United States Department of Labor
Employees' Compensation Appeals Board

B.B., Appellant	)	
and	)	**Docket No. 06-392**
	)	**Issued: January 22, 2007**
U.S. POSTAL SERVICE, HIGHLAND PARK STATION, Chattanooga, TN, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 12, 2005 appellant, through his attorney, filed a timely appeal from a December 7, 2005 merit decision of the Office of Workers' Compensation Programs finding that he did not sustain an injury in the performance of duty. Pursuant to 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 established that he sustained any disability causally related to his accepted October 11, 2002 employment-related injury.

FACTUAL HISTORY

This case has previously been on appeal twice before the Board. In an August 26, 1981 decision, the Board found that the Office did not meet its burden of proof to terminate appellant's compensation benefits.[1] In a decision dated September 23, 2005, the Board found

[1] Docket No. 81-1418 (issued August 26, 1981). The Board notes that the case record does not contain the August 26, 1981 decision.

that the Office did not meet its burden of proof to terminate his compensation on the grounds that he abandoned suitable work on October 11, 2002.[2] It stated that, since the Office, in a March 28, 2003 decision, accepted that appellant sustained a new traumatic injury on October 11, 2002 it was precluded from adjudicating the termination of his benefits without first determining the extent of disability causally related to this employment-related injury. The Board, however, found that appellant did not sustain a recurrence of total disability on October 11, 2002 causally related to his accepted September 20, 1976 employment-related injury. It stated that the Office's acceptance of his exposure to new employment factors on October 11, 2002 broke the chain of causation and caused appellant's alleged disability for work. The Board noted that the medical evidence of record pertaining to the October 11, 2002 employment-related injury required further development as to whether appellant sustained any disability due to the accepted employment injury and, thus, remanded the case to the Office. It instructed the Office to consolidate appellant's recurrence of total disability and traumatic injury claims into one case file. The facts and the history of the case are set forth in the Board's prior decisions and incorporated by reference. As germane to this appeal, appellant, then a 55-year-old clerk, filed a traumatic injury claim (Form CA-1) on October 11, 2002 alleging that on that date he experienced an acute exacerbation of chronic low back pain and pain in his upper back and chest while casing mail at a "044" hand case. He stated that the pain was constant and that he experienced shooting pain in his buttocks and weakness in his legs and feet. On appellant's claim form, Valentine Davis, appellant's supervisor, stated that she had no firsthand knowledge of the alleged accident.

In an accompanying narrative statement, appellant reiterated that casing mail at a "044" hand case caused him constant pain. He described his symptoms and Ms. Davis' initial refusal to give him a CA-1 form. Appellant stated that he called an ambulance which took him to a hospital emergency room.

On October 11, 2002 appellant was treated in a hospital emergency room by Dr. James F. Wojcik, a Board-certified internist, who stated in a form report that appellant could return to work on October 15, 2002.

In an October 15, 2002 medical report, Dr. Walter M. Boehm, a Board-certified neurosurgeon, noted appellant's statement that he was forced to return to work as a modified full-time distribution clerk, despite his opinion that appellant was unable to perform his work duties without significantly aggravating his back condition. On physical examination, he reported appellant's complaint of pain when he moved, marked paravertebral muscle spasm and inability to forward flex more than a few degrees. Dr. Boehm opined that appellant was forced back to work and that he should be on bed rest. His October 24, 2002 report reiterated that appellant was not capable of performing his clerk work duties without significant increase in back pain and that he should remain off work. Dr. Boehm further stated that the situation was not expected to change in the future.

In reports dated October 11, 2002, Dr. Wojcik stated that appellant sustained acute exacerbation of chronic low back pain. He discharged him in stable condition and pain free. Dr. Wojcik released appellant to return to work on October 12, 2002.

[2] 56 ECAB ___ (Docket No. 04-564, issued September 23, 2005).

Appellant filed a claim for compensation (Form CA-7) for the period November 25 through December 25, 2002 and submitted Dr. Boehm's November 22, 2002 form report which stated that he sustained a back injury and pain on October 11, 2002. Dr. Boehm diagnosed back pain and indicated with an affirmative mark that this condition was caused or aggravated by an employment activity. In a November 21, 2002 narrative report, he stated that appellant was being treated for his latest exacerbation of severe low back pain. Dr. Boehm opined that he was totally disabled and that he should remain off work until further notice.

