United States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
and	)	**Docket No. 09-813**
	)	**Issued: October 14, 2009**
DEPARTMENT OF THE NAVY, PEARL HARBOR NAVAL SHIPYARD, Pearl Harbor, HI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 4, 2009 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decisions dated May 2 and December 16, 2008 denying his claim for compensation. 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 met his burden of proof in establishing that he sustained a traumatic injury on June 8, 2007 in the performance of duty.

FACTUAL HISTORY

On June 20, 2007 appellant, then a 39-year-old painter leader, filed a traumatic injury claim alleging that he sustained a back sprain from shoveling sand grit at work on June 8, 2007. He stopped work on June 11, 2007 and returned on June 15, 2007. A June 8, 2007 employing establishment dispensary permit form signed by a physician's assistant indicated that appellant

should work restricted duties as tolerated and checked a box on the form indicating that the condition was occupational in nature. The supervisor's portion of the form advised that appellant reported a back injury. Also of record are subsequent dispensary permit forms wherein a physician's assistant noted that appellant's duties should be restricted.

In a June 14, 2007 work restriction form, Dr. Baron Ching, a Board-certified internist, diagnosed back pain. He also noted that appellant was excused from work between June 11 and 14, 2006 and could return to work on June 15, 2007. In a July 7, 2007 attending physician's report, Dr. Ching noted that the history of injury consisted of shoveling a spilled load of grit from a two-ton bag. He indicated no evidence of concurrent or preexisting injury. Dr. Ching found pain in the lumbosacral area and diagnosed low back pain. He checked a box "yes" indicating that appellant's condition was caused or aggravated by his employment activity, noting that appellant shoveled two tons of grit. Dr. Ching also submitted a July 7, 2007 work restriction form indicating that appellant could work full time within certain restrictions. Appellant also submitted several physical therapy notes dated between June 28 and August 18, 2008.

On September 6, 2007 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit additional evidence. Appellant was asked to provide additional medical evidence which included a diagnosis of his medical condition and opinion from a physician on causal relationship.

A June 14, 2007 report from Dr. Ching noted appellant's complaint of "more back pain" since June 8, 2007. He indicated that appellant reported shoveling two tons of sand into containers that required bending, lifting and twisting. Dr. Ching further indicated that appellant reported low back pain the next day with difficulty standing up straight. He noted tenderness to palpation in the lumbosacral area and no lateralizing neurologic deficits. Dr. Ching diagnosed low back pain and a "strong suspicion" that appellant may have herniated L4-5 or L5-S1. On July 7, 2007 he noted appellant's complaint of continued slight back pain. Upon examination, Dr. Ching found full range of motion of appellant's back with no tenderness to palpation and no neurological deficits. He diagnosed back pain from unloading tons of sandblasting grit. An August 22, 2007 work restriction form from Dr. Ching indicated that appellant could return to regular duty on August 23, 2007. In a report of the same date, he reiterated appellant's complaint of slight pain. Dr. Ching found full range of motion of appellant's back with no neurologic deficits. He diagnosed resolved back pain and to rule out sprain or strain.

In an October 10, 2007 decision, the Office denied appellant's claim for compensation finding insufficient medical evidence to support that he sustained a medical condition as a result of the accepted work incident.

In a January 22, 2008 letter, appellant requested reconsideration and noted that he was resubmitting records from Dr. Ching. In a June 14, 2007 report, Dr. Ching noted that appellant sustained a traumatic injury to his lower back due to shoveling sand grit. He opined that he had a "strong suspicion" that appellant may have herniated L4-5 or L5-S1 causing his low back pain. Appellant also submitted several physical therapy notes already of record.

In a May 2, 2008 decision, the Office denied modification of its October 10, 2007 decision finding that the additional medical evidence insufficient to establish a causal relationship between appellant's condition and the work incident. It noted that Dr. Ching did not offer a firm diagnosis.

On October 6, 2008 appellant requested reconsideration. He noted that he promptly notified his supervisor of his claimed injury and asserted that the medical evidence was sufficient to establish his claim.

