

**United States Department of Labor
Employees' Compensation Appeals Board**

C.B., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Fayetteville, NC, Employer)

**Docket No. 13-694
Issued: May 29, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 5, 2013 appellant filed a timely appeal from an October 30, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied 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.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a low back or buttock condition causally related to the August 7, 2012 employment incident.

FACTUAL HISTORY

On September 4, 2012 appellant, then a 56-year-old nuclear medicine technologist, filed a traumatic injury claim alleging that on August 7, 2012 he sustained acute right sciatica when he

¹ 5 U.S.C. § 8101 *et seq.*

assisted a patient from an examination table to a wheelchair and prevented him from falling down. He stopped work on August 14, 2012 and returned on August 31, 2012. The employing establishment controverted appellant's claim alleging that his medical diagnosis was not related to the claimed condition.

In an August 8, 2012 hospital discharge report, Dr. Joshua M. McConkey, Board-certified in emergency medicine, related a history of bulging disc and back pain when appellant pulled his back while lifting a patient at work on August 7, 2012. Examination revealed tenderness in musculature of lumbar back and no midline, paresthesias, weakness or dysuria. Dr. McConkey diagnosed lumbar back pain.

In an August 13, 2012 note, Dr. Charles R. Ellis, Board-certified in family and occupational medicine, stated that appellant returned to the emergency room to complete work-related injury paperwork after being evaluated for a claimed work-related low back injury that occurred on August 7, 2012.

In an August 13, 2012 Department of Veterans' Affairs memorandum, Dr. William Fiden, a Board-certified family practitioner, noted that appellant sustained a work-related injury on August 7, 2012.

In an August 14, 2012 record, Barbara J. Phillips, a physician's assistant, examined appellant for a bulging intervertebral disc and back and right buttock pain radiating down the left extremity. Appellant stated that a week prior he caught a patient who was falling while at work and felt a "pop" with the sudden onset of sharp, shooting pain. Upon examination, Ms. Phillips observed tenderness on palpation of right buttock but no muscle spasm. Thoracolumbar spine did not demonstrate full range of motion. Straight leg raise testing was negative. Ms. Phillips diagnosed sciatica and recommended no prolonged standing or sitting for more than 15 minutes and no heavy lifting more than 20 pounds.

In an August 14, 2012 x-ray report, Dr. Charles B. Gantt, a Board-certified diagnostic radiologist, observed mild anterior osteophyte formation in the lower lumbar vertebral bodies and mild lumbar dextroscoliosis. Lumbar vertebral bodies were normal in height and no spondylosis or other abnormalities were found. Dr. Gantt diagnosed degenerative changes of the lower lumbar spine including multiple disc narrowing.

In an August 17, 2012 return to work slip, Dr. Fiden recommended appellant not work for 14 days. He authorized appellant's return to work on August 31, 2012 with restrictions of no lifting more than 30 pounds and no prolonged standing or sitting more than 30 minutes.

In an August 19, 2012 health record, Dr. Fiden related appellant's complaints of pain in the right upper buttocks and back. He noted that x-rays showed multilevel disc-space narrowing and recommended a magnetic resonance imaging (MRI) scan test. Examination of the lumbar spine revealed right tender paralumbar muscles with spasm. Straight leg raise tests were positive on the right. Dr. Fiden diagnosed lower back pain.

In an August 21, 2012 report, Dr. Fiden noted that appellant had a history of degenerative disc disease and chronic lower back pain. He related that appellant complained of right buttock pain radiating into his lower extremity after lifting a patient at work the prior week. Upon

examination, Dr. Fiden observed tenderness to palpation over his right buttock or piriformis, right straight leg raise testing and poor range of motion. He diagnosed sciatica.

In an August 23, 2012 health record, Dr. Jesus Muniz, a Board-certified internist, related appellant's complaint of lower back pain and request for additional pain medication. He noted that appellant was usually seen by Dr. Fiden.

In an August 27, 2012 health record, Dr. Fiden noted that appellant's MRI scan results of the lumbar spine revealed multilevel protrusive disc disease, normal alignment vasculature, normal conus medullaris and mild lumbar spondylosis. He diagnosed small/moderate protrusive disc disease of the lower lumbar spine. Appellant also submitted physical therapy reports.

On September 26, 2012 OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested additional evidence.

In an October 20, 2012 statement, appellant explained that on August 7, 2012 he felt a pull and pop in his back and buttock while helping a patient from his wheelchair to the examination table. The next day he went to the emergency room because of increased pain. Appellant was given an injection and returned to work with restrictions. He described the back pain he experienced and medical treatment he received over the following days.

