United States Department of Labor
Employees' Compensation Appeals Board

W.F., Appellant	)	
and	)	**Docket No. 10-1087**
	)	**Issued: February 23, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Hartford, CT, Employer	)	

Appearances:
Greg Dixon, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 10, 2010 appellant filed a timely appeal of a February 25, 2010 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that his L5 lumbar radiculopathy condition is causally related to the December 20, 2007 employment incident.

FACTUAL HISTORY

On January 10, 2008 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim alleging that on December 20, 2007 he sustained low back pain into his left leg and a ruptured disc as he reached into a mailbox. He explained that he reached further than normal into the mailbox to get around snow banks. Appellant stopped work on December 24, 2007 and

returned on July 1, 2008.[1] He submitted work restriction notes from Rockville General Hospital dated December 23, 2007, Healthwise Medical Associates dated December 26, 2007 and Neurosurgeons of Central Connecticut dated January 4, 2008.

The employing establishment controverted appellant's claim on the grounds that he was not injured in the performance of duty. Joseph A. Mazzola II, the postmaster, stated that the injury was a reaggravation of a prior back injury and that appellant complained of back pain two weeks prior to the December 20, 2007 incident.

In a letter dated January 14, 2008, the Office advised appellant that the evidence submitted was insufficient to establish his claim and requested additional information. It noted that the December 20, 2007 employment incident was not established as alleged and that the medical evidence failed to provide a diagnosis of any medical condition or a medical opinion explaining how the alleged incident caused any diagnosed condition. The Office asked appellant to explain why he waited until January 7, 2008 to report the alleged injury and to respond to his supervisor's statement that he previously complained of back pain. It requested a medical report from an attending physician providing a history of injury, a firm diagnosis, and an explanation of how the diagnosed condition was caused or aggravated by the alleged event.

On January 28, 2008 the Office received appellant's response. Appellant waited until January 7, 2008 to report the alleged injury because he was not scheduled to work the following three days and thought he would be able to return to work after resting a few days. When his condition did not improve he sought medical treatment. Appellant first notified his employer of the injury on December 24, 2007 and informed Mr. Mazzola on December 31, 2007.[2]

Appellant submitted a January 15, 2008 prescription note and February 5, 2008 work restriction note from Neurosurgeons of Central Connecticut. In a January 4, 2008 report, Dr. Arnold J. Rossi, a Board-certified neurologist, noted that appellant began experiencing back and left leg pain a couple of weeks prior possibly as a result of twisting to one side. He reviewed a magnetic resonance imaging (MRI) scan that appellant brought, which revealed a very small disc protrusion on the left at L4-L5 and opined that he had "something suggestive of an L5 radiculopathy." Dr. Rossi reported that motor testing revealed 5/5 strength throughout the upper and lower extremity muscle groups and observed flattening of lumbar lordosis, moderate paraspinal muscle spasm and limitation of back motion in all directions. He suggested an epidural steroid injection. In a January 15, 2008 report, Dr. Rossi reported that appellant experienced L5 root pain on the left side and that an MRI scan revealed a small disc rupture at L4-L5 on the left. Because appellant had some response to the epidural steroids, he suggested a transforaminal L4-L5 injection.

[1] The Form CA-1 submitted by appellant did not state when he returned to work; however, other documents in the record list July 1, 2008 as the date he returned to work.

[2] Appellant explained that he previously had a similar back injury as a result of a work-related accident on January 13, 2005 (Claim No. xxxxxx767).

By decision dated February 14, 2008, the Office denied appellant's claim for compensation finding that the medical evidence did not establish that his low back condition was causally related to the accepted December 20, 2007 employment incident.

On March 7, 2008 appellant requested reconsideration and submitted a February 26, 2008 report from Dr. Rossi. Upon examination, Dr. Rossi noted that appellant had positive straight leg raising of 30 degrees on the left and no motor weakness. Appellant complained of L5 root pain on the left side and an EMG revealed strong evidence of an acute left L5 radiculopathy consistent with the MRI scan finding. Dr. Rossi referred to appellant's January 4, 2008 visit at which appellant described how he twisted excessively in order to get over a snowbank. He stated that appellant's pain was "unequivocally related to this injury." Dr. Rossi suggested that appellant undergo L5 root compression and discectomy.

In an April 17, 2008 decision, the Office denied modification, finding that the evidence included a well-rationalized medical opinion on causal relationship. It found Dr. Rossi's opinion regarding causal relationship to be speculative and failed to provide a date of injury, but had only referred to what appellant stated during a January 4, 2008 visit.

On May 23, 2008 appellant requested reconsideration together with additional medical reports from Dr. Rossi. On May 13, 2008 Dr. Rossi stated that the date of injury was December 20, 2007 as described by appellant. He explained that appellant's injury involved twisting while sitting, which involved stretching of the nerve root in an already tight foramen, causing irritation of the root. Dr. Rossi noted that there were many possible causes for nerve root irritation and no consistent way to state whether a particular movement would result in a specific condition. In an April 9, 2008 surgical report, he performed a left L4-L5 laminotomy and decompression of L4-L5 nerve roots. Dr. Rossi observed that appellant's L5 nerve root was compressed and had passed through the lateral recess into the foramen and was a double, conjoined root that was decompressed well past the pedicle.

By decision dated September 30, 2008, the Office again denied modification of the prior decisions. It found that Dr. Rossi did not provide sufficient medical opinion relating appellant's back condition to the December 20, 2007 incident.