In an October 6, 2008 report, Dr. Ching noted that he first saw appellant on June 14, 2007 for his complaint of back pain from a June 8, 2007 work injury. He reiterated his diagnosis of low back pain with suspicion of herniation of L4-5 or L5-S1. Dr. Ching noted that he had recommended physical therapy. He also noted that appellant's condition had resolved within 12 weeks. Dr. Ching noted that he did not take x-rays as appellant had uncomplicated lower back pain, which generally resolves without any intervention within six weeks. He also questioned the Office's adjudication, noting that the diagnosis of lower back pain was "a universally accepted syndrome/diagnosis in the medical and insurance world." Appellant also submitted other reports from Dr. Ching already of record.

In a December 16, 2008 decision, the Office denied modification of its May 2, 2008 decision finding the medical evidence insufficient to establish that appellant sustained a low back condition. It found noted that Dr. Ching did not offer a firm diagnosis.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[2]

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. 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.[3]

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Id*.

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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 the specific employment factors identified by the employee.[4]

ANALYSIS

The record supports that appellant shoveled two tons of sand grit at work on June 8, 2007. However, the medical evidence is insufficient to establish a causal relationship between his lower back condition and the June 8, 2007 work incident.

In an attending physician's report dated July 7, 2007, Dr. Ching diagnosed low back pain. He also checked a box "yes" indicating that appellant's condition was caused or aggravated by shoveling two tons of grit. Although this report supports causal relationship, it lacks medical rationale specifically explaining how the act of shoveling contributed to the diagnosed low back condition. The Board has held that medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.[5] Moreover, pain is a symptom, not generally a compensable medical diagnosis.[6] Dr. Ching's narrative report of the same date diagnosed back pain from unloading tons of sandblasting grit. Although this report generally supports causal relationship, it lacks medical reasoning relating the June 8, 2007 work incident to a diagnosed back condition. As noted, medical evidence without rationale is of little probative value.

In reports dated June 14, 2007 and October 6, 2008, Dr. Ching diagnosed lower back pain due to shoveling. He also indicated that he had a strong suspicion that appellant may have herniated L4-5 or L5-S1, which caused his low back pain. However, these reports are equivocal with regard to a firm medical diagnosis as the physician advised that he had a "strong suspicion" and that appellant "may have" make his opinion equivocal.[7] Although Dr. Ching questioned why the Office did not accept a diagnosis of pain, the Board has, as noted, held that pain alone, is

[4] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[5] *S.S.*, 59 ECAB ___ (Docket No. 07-579, issued January 14, 2008). *See Alberta S. Williamson*, 47 ECAB 569 (1996) (an opinion on causal relationship which consists of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value).

[6] *C.F.*, 60 ECAB ___ (Docket No. 08-1102, issued October 10, 2008).

[7] *See Kathy Kelley*, 55 ECAB 206 (2004) (the Board has held that opinions such as, the implant "may have ruptured" and that the condition is "probably" related, "most likely" related or "could be" related are speculative and diminish the probative value of the medical opinion).

not a compensable diagnosis.[8] He did not adequately describe of the physiological mechanism causing injury.

In a report dated August 22, 2007 and work restriction forms dated June 14 and August 22, 2007, Dr. Ching diagnosed back pain but did not address whether or how appellant's June 8, 2007 work incident caused his diagnosed condition. These reports do not support appellant's claim as medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9]

The record also contains several reports and records from appellant's physical therapists and physician's assistants. However, these reports are of no probative value as physical therapists and physician's assistants are not considered physicians under the Act and as a result, they are not competent to provide a medical opinion.[10] Consequently, the Board finds that appellant has not submitted sufficient medical evidence to establish that shoveling sand on June 8, 2007 caused or aggravated his lower back condition.

On appeal, appellant asserts that Dr. Ching did not satisfy the burden to submit sufficient medical evidence and that the denials of his claim should have been directed to him as he is knowledgeable of the medical practices for a workers' compensation claim. As noted, he has the burden of proof in establishing the essential elements of his claim, including submitting medical evidence providing a diagnosis of his condition and supporting that his claimed condition is caused by an employment incident.[11]

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a traumatic injury on June 8, 2007 in the performance of duty.

[8] *Supra* note 6.

[9] *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007).

[10] *See David P. Sawchuk*, 57 ECAB 316 (2006). *See also* 5 U.S.C. § 8101(2).

[11] *See G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008) (an employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated December 16 and May 2, 2008 are affirmed.

Issued: October 14, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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