condition. Based upon appellant's allegations the Office properly converted appellant's claim to an occupational disease claim.

Appellant's burden is to establish that his alleged condition was caused by factors of his employment. Causation is a medical issue that can only be proven by competent, probative

[2] 5 U.S.C. §§ 8101-8193.

[3] *C.S.*, 60 ECAB __ (Docket No. 08-1585, issued March 3, 2009).

[4] *S.P.*, 59 ECAB __ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[6] *Cecelia M. Corley*, 56 ECAB 662 (2005).

medical opinion evidence. The evidence of record is insufficient and, accordingly, appellant has not satisfied his burden of proof.[7]

The relevant medical evidence of record consists of reports and notes signed by Drs. Chou, Cronen, Doyle, Linkous and Nunnelly. Taken as a group, these reports and notes are of little probative value on the issue of causal relationship as they lack an opinion concerning how the identified employment factors caused the conditions diagnosed.[8] The only reports that even attempted to address causal relationship were from Dr. Doyle. While Dr. Doyle repeated appellant's allegation that standing for four hours at a time caused his symptoms to worsen, he was not provided a proper description of appellant's limited-duty position, which only required sitting for four hours a day. Furthermore, he provided no medical rationale explaining how the employment activity alleged by appellant would have caused his current condition. Therefore, Dr. Doyle's opinion is of little probative value on the issue of causation. The Board notes that Dr. Doyle also attributed appellant's condition, without adequate supporting medical rationale, to lifting trays of mail. Dr. Doyle indicated that appellant was lifting trays weighing 30 to 45 pounds from the floor to above his shoulders. He did not demonstrate awareness that appellant had been placed on limited duty upon his return to work. The factors that comprise the evaluation of medical evidence include the physician's relative area of expertise, the opportunity for and thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history and the care of analysis manifested in reaching his conclusions.[9] Such deficiencies reduce the probative value of this evidence on the issue of causal relationship. Accordingly, this evidence is insufficient to satisfy appellant's burden of proof.

The fact that a condition manifests itself or worsens during a period of employment[10] or that work activities produce symptoms revelatory of an underlying condition[11] does not raise an inference of causal relationship between a claimed condition and employment factors. Appellant has not submitted sufficient competent and probative medical evidence supporting his claim and, therefore, he has not satisfied her burden of proof.

[7] The Board notes that appellant submitted reports signed by a registered nurse, a nurse practitioner and a physical therapist. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered physicians under the Act, their reports and opinions do not constitute competent medical evidence. 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007); *Jerré R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

[8] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *See also Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[9] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[10] *E.A.*, 58 ECAB ___ (Docket No. 07-1145, issued September 7, 2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

[11] *D.E.*, 58 ECAB ___ (Docket No. 07-27, issued April 6, 2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).

CONCLUSION

The Board finds appellant has not established that he sustained recurrence of disability causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board