By letter dated December 9, 2002, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the factual and medical evidence he needed to submit to support his claim of injury.

Appellant submitted Dr. Boehm's December 18, 2002 report which stated that he experienced severe pain since his most recent on-the-job injury. Dr. Boehm provided a history that appellant's back injury was due to pulling back plastic used to hold bundles of bulk mail. On physical examination, Dr. Boehm reported that appellant was in obvious discomfort, that he was able to stand and walk but did so with a limp and that he continued to experience rather marked paravertebral muscle spasm.

Dr. Boehm's January 2, 2003 form report reiterated that appellant sustained back pain and that this condition was caused or aggravated by an employment activity on October 11, 2002 as indicated by an affirmative mark.

By decision dated January 15, 2003, the Office found that appellant did not sustain an injury in the performance of duty on October 11, 2002. The factual evidence failed to establish that he sustained an injury at the time, place and in the manner alleged. The medical evidence failed to establish that appellant sustained an injury caused by his work duties. In a letter dated January 19, 2003, appellant, through his attorney, requested an oral hearing before an Office hearing representative.

Appellant submitted Dr. Boehm's February 12, 2003 report which stated that he continued to experience back pain. Dr. Boehm opined that appellant sustained a work-related back injury as he was performing his work duties and that he reported the injury to a supervisor. He further opined that he was incapable of performing his work duties without significant increase in back pain and that he should remain off work.

Treatment notes from Dr. Calvin L. Calhoun, Jr., an internist, and Dr. Charles L. Huddleston, a Board-certified physiatrist, revealed that appellant was treated on intermittent dates from July 30, 2001 to March 21, 2003 for, among other things, low back pain. Treatment notes from Dan White, a social worker, Deborah G. Hale, Rita Thornberry, Verna P. Porth and Martha M. Proffitt, registered nurses, Andrea G. Jackson, Patricia D. Edge and Melanie B. Osborne, licensed practical nurses, John S. Cameron, a registered nurse practitioner, and Walter M. Tyson, a mental health counselor, indicated that appellant was treated on intermittent dates from April 30, 1998 to March 21, 2003 for various physical conditions which included chronic back pain. An emergency room treatment report dated July 9, 2003 from a physician whose signature is illegible indicated that appellant suffered from low back pain.

In a letter dated August 6, 2003, appellant's counsel requested a review of the written record by an Office hearing representative.

The Office received Dr. Boehm's August 6, 2003 report which noted appellant's complaint of back pain radiating into his left leg which caused some bad falls and caused him to awaken at night with numbness from the waist down. On neurological examination, he reported no acute distress, moderately severe paravertebral muscle spasm, definite limited range of motion of the back on forward flexion, absent deep tendon reflexes on the knees and ankles and positive straight leg raising.

By letter dated August 28, 2003, the employing establishment controverted appellant's claim of injury. It contended that the reports of Dr. Boehm and Dr. Wojcik revealed inconsistencies as to whether the October 11, 2002 incident occurred as alleged by appellant. It further contended that the medical evidence of record did not contain any objective findings sufficient to establish that appellant sustained an injury or exacerbation of a preexisting condition in the performance of duty on October 11, 2002.

In a decision issued on November 17, 2003, a hearing representative affirmed the Office's January 15, 2003 decision. The evidence of record failed to establish that appellant sustained an injury while in the performance of duty on October 11, 2002, as alleged.

Following the issuance of the Board's September 23, 2005 decision, appellant submitted Dr. Boehm's September 26, 2005 report which indicated that he had been driving a van for his church and that he had been offered a driver's position by the Veterans Administration (VA). Appellant requested a letter from Dr. Boehm stating that, he was capable of driving. Dr. Boehm noted that appellant stayed as active as possible and rode a bicycle and that the only spell he experienced was two years ago which he associated with confusion. Appellant also thought this was possibly caused by water intoxication from his diuretics. On neurological examination, Dr. Boehm stated that did not appear to be in any significant distress.

By letter dated November 3, 2005, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the medical evidence he needed to submit within 30 days to establish his claim. Appellant did not respond within the allotted time period.

