

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

S.Y., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Brockton, MA, Employer**

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**Docket No. 11-206
Issued: August 9, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 27, 2010 appellant filed a timely appeal from an October 7, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)¹ 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 back injury causally related to his September 25, 2009 employment duties.

FACTUAL HISTORY

On October 9, 2009 appellant then a 49-year-old police officer, filed a traumatic injury claim alleging that on September 25, 2009 he sustained a muscle strain in the lower left side of

¹ 5 U.S.C. § 8101 *et seq.*

his back as a result of lifting heavy furniture, carrying two heavy duffel bags, restraining a patient on a sidewalk and writing reports during a shift. He stopped work from September 25 to October 2, 2009.

In an undated handwritten emergency room record, a registered nurse noted appellant's complaints of low back pain that started 24 hours ago. Appellant denied a specific injury, but stated that he worked last night and did the usual lifting and turning. He was diagnosed with low back pain and acute sprain.

Appellant submitted various diagnostic reports. In a September 26, 2009 radiology report, Dr. Walter F. Barnes, a Board-certified radiologist, noted appellant's complaints for back pain. Appellant's lumbar vertebral bodies were normally aligned and formed with hardly any anterior marginal spur formation. In a September 26, 2009 computerized axial tomography (CAT) scan report, Dr. Anne M. Ruggieri, a Board-certified diagnostic radiologist, noted appellant's complaints of left side low back pain. She did not observe any calculi and hydronephrosis in appellant's kidneys but found several tiny hypodensities within the liver. Dr. Ruggieri diagnosed probable tiny hepatic cysts. In a September 26, 2009 urine analysis report, appellant's urine was normal.

On December 2, 2009 OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested additional information. It specifically requested a medical report from his treating physician, which included a history of injury, a firm medical diagnosis, test results and findings, symptoms, period and extent of disability, and a physician's opinion, based on medical rationale, which explained how appellant's condition resulted from the employment incident. OWCP further advised appellant that the medical reports received, except for the radiological reports, were not signed by a physician, and thus, did not constitute probative medical evidence.

In a September 30, 2009 medical report, a physician's assistant noted appellant's complaints of left lumbar pain, which radiated toward the left iliac crest and provided a history of injury. He stated that appellant was a police officer at the VA hospital who usually worked the 3:00 p.m. to 11:00 p.m. shift. During a Friday evening shift, appellant moved a table, carried a heavy duffel bag for one of the patients and wrestled a patient on the floor. His back felt well until about 9:30 p.m. when he was typing reports and experienced a sudden onset of left lumbar pain. The next day, the pain became more severe and appellant went to the emergency room. X-rays revealed a normal lumbar spine and a CAT scan of the abdomen showed a probable tiny hepatic cyst but no acute intraabdominal findings. When asked if this was a workers' compensation injury, appellant responded that, although he felt pain at work, he could not be specific about whether it was a result of his work. Straight leg raise test of the right leg achieved 20 degrees before appellant felt left lumbar discomfort. The physician's assistant was unable to complete the straight leg raise test of appellant's left leg because of pain. Appellant complained of severe pain when bending over, but no left leg numbness or weakness.

In a decision dated January 8, 2010, OWCP denied appellant's claim. It accepted that the employment incident occurred as alleged, but found that the medical evidence failed to provide a diagnosed condition that was causally related to the September 25, 2009 employment incident.

On January 16, 2010 appellant requested a review of the written record before the Branch of Hearings and Review. He resubmitted the September 30, 2009 physician's assistant report, which included a signature by Dr. John Howard, a Board-certified internist, and a handwritten diagnosis of lumbar back pain and lumbar spine sprain.

In an October 1, 2009 return to work slip cosigned by Dr. Howard and a physician's assistant, appellant was excused from work for the period September 26 to October 1, 2009 due to a muscle strain of his lower back.

In a March 1, 2010 letter, OWCP informed the employing establishment that appellant had requested a review of the written record and requested for any comments or additional evidence. No additional evidence was received.

By decision dated March 29, 2010, OWCP's hearing representative denied appellant's claim because he failed to submit probative medical evidence establishing that he sustained a diagnosed medical condition causally related to his employment activities.

By letter dated April 6, 2010, appellant submitted a request for reconsideration. He resubmitted the September 30, 2009 medical report and October 2, 2009 return to work slip cosigned by Dr. Howard and a physician's assistant. In the October 2, 2009 slip, Dr. Howard included a handwritten note stating that he agreed with the physician's assistant diagnosis.

