United States Department of Labor
Employees' Compensation Appeals Board

ERIC R. BARNETT, Appellant	)	
and	)	**Docket No. 05-991**
	)	**Issued: August 9, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Portsmouth, VA, Employer	)	

Appearances:
Eric R. Barnett, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On March 22, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 9, 2005 merit decision and November 22, 2004 merit denial of her claim. Under 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 established that he sustained a lower back condition in the performance of duty.

FACTUAL HISTORY

Appellant, a 45-year-old custodian, filed a Form CA-1 claim for benefits on September 14, 2004 alleging that he injured his lower back while moving a carrier case to a storage area. In a written statement dated September 20, 2004, appellant stated that he developed a lower back condition due to repetitive moving of heavy carrier cases and mailboxes.

Appellant submitted a June 30, 2004 report from Hampton Medical Clinic, which indicated that he experienced low back pain and lateral epicondylitis. He complained of worsening lower back pain radiating into his right buttocks, lateral thigh and right big toe. This report was prepared by Carmina Bautista, a family nurse practitioner. An electromyelogram (EMG) scan, interpreted by Dr. Shafali Kaushik, a Board-certified diagnostic radiologist, on June 30, 2004 showed evidence of lumbar radiculopathy at the L5 level. The following diagnoses were reported: (1) Prominent epidural fat from L3 through S2 suggestive of epidural lipomatosis, which resulted in altered morphology of thecal sac inferiorly, particularly from L5 to the S1-S2 level, representing mild compression; and (2) L5-S1 disc desiccation and diffuse disc bulge, with osteophytes and diffuse disc bulging resulting in moderate bilateral neural foraminal narrowing. This disc-osteophytic complex is in contact with the right exiting L5 nerve root, for which clinical correlation for radiculopathy would be beneficial; L5 Grade 1 anterolisthesis in relation to S1; and an L3 right-sided lesion which most likely represents an atypical hemangioma.

In a report dated July 8, 2004, Dr. Ran Vijai P. Singh, a neurologist, stated that appellant presented with a history of lower back pain with pain radiating into his right lower extremity for the past six months. Dr. Singh stated that appellant's recent problem started about four months ago when he started getting pain in his right lower back, especially in the right buttock, with radiation along the right lower extremity to his right big toe and second toe. He also related complaints of numbness and tingling in the same distribution, with some weakness in his right leg. Dr. Singh advised that appellant brought a magnetic resonance imaging (MRI) scan which showed evidence of Grade 1 spondylolisthesis at L5-S1 and severe bilateral neuroforaminal narrowing at L5-S1 on both sides. In an August 9, 2004 report, Dr. Singh stated that appellant's condition had not improved through either epidural injection or physical therapy. He advised that appellant's neurological examination was unchanged and recommended an L5-S1 decompression and instrumented fusion.

By letter dated September 23, 2004, the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days. Appellant did not submit any additional medical evidence.

By decision dated November 22, 2004, the Office denied appellant's claim, finding that he failed to submit medical evidence sufficient to establish that the claimed medical condition was causally related to the established employment incident.

On January 5, 2005 appellant requested reconsideration.

In a January 3, 2005 report, Dr. Myrna M. Espinosa, a general practitioner, stated that appellant complained of lower back pain sustained as a result of lifting heavy furniture at work. He related appellant's continued complaints of pain radiating to his right hip, right leg down to his foot, which affected his work performance. Dr. Espinosa diagnosed severe low back pain, radiculopathy and spondylolisthesis.

By decision dated February 9, 2005, the Office denied the claim although it modified the November 22, 2004 to reflect that appellant's claim was being adjudicated as one based on occupational disease, which developed over a period of time.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[4]

ANALYSIS

The Board finds that appellant has failed to submit any medical opinion containing a rationalized, probative report, which relates his claimed lower back condition to factors of his employment. For this reason, he has not discharged his burden of proof to establish his claim that this condition was sustained in the performance of duty.

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Gloria J. McPherson*, 51 ECAB 441 (2000).

Appellant submitted the June 30, 2004 report from Hampton Medical Clinic, which indicated that he experienced low back pain and lateral epicondylitis and related complaints of worsening lower back pain radiating into his right buttocks, lateral thigh and right big toe. This report was prepared by a nurse practitioner, not a physician. The Board has long held that a report from a nurse practitioner is of no probative value in establishing a claim because a nurse practitioner is not a physician under the Act.[5]

An EMG scan, also dated June 30, 2004, was submitted which demonstrated evidence of L5 lumbar radiculopathy, in addition to diagnosing mild compression at the L5 to S1-S2 level, L5-S1 disc desiccation and diffuse disc bulge, diffuse disc bulging resulting in moderate bilateral neural foraminal narrowing and L5 Grade 1 anterolisthesis. This report from Dr. Kaushik offered no opinion regarding the cause of these conditions.

In addition, appellant submitted reports dated July 8 and August 9, 2004 from Dr. Singh, a Board-certified neurologist, who noted appellant's history of lower back pain with pain radiating into his right lower extremity for the past six months. Dr. Singh related that appellant's began having lower back problems on his right side approximately four months previously, especially in the right buttock, with radiation along the right lower extremity to his right big toe and second toe, along with numbness, tingling and weakness in his right leg. Dr. Singh stated that an MRI scan evidenced Grade 1 spondylolisthesis at L5-S1 and severe bilateral neuroforaminal narrowing at L5-S1 on both sides. In his August 9, 2004 report, Dr. Singh stated that appellant's condition had not improved and recommended an L5-S1 decompression and instrumented fusion. None of the reports appellant submitted, however, provided a probative, rationalized medical opinion that the claimed condition was causally related to employment factors. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[6] The reports from Dr. Kaushik and Dr. Singh did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition. These reports, therefore, are of limited probative value as they do not contain any medical rationale explaining how or why appellant's claimed lower back condition was currently affected by or related to factors of employment.[7]

In a January 3, 2005 report, Dr. Espinosa related appellant's history of lower back pain sustained as a result of lifting heavy furniture at work and noted his continued complaints of pain radiating to his right hip, right leg down to his foot, which affected his work performance. He diagnosed severe low back pain, radiculopathy and spondylolisthesis; he did not, however, describe the etiology of appellant's condition in any detail or describe how his work duties would have been competent to cause the claimed lower back condition. Moreover, his opinion is of limited probative value for the further reason that it is generalized in nature and equivocal in that he only noted summarily that appellant's condition was causally related to factors of his

[5] *See* 5 U.S.C. § 8101(2); *Joseph N. Fassi*, 42 ECAB 677 (1991).

[6] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[7] *William C. Thomas*, 45 ECAB 591 (1994).

employment. Accordingly, the reports from Hampton Medical Clinic and Drs. Singh and Espinosa, the only evidence appellant submitted in support of his claim, did not constitute sufficient medical evidence to establish that appellant's claimed lower back condition was causally related to his employment.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[8] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his claimed lower back condition was causally related to his employment.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained bilateral foot and knee conditions in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2005 and November 22, 2004 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: August 9, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

[8] *Id.*