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J.M., Appellant	)	
	)	
and	)	Docket No. 12-1756
	)	Issued: February 7, 2013
U.S. POSTAL SERVICE, POST OFFICE,	)	
Tampa, FL, Employer	)	
	)	

Case Submitted on the Record

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On August 21, 2012 appellant, through his representative, filed a timely appeal from a July 24, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant met his burden of proof to establish that he sustained neck, back or arm conditions causally related to a work incident on December 28, 2011.

On December 29, 2011 appellant, then a 63-year-old letter carrier, filed a traumatic injury claim alleging that he sustained an injury on December 28, 2011 while in the performance of his

¹ 5 U.S.C. § 8101 *et seq.*

work duties. He stated that he sustained injury as he was twisting and turning to pick up packages off the floor of his mail truck. Appellant's supervisor noted that appellant was already in pain when he arrived at work.

In a statement dated December 28, 2011, appellant explained that when he started work that day his low back pain was "about 2 to 3" out of a maximum of 10. He explained that his back pain gradually intensified as he was making his deliveries along his route, which involved continually twisting and turning to pick up parcels from the floor.

In a report dated December 29, 2011, Dr. Sara Vizcay, a Board-certified physician in family medicine, noted that appellant felt sharp back pain in his lower back as he reached over to pick a package off the floor. She also indicated that he had a past medical history of neck surgery in 2009, a low back surgery in 1982 and was in an motor vehicle accident in 1997. Dr. Vizcay diagnosed him with cervical sprain/strain, lumbar sprain/strain, bilateral shoulder sprain/strain and bilateral lower extremity radiculopathy. She opined that appellant's "injuries to his neck, shoulder, lower back and lower extremities are a direct result of his repetitive twisting, turning, bending, reaching and lifting which are part of [appellant]'s job duties with the U.S. Postal Service." Dr. Vizcay advised that appellant should remain off work for four weeks.

By letter dated January 5, 2012, the employing establishment advised that appellant was a rehabilitation employee who had accepted claims for cervical and lumbar conditions.

In a January 12, 2012 letter, OWCP advised appellant to provide a rationalized medical opinion explaining the nature of the relationship between his diagnosed conditions and the employment incident as alleged.

OWCP denied appellant's claim in a February 16, 2012 decision on the grounds that appellant did not submit a rationalized medical report explaining how his accepted work incident on December 28, 2011 caused or contributed to his diagnosed medical conditions.

On February 17, 2012 OWCP received a number of documents, submitted in support of the claim.

In x-ray reports dated January 5, 2012, received by OWCP on February 17, 2012, Dr. Mark Timken, a Board-certified diagnostic radiologist, noted that the thoracic x-ray films showed cervicothoracic levoscoliosis and thoracolumbar dextroscoliosis and narrowing of multiple thoracic disc spaces with diffuse spondylosis; while cervical x-rays showed prior anterior cervical discectomy fusion at C3-4, C4-5, C5-6 and C6-7 with diffuse spondylosis of posterolisthesis of C5 on C6, which suggested ligamentous laxity or strain; sacral/coccyx x-rays suggested prior injury and lumbosacral facet arthropathy.

By report dated January 11, 2012, also received by OWCP on February 17, 2012, Dr. Vizcay noted the results of the x-rays and diagnosed appellant with cervical strain/sprain, lumbar strain/sprain, bilateral shoulder strain/sprain and bilateral finger and hand numbness.

On February 17, 2012 OWCP also received a January 25, 2012 medical report from Dr. Vizcay, who diagnosed cervical strain/sprain, lumbar strain/sprain and bilateral shoulder strain/sprain.

Appellant disagreed with the February 16, 2012 decision and requested a hearing on March 2, 2012.

Along with his request, appellant submitted a January 30, 2012 report from Dr. Allamm Morales, a Board-certified neurologist, who stated that on December 29, 2011 appellant stopped to make a delivery and when he reached over to pick the package up off the floor, he suddenly felt a sharp pain in his lower back radiating to both legs. Dr. Allamm diagnosed appellant with muscle spasm, cervical sprain/strain, lumbar sprain/strain and hypertension.

Also submitted was a report from Dr. Samy Bishai, a Board-certified orthopedic surgeon, who stated:

“[Appellant] suffered injuries to his neck and back on December 28, 2011 while working as a city carrier for the employing establishment. In the course of his employment on December 28, 2011, while appellant was in his vehicle, he was twisting and turning to pick up packages off the floor of truck and he felt a sharp pain in his lower back and burning in his legs. He tried to finish his route and tried not to twist his body and just turned his head but by the time he finished, his neck and shoulders were in a lot of pain too.”

