United States Department of Labor
Employees' Compensation Appeals Board

N.M., Appellant	)	
and	)	**Docket No. 08-2017**
	)	**Issued: April 7, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Woodbury, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On July 17, 2008 appellant, through counsel, filed a timely appeal from a May 1, 2008 merit decision, denying modification of a decision of the Office of Workers' Compensation Programs dated February 27, 2007. 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 an injury on March 10, 2005 in the performance of duty.

FACTUAL HISTORY

On April 25, 2005 appellant, a 61-year-old general clerk, filed a traumatic injury (Form CA-1) claim for a back injury. He claimed that, on March 10, 2005, while lifting mail and buckets of flats he felt a sharp pain in his back. Appellant stated that this injury limited his ability to walk and resulted in spinal stenosis and three displaced spinal discs. By memorandum dated April 25, 2005, the employing establishment controverted his claim.

Appellant submitted no supporting medical evidence with his claim and, in a May 10, 2005 letter, the Office notified him that the evidence he submitted was insufficient to support his claim.

Responding to the Office's letter, appellant submitted a duty status report (Form CA-17) dated May 16, 2005 as well as a medical authorization (Form CA-16) dated April 29, 2005.[1] The CA-16 form pertained to alleged conditions of stenosis of the spine, laminectomy and inability to walk.

Appellant also submitted a March 28, 2005 medical report signed by Dr. Joseph Greco, a Board-certified anesthesiologist, who proffered a surgical diagnosis of spinal stenosis with herniated disc L3-4.

By decision dated July 27, 2005, the Office denied appellant's claim because the medical evidence he submitted was insufficient to establish that he sustained an injury in connection with the reported event.

After retaining legal counsel, appellant submitted an illegible medical report dated March 24, 2005 concerning an appointment at Winthrop University Hospital. He submitted a March 28, 2005 surgical report signed by Dr. Mark Eisenberg, a Board-certified neurosurgeon, which noted that on March 25, 2005 he performed an L3, L4, L5 decompressive laminectomy with bilateral medial facetectomy and foraminotomies at L3-4, L4-5 and L5-S1; L3-4 discectomy from left; L4-5 discectomy from the left. On May 4, 2005 Dr. Eisenberg reported that appellant continued to improve and was transitioned to a quad cane. In a letter dated June 22, 2005, he reported that appellant was doing well and continued to make postsurgical improvement.

Appellant submitted an April 22, 2005 medical discharge report, signed by Dr. Peter Hollis, a Board-certified neurosurgeon, diagnosing him with lumbar spinal stenosis.

In a September 21, 2005 addendum, Dr. Harold Avella, a Board-certified physiatrist, stated that appellant's condition occurred while at work on March 10, 2005. He also reported that appellant fell on March 11, 2005.

Appellant submitted a September 21, 2005 post-neurosurgical follow-up medical report from Dr. Eisenberg, which reflected that he was doing well and was very pleased with his surgical outcome. On October 19, 2005 Dr. Eisenberg in a letter to appellant's attorney, reviewed appellant's course of treatment. He noted that he had first seen appellant on March 25, 2005 when appellant presented with a two-week history of severe back pain. Dr. Eisenberg noted that appellant had a history of some back pain, but that the pain had intensified during the past two weeks. He did not note or identify appellant's job duties on March 10, 2005 as the cause of his lumbar condition.

[1] The Board notes that the Office issued a Form CA-16. A properly executed CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. *See Elaine M. Kreymborg*, 41 ECAB 256, 259 (1989). The CA-16 form issued to appellant did not authorize either examination or treatment and was, therefore, not properly executed.

Appellant also submitted a December 22, 2005 medical report signed by Dr. Avella, Board-certified physiatrist, which noted that his status was post L3-4, L4-5 and L5-S1 discectomy and post L3, L4 and L5 decompressive laminectomy. Dr. Avella reported a diagnosis of L3-4 and L4-5 herniated discs. The diagnosis noted L3-4, L4-L5 and L5-S1 central canal stenosis, with left lower extremity myelopathy, left foot drop, as well as gait disturbance. Dr. Avella opined that appellant was totally disabled from work, his condition was permanent and that the prognosis for further improvement was poor. Furthermore, he asserts that appellant's medical history, medical records and Dr. Avella's examination establish that his diagnoses were causally related to appellant's March 10, 2005 work injury.

By request dated May 26, 2006 appellant, through his attorney, requested reconsideration. His attorney submitted a brief, arguing that the Office's July 27, 2005 decision was contrary to controlling principles of the Federal Employees' Compensation Act and Board precedent.

By decision dated February 16, 2007, the Office denied modification. Although it had accepted that the events occurred as alleged, the medical evidence did not resolve the evidentiary inconsistencies concerning whether appellant's condition was caused by the work-related March 10, 2005 event or appellant's fall on March 11, 2005.

By request dated February 8, 2008, appellant, through his attorney, requested reconsideration. In support of his claim, counsel submitted a brief in which he argued that the Office's February 16, 2007 denial of reconsideration was contrary to controlling principles of the Act.

