United States Department of Labor
Employees' Compensation Appeals Board

M.O., Appellant	)	
and	)	**Docket No. 13-1488**
	)	**Issued: December 18, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Honolulu, HI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On June 10, 2013 appellant, through his attorney, filed a timely appeal of a December 17, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 an injury in the performance of duty.

FACTUAL HISTORY

On May 18, 2012 appellant, then a 62-year-old laborer/custodian, filed a traumatic injury claim alleging that on January 29, 2012 he sustained an injury to his neck, cervical spine and a

[1] 5 U.S.C. § 8101 *et seq.*

strain or sprain of the right shoulder when he grabbed and pulled a door handle at work.[2] He stopped work on January 30, 2012.

In a January 30, 2012 treatment note, Dr. Joseph Dicostanzo, a Board-certified internist, noted that appellant was at work lifting a 60-pound trash bag, when he developed sudden pain in his left shoulder. He related that appellant tried to go back to work and had a recurrence of pain while trying to open a door. Dr. Dicostanzo noted that appellant had neck and shoulder pain with palpation revealing a very tender trapezius. In a February 9, 2012 report, he noted that appellant had an industrial injury and diagnosed shoulder trapezius strain and sprain or strain of the cervical spine. Appellant related that therapy aggravated his right arm numbness since the date of injury and that he also had an incident of left arm pain. Dr. Dicostanzo advised that appellant's complaints seemed out of proportion to the injury. In a March 1, 2012 report, he reviewed x-rays of the cervical spine dated February 9, 2012 and determined that appellant had mild bilateral neuroforaminal narrowing of the right C3-4 and C6-7 and mild narrowing of the left C5-6 and C6-7 neuroforamina. Dr. Dicostanzo advised that appellant could not work. He continued to treat appellant and submit reports.

On June 1, 2012 OWCP received a May 29, 2012 statement from appellant, who described his activities at work. Appellant noted that on January 17, 2012 he injured his neck and right shoulder while trying to lift a heavy trash bag. He explained that he was placed off work from January 17 to 28, 2012. Appellant noted that he returned to work on January 29, 2012 and after approximately 30 minutes of working, he aggravated his neck and right shoulder when he pulled a door handle.

On June 8, 2012 OWCP advised appellant of the additional evidence needed to establish the claim. It explained that a physician's opinion was crucial to his claim and allotted appellant 30 days within which to submit the requested information.

By decision dated July 12, 2012, OWCP denied appellant's claim. It found that the evidence supported that the claimed events occurred; however, appellant failed to submit the necessary medical evidence to establish his claim. OWCP found that the record did not show a medical condition diagnosed in connection with the reported work incident.

OWCP subsequently received a June 27, 2012 disability certificate in which Dr. Dicostanzo advised that appellant was off work through August 17, 2012. In a July 6, 2012 report, Dr. Dicostanzo noted that appellant was unable to return to work since the January 29, 2012 incident. He advised that appellant's "complaints seem out of proportion to injury."

In a July 17, 2012 report, Dr. Dicostanzo noted that there was a paucity of objective findings for appellant. He noted that objective results from a February 9, 2012 x-ray of the cervical spine revealed mild bilateral neuroforaminal narrowing. Dr. Dicostanzo also noted that

[2] The record reflects that appellant has a prior claim under File No. xxxxxx409, which was accepted for cervical sprain and right shoulder sprain due to lifting a trash bag on January 17, 2012. On April 19, 2012 he alleged a recurrence of total disability on January 29, 2012 when he grabbed and pulled a door handle. OWCP developed this as a new claim for a traumatic injury.

range of motion was severely limited since his initial visit. He recommended a magnetic resonance imaging (MRI) scan of the cervical spine.

In a July 20, 2012 report, Dr. Dicostanzo noted that appellant's previous injury of January 17, 2012 resolved by January 19, 2012. Thereafter, appellant related that he was asymptomatic until he pulled open a metal door on January 29, 2012. Dr. Dicostanzo advised that appellant was treated on January 30, 2012 with neck and right shoulder symptoms that included sharp pain as well as muscle spasms and tingling down the right arm. He advised that these were different symptoms and he had a different mechanism of injury. Dr. Dicostanzo advised that there had been little improvement in appellant's symptoms. He reiterated that there was a paucity of objective findings and requested authorization for diagnostic testing. Dr. Dicostanzo diagnosed trapezius strain, sprain/strain of cervical spine and torticollis and advised that the place of injury was industrial.