In an October 23, 2012 report, Dr. Fiden related that on August 7, 2012 appellant suffered an acute low-back injury while lifting a patient from a wheelchair at his employment. Appellant complained of pain in the lumbosacral area radiating to the right buttock. Dr. Fiden noted that appellant was examined on August 14, 2012 by one of his physician assistants who diagnosed exacerbation of chronic low-back disorder, confirmed a sciatic component, and ordered spine x-rays and a physical therapy consult. Dr. Fiden examined him on August 17 and noted that x-rays revealed multilevel disc space narrowing. He treated appellant and prescribed medication. Appellant returned to modified duty on August 31, 2012. Dr. Fiden believed that the reported work incident was causal in aggravating a degenerative disc disease with disc protrusive changes.

In a decision dated October 30, 2012, OWCP denied appellant's claim. It accepted that the August 7, 2012 incident occurred as alleged but denied his claim finding insufficient medical evidence to establish that his back condition was a result of the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence³ including that he sustained an injury in the performance of duty and that any specific condition

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

or disability for work for which he claims compensation is causally related to that employment injury.⁴

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.⁵ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁷ An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.⁸

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.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 The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion.¹¹

ANALYSIS

Appellant alleged that on August 7, 2012 he sustained a low back and buttock injury when he prevented a patient from falling from an examination table in the performance of duty. OWCP accepted that the August 7, 2012 incident occurred as alleged but found that the medical evidence failed to establish that he sustained a diagnosed condition as a result of the accepted incident. The Board notes that the medical evidence reflects a history that appellant had a preexisting degenerative disc disease. The medical evidence of record fails to establish that his back condition was caused or aggravated by the August 7, 2012 employment incident.

Appellant submitted various treatment reports by Dr. Fiden dated from August 13 to October 23, 2012. He related that on August 7, 2012 appellant sustained a work-related injury to

⁴ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁶ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁷ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

⁹ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹¹ *James Mack*, 43 ECAB 321 (1991).

his right buttock and back when he lifted a patient at work. Dr. Fiden noted that appellant had a history of degenerative disc disease and chronic low back pain. He observed that x-rays revealed multilevel disc-space narrowing and an MRI scan examination revealed multilevel protrusive disc disease. Examination of the lumbar spine revealed right tender paralumbar muscles with spasm. Dr. Fiden diagnosed lower back pain and sciatica. In an August 17, 2012 note, he authorized appellant to return to work on August 31, 2012 with restrictions. In an October 23, 2012 report, Dr. Fiden stated that the reported work incident was “causal” in aggravating a degenerative disc disease with disc protrusive changes. The Board notes that Dr. Fiden accurately described the August 7, 2012 employment incident and provided findings on examination. He diagnosed back pain and sciatica. Pain, however, is a symptom, and not generally considered a firm, medical diagnosis.¹² While Dr. Fiden opined that the accepted incident was causally related in aggravating appellant’s degenerative disc disease, he did not provide any explanation or medical rationale for how appellant’s current back condition was caused or aggravated by the August 7, 2012 employment incident. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹³ Thus, the Board finds that Dr. Fiden’s opinion is of limited probative value on the issue of causal relationship because he does not explain how the August 7, 2012 employment incident caused or exacerbated his preexisting back condition.

The additional reports by Drs. McConkey, Ellis, Gantt, and Muniz are likewise insufficient to establish appellant’s claim. Drs. McConkey, Ellis and Muniz related appellant’s complaints of lower back pain after an August 7, 2012 work-related injury. In an August 14, 2012 x-ray report, Dr. Gantt observed mild anterior osteophyte formation in the lower lumbar vertebral bodies and diagnosed degenerative changes of the lower lumbar spine. None of the physicians, however, provided any opinion on the cause of appellant’s back pain or degenerative disc disease. The Board has held that 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.¹⁴ These reports, therefore, are insufficient to establish appellant’s claim.

Appellant also provided several reports and progress notes from a physician’s assistant and physical therapist. Section 8102(2) of FECA provides that the term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. As physician’s assistants and physical therapists are not “physicians” as defined under FECA, their medical opinions regarding diagnosis and causal relationship are of no probative medical value.¹⁵

On appeal, appellant described the August 7, 2012 employment incident and alleged that x-rays and other tests showed evidence of muscle strain. He alleged that this injury took place in the

¹² *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

¹³ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-975 (issued February 6, 2009).

¹⁴ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁵ 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

line of duty. As previously noted, however, the record establishes that appellant suffered from degenerative disc disease but it does not contain any other medical diagnosis. Causal relationship is a medical issue that can only be shown by reasoned medical opinion evidence that is supported by medical rationale.¹⁶ Appellant failed to provide such sufficient medical evidence in this case. Thus, the Board finds that he did not meet his burden of proof to establish that he sustained a diagnosed back and buttock condition causally related to the August 7, 2012 employment incident.

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.

CONCLUSION

The Board finds that appellant did not establish that he sustained a buttock or back condition causally related to the August 7, 2012 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 29, 2013
Washington, DC

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

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

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

¹⁶ *Supra* note 7.