In an October 2, 2009 progress note, Dr. Thomas H. Dickinson, a Board-certified internist, stated that appellant was cleared to return to work without restrictions and was treated for low back muscle spasms. In an October 2, 2009 progress record, a registered nurse noted that appellant had been treated for muscle strain of the lower back.

In an April 6, 2010 letter, the employing establishment informed OWCP that appellant returned to work full-time on October 2, 2009 after being on sick leave for the period September 25 to October 1, 2009. It requested that OWCP overturn its denial decision and approve appellant's condition.

In a decision dated October 7, 2010, OWCP denied modification of appellant's claim because none of the medical evidence contained a clear opinion supporting causal relationship between the September 25, 2009 employment incident and his medical condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative, and substantial evidence² including that he sustained an injury in the performance of duty and that any specific condition

² *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.³

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.⁴ 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.⁵ 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.⁶ 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.⁷

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship. 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.⁸ 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.⁹

ANALYSIS

The record reflects that OWCP has accepted that on September 25, 2009 appellant performed the employment duties alleged. Specifically that appellant lifted heavy furniture, carried heavy duffel bags to a patient and restrained a patient on a sidewalk during his work shift. The Board finds, however, that the medical evidence fails to establish that appellant sustained a back condition as a result of the September 25, 2009 employment duties.

Appellant submitted medical reports co-signed by a physician’s assistant and Dr. Howard. In the September 30, 2009 medical report, the history of injury as related by appellant was provided in detail. Dr. Howard included a handwritten diagnosis of lumbar back pain and lumbar sprain. In an October 1, 2009 work excuse slip, he noted that appellant was

³ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

⁴ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁵ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁶ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

unable to work from September 26 to October 1, 2009 due to a muscle strain of his lower back. Dr. Howard also included a handwritten note, which stated that he agreed with the physician's assistant.

The reports provide a diagnosis of lower back strain or sprain. None of the reports, however, provide an opinion on the cause of appellant's back condition nor relate his condition to the September 25, 2009 employment duties. The Board has found 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.¹⁰ While Dr. Howard mentions the September 25, 2009 work shift and appellant's activities during that shift in relating appellant's history, he does not explain whether appellant's back condition resulted from these activities. Without a well-rationalized medical opinion explaining how the September 25, 2009 work factors caused or contributed to appellant's back condition, these reports are insufficient to meet appellant's burden of proof.¹¹

The additional medical evidence is likewise insufficient to meet appellant's burden of proof. Appellant submitted various diagnostic reports dated September 26, 2009. In the radiology report, Dr. Barnes observed that appellant's lumbar vertebral bodies were normally aligned with hardly any anterior marginal spur formation. In the CAT scan report, Dr. Ruggieri noted appellant's complaints of left-side low back pain and found several tiny hypodensities within the liver. She diagnosed probable tiny hepatic cysts. Appellant's urine analysis report was also normal. While the doctors noted appellant's complaints of back pain, none of the doctors provided any firm diagnosis of appellant's condition. Similarly, Dr. Dickinson's October 2, 2009 medical report did not provide a firm diagnosis of any back condition. This medical evidence, therefore, is also of limited probative value on the issue of causal relationship.¹²

Appellant also provided various reports from a registered nurse and a physician's assistant. Section 8102(2) of FECA, however, 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 nurses and physician's assistants are not "physicians" as defined by FECA, their medical opinions regarding diagnosis and causal relationship are of no probative medical value.¹³

On appeal, appellant stated that he was unable to identify the specific incident which led to his injury, but one of the activities caused his muscle strain. As noted above, however, the employee has the burden of proof to establish the essential elements of his claim, which includes furnishing probative medical evidence establishing causal relationship. Causal relationship is a medical issue that can only be established by the submission of rationalized medical opinion

¹⁰ *K.W.*, 59 ECAB 271 (2007); *R.E.*, Docket No. 10-679 (issued November 16, 2010).

¹¹ *See J.F.*, Docket No. 10-1978 (issued May 16, 2011).

¹² *See J.C.*, Docket No. 10-1195 (issued March 23, 2011); *E.K.*, Docket No. 09-1827 (issued April 21, 2010).

¹³ 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005); *E.H.*, Docket No. 08-1862 (issued July 8, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

evidence.¹⁴ The record in this case does not contain such rationalized medical opinion evidence establishing that appellant's back condition was causally related to any of the September 25, 2009 work activities. Thus, appellant did not meet his burden of proof.

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 failed to meet his burden of proof to establish that he sustained a back condition causally related to his September 25, 2009 employment duties.

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2010 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: August 9, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁴ *Supra* note 8.