United States Department of Labor
Employees' Compensation Appeals Board

M.O., Appellant	)	
and	)	**Docket No. 10-1085**
	)	**Issued: December 14, 2010**
DEPARTMENT OF VETERANS AFFAIRS, AUDIE L. MURPHY VETERANS HOSPITAL, San Antonio, TX, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 10, 2010 appellant filed a timely appeal from a December 15, 2009 merit decision of the Office of Workers' Compensation Programs. 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 to establish that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On May 22, 2009 appellant, then a 54-year-old housekeeping aid leader, filed an occupational disease claim alleging that he sustained chronic low back pain as a result of performing his job duties eight hours each workday. His duties included mopping, sweeping, stooping and lifting trash cans and liners and transporting 50- to 100-pound trash carts and biohazardous materials. Appellant first became aware of his condition on July 16, 2008 but did

not file a claim immediately because he was undergoing therapy at the time. He did not stop working.

Appellant submitted a July 16, 2008 report from Dr. Robert B. Gledhill, an orthopedic surgeon, noting that he had a history of low back and leg pain since 1977 related to a bending injury sustained while working as a cook for the Marine Corps. Dr. Gledhill performed a physical examination and observed that appellant had difficulty walking and getting on and off the examination table, markedly restricted range of motion and tenderness in the lower lumbar spine and tenderness in the left and right greater sciatic notches. X-rays exhibited severe facet arthrosis of the lumbosacral joint (L5-S1), a vacuum sign at the L5-S1 disc and interior disc herniation behind the lumbar spine. Dr. Gledhill also commented that prior radiographs provided by appellant showed severe changes of the L5-S1 with retrolisthesis of the L5 and S1 vertebrae, marked decrease in disc space and moderately large midline disc herniation. He diagnosed appellant as having, among other things, herniated nucleus pulposus and facet arthrosis of the L5-S1, small disc bulges at the L2-L3, L3-L4 and L4-L5 spinal regions, severe degenerative disc disease and bilateral sciatica.

Appellant also submitted a May 19, 2009 employing establishment emergency department note from Dr. Hameed A. Dosunmu, a Board-certified internist, detailing that he had a history of chronic low back pain that worsened when he "overworked himself" last weekend during a staff shortage. After performing a physical examination, Dr. Dosunmu observed "some painful distress" and assessed appellant as having a lumbar sprain and spasm.

In a June 12, 2009 letter, the Office informed appellant that the evidence submitted was insufficient to establish his claim and advised him about the type of evidence needed to establish his claim.

Appellant subsequently provided medical reports from Dr. Glenn Whitten, a Board-certified family practitioner and employing establishment physician. In a June 5, 2009 progress note, Dr. Whitten commented that appellant "did extra work on his job" on May 16, 2009 and developed increased lower back pain and a stress fracture in his left foot. He added that appellant visited an orthopedist for his back pain on May 24, 2009. Dr. Whitten observed moderate tenderness of the lumbosacral spine and diagnosed exacerbation of chronic lower back pain and severe degenerative disc disease.

In a July 8, 2009 progress note, Dr. Whitten reported that appellant's left foot stress fracture was resolved, but he still experienced lower back pain and occasional spasms. He observed minor tenderness in appellant's lumbosacral spine. A June 5, 2009 x-ray revealed mild disc space narrowing at the L2-L3 and L5-S1 regions with small marginal osteophytes, indicative of mild degenerative disc disease. Dr. Whitten diagnosed appellant with lower back pain and mild degenerative joint disease.

By decision dated August 28, 2009, the Office denied appellant's claim, finding that he failed to submit a factual statement outlining the work factors that contributed to his condition and medical evidence providing a diagnosis which could be connected to these factors.

Appellant requested a review of the written record on September 10, 2009. He submitted numerous medical records for the period April 1977 to September 2, 2009, most of which detailed an extensive history of lower back problems stemming from his time in the military.