Appellant noted the examination and treatment by Dr. Vizcay and Dr. Morales. Dr. Bishai diagnosed appellant with cervical disc syndrome, chronic cervical strain radiculopathy bilateral upper extremities, status post cervical disc excision and fusion, chronic lumbosacral strain, lumbar disc syndrome, status post lumbar fusion, radiculopathy bilateral upper extremities and carpal tunnel syndrome in the right hand. He wrote that appellant had injured his neck and back on December 28, 2011 while working as a city letter carrier. Appellant had previous surgery done on his back in 1982 for laminectomy and fusion and he also had surgery on his neck in 2010 for anterior cervical fusion. These surgeries were done for treatment of work-related injuries that occurred while he was working for the employing establishment. Dr. Bishai explained that appellant's preexisting conditions were severe conditions that required major surgical procedures in order to correct the problems and the patient had quite a bit of residuals from these major injuries to his neck and back and postsurgical as well. Appellant was able to return to work but suffered aggravation of these preexisting conditions on December 28, 2011 due to the type of work he was doing. Dr. Bishai concluded that the twisting movements that appellant performed to do his job has caused this permanent aggravation to develop. He also concluded that the December 28, 2011 incident accelerated appellant's condition and caused him to develop symptoms that would not have happened if it was not for the preexisting conditions.

Dr. Sonia Tolgyesi, a Board-certified neurologist, indicated in her February 22, 2011 report that appellant underwent an abnormal nerve conduction study of the bilateral lower extremities, which showed evidence of sensory motor polyneuropathy with mixed features.

A hearing was held on June 12, 2012, at which time appellant was given 30 days after the hearing to submit further medical evidence. No further medical evidence was received by OWCP.

In a July 24, 2012 hearing decision, OWCP denied appellant's claim on the grounds that he had not met his burden of proof to establish that he sustained any medical conditions causally related to his December 28, 2011 work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the 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.⁴ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

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 compensable employment factors identified by the claimant.⁶

ANALYSIS

OWCP has accepted that appellant did pick up a package from the floor of his mail truck on December 28, 2011. The Board finds that he has submitted insufficient medical evidence to establish that his neck, back and arms conditions were caused or aggravated by the accepted December 28, 2011 employment incident.

Appellant submitted several medical reports from Dr. Vizcay, who diagnosed cervical strain/sprain, lumbar strain/sprain and bilateral shoulder strain/sprain. However, while the medical reports noted his history of injury on December 28, 2011, they did not offer a full medical rationale explaining the cause of his medical condition, as related to this incident. In her December 29, 2011 report, Dr. Vizcay stated that appellant's neck, shoulder, back and leg injuries were a direct result of his repetitive turning, twisting, bending, reaching and lifting as

² 5 U.S.C. §§ 8101-8193.

³ *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁵ *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁶ *D.G.*, 59 ECAB 734 (2008); *G.T.*, 59 ECAB 447 (2008); *I.J.*, 59 ECAB 408 (2008).

part of his employment duties. She thus related the diagnosed conditions to occupational injury over a period of time, not the incident of December 28, 2011. Also, while Dr. Vizcay stated a conclusion, she did not explain how medically the twisting and turning appellant performed on the day in question would have caused the diagnosed conditions. The Board has held that medical reports lacking rationale on causal relationship have little probative value.⁷ As such, these medical reports are of limited probative value.

Similarly, Dr. Morale's January 30, 2012 report is also of little probative value. He described the December 28, 2011 incident, but offered no medical explanation as to how this event would have caused appellant's diagnosed conditions. OWCP also received a radiology report from Dr. Timken, dated January 5, 2012 and a nerve conduction study from Dr. Tolgyesi dated February 22, 2011. However, neither of these reports offered any opinion regarding the cause of appellant's conditions.

The only other medical report that addressed the causal relationship issue was the February 14, 2012 medical report from Dr. Bishai, who stated that the twisting motions appellant performed on December 28, 2011 had caused aggravation and acceleration of appellant's preexisting conditions. Dr. Bishai also stated that the injury had caused appellant "to develop symptoms that would not have happened if it was not for the preexisting conditions." However, as OWCP's hearing representative pointed out, Dr. Bishai gave no rationale for his opinion as to how the twisting motion could have caused aggravation of the preexisting conditions. While appellant may have experienced increased symptoms on December 28, 2011, none of the medical evidence of record explains how his preexisting conditions were in fact aggravated or accelerated by this event. The necessary medical opinion should present objective medical findings which support an acceleration or aggravation of the conditions and explain how this progression of the preexisting conditions was caused by the accepted incident. The Board has held that medical reports consisting solely of conclusory statements without supporting rationale are of diminished probative value⁸ and that 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.⁹ As such, Dr. Bishai's report also failed to satisfy the causal relationship requirement of appellant's claim.

As there is no competent medical evidence that offered a medical rationale explaining how the employment incident had caused or aggravated his medical conditions, appellant had failed to establish the causal relationship element of his claim.

⁷ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

⁸ *William C. Thomas*, 45 ECAB 591 (1994).

⁹ *I.J.*, *supra* note 5; *Victor J. Woodhams*, 41 ECAB 345 (1989).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.¹⁰

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on December 28, 2011.

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

¹⁰ The Board notes that, following the July 24, 2012 OWCP decision, appellant submitted new evidence. However, the Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence, together with a formal written request for reconsideration to OWCP, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.