On July 24, 2012 appellant requested a hearing, which was held on October 22, 2012. In an August 29, 2012 treatment note, Dr. Marc Miyasaki, a Board-certified internist, noted that appellant was seen for right neck and shoulder pain. He advised that appellant remain on limited duty from September 7 to October 1, 2012 with restrictions to include no lifting over five pounds and working no more than four hours a day.

In an October 1, 2012 report, Dr. Jason Chang, a Board-certified physiatrist, noted that appellant had chief complaints of neck, right arm and hand pain, paresthesias and numbness. He provided electromyogram (EMG) and nerve conduction velocity (NCV) findings which included: bilateral median sensory neuropathy at the wrist affecting myelin and suggestive of a mild carpal tunnel syndrome; bilateral ulnar sensory neuropathy at the wrist affecting myelin and suggestive of a mild carpal tunnel syndrome, bilateral ulnar neuropathy at the wrist affecting myelin with evidence of a left ulnar motor neuropathy at the elbow which was suggestive of cubital tunnel syndrome. He recommended an MRI scan of the cervical spine. In an October 17, 2012 report, Dr. Chang diagnosed bilateral carpal tunnel syndrome, ulnar neuropathy and multilevel cervical radiculopathy. He prescribed no heavy lifting over 10 pounds for three months. Dr. Chang opined that appellant's chronic neck and upper extremity pain limited his ability to lift/carry heavy objects and risked worsening his conditions.

By decision dated December 17, 2012, OWCP affirmed the July 12, 2012 decision, but modified it to reflect that the claim was denied due to insufficient evidence of causal relation.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative and substantial evidence,[3] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[4] The employee must also

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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 medical evidence to establish that the employment incident caused a personal injury.[6]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[7]

ANALYSIS

OWCP properly found that appellant established that he grabbed and pulled a door handle at work on January 29, 2012. However, appellant submitted insufficient medical evidence to establish that he sustained a right shoulder or neck condition that was caused or aggravated by this incident.

The medical evidence submitted by appellant included a January 30, 2012 report from Dr. Dicostanzo, who noted appellant's prior January 17, 2012 claim related to appellant lifting a 60-pound trash bag. Although he referred to the incident where appellant returned to work and had a recurrence of pain while trying to open a door, Dr. Dicostanzo did not provide any opinion on how this incident caused or contributed to a diagnosed medical condition. 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.[8] In his February 9 and March 1, 2012 reports, he provided diagnoses which included that appellant had an industrial injury including a strain of the shoulder and trapezius muscle, sprain or strain of the cervical spine. These reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain a reasoned opinion on causal relationship. While he refers to appellant's condition as an industrial injury, he did not explain his conclusion. Dr. Dicostanzo noted that appellant's "complaints seem out of proportion to injury."

In his July 20, 2012 report, Dr. Dicostanzo advised that appellant's January 17, 2012 injury had resolved by January 19, 2012 and that he reported being asymptomatic until he pulled open a metal door at work on January 29, 2012. He noted treating appellant on January 30, 2012

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *T.H.*, 59 ECAB 388 (2008).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *K.W.*, 59 ECAB 271 (2007).

and advised that the January 29, 2012 incident had a different mechanism of injury and produced different symptoms than the prior injury. However, this opinion is of limited probative value as Dr. Dicostanzo acknowledged that there were limited objective findings to support appellant's condition and he also did not explain how the January 29, 2012 incident caused or contributed to a diagnosed medical condition. As noted above, part of appellant's burden of proof includes the submission of reasoned, or rationalized, medical evidence explaining how a work event caused or contributed to his claimed condition. Other reports from Dr. Dicostanzo are also of limited probative value as they did not provide a reasoned explanation as to how the January 29, 2012 work incident caused or contributed to a diagnosed medical condition.

The record also contains reports from Dr. Miyasaki and Dr. Chang. However, these reports are of limited probative value as neither physician addressed how a diagnosed medical condition was causally related to the January 29, 2012 work incident.[9]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[10] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no medical evidence that sufficiently explains how appellant's employment duties on January 29, 2012 caused or aggravated a right shoulder or neck condition, appellant has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of his employment.

Appellant may submit new evidence or argument with a written request for reconsideration within one year of this merit decision pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty.

[9] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which 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] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[11] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board