By decision dated December 7, 2005, the Office denied appellant's claim on the grounds that he did not establish that the claimed employment incident occurred at the time, place and in the manner alleged and that he sustained an injury causally related to factors of his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his or her claim, including the fact that an injury

[3] 5 U.S.C. §§ 8101-8193.

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.[4] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[5]

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,[6] must be one of reasonable medical certainty,[7] 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.[8] 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. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.[9]

ANALYSIS

The Office accepted that appellant sustained an injury on October 11, 2002. Appellant contends that he was totally disabled due to his October 11, 2002 employment-related injury. The Board finds that the medical evidence in this case is insufficient to establish his claim.

Dr. Wojcik's October 11, 2002 reports indicated that appellant sustained an exacerbation of chronic low back pain, that he was in stable condition and pain free and that he could return to work on October 12 and 15, 2002. Dr. Boehm's August 6, 2003 report revealed his normal findings on neurological examination. His September 26, 2005 report indicated that appellant was driving a church van and that he had been offered a job by the VA which required driving. Appellant requested a letter from Dr. Boehm stating that he was capable of driving. Dr. Boehm noted his active lifestyle including, riding a bicycle and the lack of any back problems over the past two years. On neurological examination, he found that appellant did not appear to be in any significant distress. Neither Dr. Wojcik, nor Dr. Boehm opined that appellant was totally disabled for work due to the October 11, 2002 employment injury. Therefore, their reports are insufficient to establish appellant's claim.

Dr. Boehm's November 21, 2002 report stated that appellant suffered from back pain and that he was totally disabled for work. Similarly, in form reports dated November 22 and

[4] *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[9] *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

December 22, 2002 and January 2, 2003, Dr. Boehm stated that appellant experienced back pain and indicated with an affirmative mark that appellant's condition was caused by the October 11, 2002 employment injury. His February 12, 2003 report found that appellant sustained a work-related back injury and that he was totally disabled. Dr. Boehm's reports do not provide any medical rationale explaining how or why appellant's back condition was caused by the accepted October 10, 2002 employment-related injury and, therefore, are of diminished probative value.[10]

Dr. Boehm's December 18, 2002 report stated that appellant continued to suffer from back problems. He did not address whether he was totally disabled due to the October 11, 2002 employment injury. Dr. Boehm's report is insufficient to establish appellant's claim.

Dr. Calhoun's treatment notes indicated that appellant was treated for back pain on intermittent dates from July 30, 2001 to March 21, 2003. This evidence is insufficient to establish appellant's claim as the treatment he received from July 30, 2001 to September 16, 2002, predates the October 11, 2002 employment injury. In addition, the notes covering the dates following the accepted employment incident failed to address a causal relationship between appellant's back pain and the employment incident.

Similarly, the treatment notes from Dr. Huddleston fail to establish that appellant was disabled due to the employment-related condition as he neither addressed causal relationship nor the fact that appellant was disabled.

The treatment notes from a social worker,[11] registered and licensed practical nurses[12] and a mental health counselor are of no probative value inasmuch they are not considered to be physicians under the Act.

The July 9, 2003 report of a physician whose signature is illegible has no probative value as the author(s) cannot be identified as a physician.[13] As the report lacks proper identification, it does not constitute probative medical evidence sufficient to establish appellant's burden of proof.[14]

Appellant has failed to submit rationalized medical evidence establishing that he sustained any disability causally related to the October 11, 2002 employment-related injury. Therefore, he has not met his burden of proof.

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[10] *See Franklin D. Haislah*, 52 ECAB 457 (2001); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

[11] *See* 5 U.S.C. § 8101(2); *Ernest St. Pierre*, 51 ECAB 623, 626 (2000); *Frederick C. Smith*, 48 ECAB 132 (1996).

[12] *See Janet L. Terry*, 53 ECAB 570 (2002); *Thomas Lee Cox*, 54 ECAB 509 (2003).

[13] *Ricky S. Storms*, 52 ECAB 349 (2001).

[14] *See Merton J. Sills*, 39 ECAB 572 (1988).

CONCLUSION

The Board finds that appellant has failed to establish that he sustained any disability causally related to his accepted October 11, 2002 employment-related injury.

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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