A June 2, 2008 report from Dr. Paul R. Scurka, a chiropractor, acknowledged appellant's history of lumbar pain for 30 years and, upon reviewing a May 5, 2008 x-ray of his lumbosacral spine, diagnosed a four-millimeter subluxation of the L5 on S1 and osteophytes along the superior vertebral plate of the L3. Dr. Scurka noted "physical challenges at work" as a complication to appellant's condition.

By decision dated December 15, 2009, the Office hearing representative affirmed denial of appellant's claim with modification. She found that, while appellant provided a sufficient statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of his condition and sufficient medical evidence providing a competent diagnosis, the medical evidence was insufficient to establish that his lower back condition was caused by the asserted employment factors.

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 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[2] 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.[3]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[4] To establish fact of injury in an occupational disease claim, 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]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[4] *See S.P.*, 59 ECAB 184, 188 (2007).

[5] *See R.R.*, 60 ECAB ___ (Docket No. 08-2010, issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[6]

ANALYSIS

The evidence supports that appellant mopped, swept, stooped and lifted trash cans and liners and transported heavy trash carts and biohazardous materials in the performance of duty. The medical evidence also supports that he has diagnosed lower back conditions. However, appellant has not submitted sufficient medical evidence to establish that his back condition was caused or aggravated by the asserted employment factors.

Dr. Whitten's June 5, 2009 progress note, which diagnosed appellant with exacerbated chronic lower back pain and severe degenerative disc disease, indicated that the condition worsened after appellant performed "extra work on his job" on May 16, 2009. Although he provided some support that appellant's job duties aggravated his preexisting condition, he did not provide any medical rationale explaining how appellant's employment duties, specifically mopping, sweeping, stooping and lifting trash cans and liners or transporting waste and biohazardous materials, caused or aggravated the injury.[7] Moreover, causal relationship cannot be inferred from the fact that appellant's condition became apparent during a period of employment.[8] Dr. Whitten's subsequent July 8, 2009 progress note did not specifically address causal relationship. Dr. Dosunmu's May 19, 2009 note, which pointed out that appellant "overworked himself" that past weekend and then sustained a lumbar sprain, did not present any medical rationale to substantiate his opinion. He did not identify the work duties involved nor explain the reasons such duties would have caused or aggravated the diagnosed sprain. The need for medical rationale explaining how appellant's work duties caused or aggravated his condition is particularly important in view of his history of lower back problems for over 30 years.

Dr. Scurka's June 2, 2008 chiropractic report diagnosed appellant as having a subluxation of the L5 on S1 based on a May 5, 2008 x-ray and mentioned that his "physical challenges at work" complicated his condition.[9] He did not explain how specific duties that appellant performed complicated or exacerbated his spinal subluxation.

Dr. Gledhill's July 16, 2008 report offered diagnoses based on appellant's medical history and physical examination. He did not, however, specifically connect any of appellant's

[6] *I.J.*, 59 ECAB 408, 415 (2008); *Woodhams*, *supra* note 3 at 352.

[7] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[8] *Robert G. Morris*, 48 ECAB 238, 239 (1996).

[9] The term "physician" 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. 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

diagnoses to his work-related housekeeping activities. 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.[10] Likewise, other medical reports provided by appellant did not specifically address how his work duties exacerbated his preexisting condition.

For these reasons, the medical evidence is insufficient to establish appellant's claim.

Appellant argues on appeal that his numerous job duties aggravated his muscle spasms and caused other injuries. As previously discussed, he did not provide sufficient, well-rationalized medical opinion evidence demonstrating that any of his diagnosed low back conditions are causally related to his employment.[11] Therefore, appellant has not met his burden of proof.

CONCLUSION

The Board finds that appellant did not establish that he sustained an occupational disease in the performance of duty.

[10] *E.K.*, 61 ECAB ___ (Docket No. 09-1827, issued April 21, 2010).

[11] The Board notes that appellant submitted new medical evidence on appeal. As the Office has not considered this evidence in reaching a decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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