On December 15, 2008 appellant requested reconsideration and submitted a December 2, 2008 report from Dr. Rossi, who explained that appellant's conjoined nerve root and foraminal stenosis was a congenital abnormality, which predisposed the nerve root to irritation by a traction injury as occurred on December 20, 2007. Dr. Rossi stated that there was not enough room for the large nerve root to move back and forth as occurs in a twisting motion, without being irritated and causing pain. Appellant's twisting on December 20, 2007 exceeded his ability and caused nerve irritation and pain. Dr. Rossi noted the fact that appellant did not experience back pain prior to the December 20, 2007 work injury. He concluded "within a reasonable degree of medical certainty/probability" that appellant's L5 radiculopathy resulted from the December 20, 2007 employment incident.

In a February 3, 2009 decision, the Office again denied modification of its prior decision. It noted that Dr. Rossi relied on the fact that appellant did not experience back pain prior to the December 20, 2007 incident, but the record established his complaint of back pain two weeks

prior to the incident. The Office found that appellant did not adequately respond to his supervisor's statement that he experienced back pain prior to December 20, 2007. It noted that appellant consistently described the mechanism of injury as reaching over a snowbank, not excessive twisting as reported by Dr. Rossi.

On February 23, 2009 appellant requested reconsideration. He contended that he did not know what his supervisor specifically stated and had answered the Office's inquiry accurately and to the best of his knowledge. Appellant explained that the reaching motion described to Dr. Rossi consisted of a twisting motion to make a curbside delivery. He contended that Dr. Rossi's opinion was not based on an accurate history in that he did not complain of back pain prior to the December 20, 2007 incident. Appellant submitted letters dated February 9 and 12, 2009 from supervisors Matthew Pixley and William Milewski, who stated that they did not ever recall appellant complaining of back problems or back pain prior to the December 20, 2007 incident. On February 19, 2009 Gus Bifolk, a coworker, stated that he was in the parking lot when Mr. Mazzola spoke with appellant on December 7, 2007, and he did not hear appellant mention experiencing prior back pain or reaggravating a prior back injury.

By decision dated May 27, 2009, the Office denied appellant's request for reconsideration, finding that he failed to submit relevant, pertinent information not previously considered.

On June 22, 2009 appellant, through his representative, filed an appeal before the Board.[3] He later withdrew his appeal. On September 28, 2009 the Board granted appellant's request to dismiss his appeal.

On September 24, 2009 appellant submitted a request for reconsideration and submitted a September 8, 2009 letter from Mr. Mazzola. He stated that he incorrectly thought that appellant's injury was a reinjury of his back, not a new injury, and had mistakenly contested appellant's claim. Mr. Mazzola clarified that appellant did not complain of back pain prior to the December 20, 2007 employment incident.

In a February 25, 2010 decision, the Office denied modification of its prior decision. It accepted that appellant did not complain of back pain prior to the December 20, 2007 incident but found that the medical evidence did not provide a well-reasoned opinion on causal relation.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence.[5] To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether "fact of injury" has been established. The employee must submit sufficient evidence to establish that he actually

[3] *See* Docket No. 09-1739 (issued September 28, 2009).

[4] 5 U.S.C. §§ 8101-8193.

[5] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

experienced the employment incident at the time, place and in the manner alleged. The employee must also submit sufficient evidence, generally in the form of medical evidence, to establish that the employment incident caused a personal injury.[6] As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background on whether a causal relationship exists between the claimant's diagnosed condition and the established employment incident.[7] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

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 specified employment factors or incident.[9] 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.[10]

ANALYSIS

The Office accepted that the December 20, 2007 employment incident occurred as alleged, that appellant reached around a snowbank into a mailbox on his route. The issue is whether the medical evidence establishes that appellant's back condition was causally related to the December 20, 2007 employment incident.

On appeal appellant's representative contended that the Office disregarded the medical evidence from Dr. Rossi that addressed the deficiencies mentioned in the Office's decisions. He contended that the medical evidence was sufficient to establish causal relationship.

The Board finds that appellant has provided sufficient evidence to require further development of the medical record to determine whether his L5 radiculopathy condition was causally related to the December 20, 2007 employment incident.

Dr. Rossi stated in a December 2, 2008 report that within a reasonable degree of medical certainty/probability appellant's L5 radiculopathy arose directly from the December 20, 2007

[6] *S.P.*, 59 ECAB 184 (2007).

[7] *Y.J.*, 60 ECAB __ (Docket No. 08-1167, issued October 7, 2008); *George H. Clark*, 56 ECAB 162 (2004); *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

[8] *C.B.*, 60 ECAB __ (Docket No. 08-1583, issued December 9, 2008); *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

[9] *W.D.*, 61 ECAB __ (Docket No. 09-658, issued October 22, 2009); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] *D.S.*, 61 ECAB __ (Docket No. 09-860, issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007).

incident at work. He described how appellant's preexisting nerve root condition made him predisposed to irritation by a traction injury such as occurred on December 20, 2007. Dr. Rossi further explained how appellant's narrow foramen did not provide enough room for the large nerve root to move back and forth, such as when twisting. He noted EMG findings and prior medical treatment of the nerve root to support his findings, as well as his findings during the April 9, 2008 surgery. Although Dr. Rossi noted that there were many causes of nerve root irritation, he subsequently clarified that appellant was working from his vehicle and twisted his back while extending to reach a mailbox. He provided an accurate date history of injury and appellant's postmaster withdrew his statement that appellant had complained of prior back symptoms before the accepted incident. Dr. Rossi's medical opinion is not fully rationalized however as he did not adequately reconcile his opinion that there were many possible causes for nerve root irritation and no consistent way to state that a particular movement would result in a specific condition.

Dr. Rossi's reports are consistent in indicating that appellant sustained an employment-related injury on December 20, 2007. They are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant's burden of proof to establish his claim, they are sufficient to require the Office to further develop the medical evidence.[11] The case will be remanded for appropriate development to be followed by a merit decision on appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

[11] *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for further development consistent with this decision of the Board.

Issued: February 23, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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