Appellant, through counsel, also submitted medical evidence. In a medical report dated March 22, 2007, Dr. Avella asserted that appellant's condition occurred on March 10, 2005 while moving boxes of mail from the floor to the table. He reported that, following this incident, appellant developed difficulty walking and left leg weakness. Dr. Avella noted that appellant fell on March 24, 2005 and asserted that this fall had no effect on the initial injury of March 10, 2005 but most likely resulted from pain and weakness down the left leg.

By decision dated May 1, 2008, the Office denied modification of the February 16, 2007 decision. It found that appellant had not submitted sufficient evidence to resolve the significant inconsistencies as to how and when the claimed back injury occurred.

LEGAL PRECEDENT

An employee seeking benefits under the Act[2] has the burden of establishing 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

[2] 5 U.S.C. §§ 8101-8193.

related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[3]

Section 10.5(ee) of Office regulations defines a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[4] To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether fact of injury is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[5]

Causal relationship is a medical issue and the medical evidence opinion required to establish a causal relationship is rationalized medical evidence.[6] Rationalized medical evidence is medical evidence which includes a physician s rationalized medical opinion on the issue of whether there is a causal relationship between the claimants diagnosed condition and the implicated employment factors.[7] 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.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[9]

ANALYSIS

Appellant identified lifting mail and buckets of flats as the employment factors contributing to his injury. The Office has accepted that appellant performed these employment duties on March 10, 2005. It is then appellant's burden to submit rationalized medical evidence establishing a diagnosed condition causally related to the identified employment factors. The evidence of record before the Office does not contain a medical report with a rationalized

[3] *Gary J. Watling*, 52 ECAB 278 (2001).

[4] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *Gary J. Watling*, *supra* note 3.

[6] *M.W.*, 57 ECAB 710 (2006).

[7] *D.D.*, 57 ECAB 734 (2006).

[8] *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[9] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

medical opinion on causal relationship explaining how appellant's shoulder condition was caused or contributed to by his work duties.

The CA-16 and CA-17 forms are of little probative value as they do not contain a physician's diagnosis, findings upon examination or a rationalized medical opinion concerning the relationship between any diagnosed condition and factors of employment. The Board has held that appellant's self-diagnosed symptoms are not substantive evidence for purposes of the Act.[10]

Dr. Greco proffered a surgical diagnosis of spinal stenosis with herniated disc L3-4. Similarly, Dr. Eisenberg's operative report proffered a diagnosis, L3, L4, L5 decompressive laminectomy with bilateral medial facetectomy and foraminotomies at L3-4, L4-5 and L5-S1; L3-4 discectomy from left; L4-5 discectomy from the left. However, as the purpose of these reports was to establish a surgical diagnosis, they do not address the cause of appellant's condition. The Board has consistently held that medical reports lacking a rationale on causal relationship have little probative value.[11] As this information is absent, Drs. Eisenberg and Greco reports are of diminished probative value.

Moreover, Dr. Hollis' medical report proffered a diagnosis of lumbar spinal stenosis without providing complete medical history or an opinion on the causal relationship of the condition to appellant's employment. As noted above, a rationalized medical opinion is based on a complete factual and medical background and is supported by medical rationale.[12] Thus, Dr. Hollis' medical report is of diminished probative value.

Appellant submitted medical reports and notes from Dr. Avella, a Board-certified physiatrist. In December 22, 2005, Dr. Avella reports on his findings during an examination performed May 18, 2005. He noted in appellant's history that, while at work on May 10, 2005, appellant experienced back pain. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.[13] The Board has held that the concurrence of symptom development with a period of employment is insufficient to establish causal relationship.[14] Dr. Avella did not provide a reasoned medical opinion explaining how appellant's work activities would cause or aggravate her diagnosed condition. Therefore, his medical report is insufficient to support appellant's claim.

In a report dated September 22, 2005, Dr. Avella relates appellant's condition to his employment. He also notes that on March 11, 2005 appellant fell. Dr. Avella did not adequately

[10] *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

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

[12] *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[13] *Robert Broome*, 55 ECAB 339, 342 (2004).

[14] *Robert M. Sanford*, 27 ECAB 115 (1975).

explain how appellant's work activities caused or aggravated his diagnosed condition and, therefore, this note is of limited probative value.

In an addendum dated March 22, 2007, Dr. Avella again asserted that appellant's March 10, 2005 employment-related incident caused his injury. He also asserted that, although appellant fell on March 24, 2005, this incident most likely resulted from the pain and weakness down the left leg and had no effect on the initial injury. But this is an equivocal statement because, as a matter of law, such terms as: "suspected," "could," "may," "might be" or "most likely" indicate that the report is equivocal, speculative or conjectural and, therefore, the report is of limited probative value.[15] There is no medical report of record which accurately reflects appellant's job duties on March 10, 2005 and then causally relates appellant's multiple diagnosed conditions with this employment duties, with proper supportive medical rationale.

Finally, the Board notes that Dr. Avella's medical reports and notes contain sufficient inconsistent factual statements as to the cause of appellant's claim.[16] The first note submitted was dated September 22, 2005. Dr. Avella asserted in this note that appellant fell on March 11, 2005 whereas in a March 22, 2007 note he asserts that appellant fell on March 24, 2005. The Board also notes that, while appellant relates all of his lumbar conditions to his lifting duties at work on March 10, 2005, there is no evidence of record that he sought immediate medical treatment until after his fall, which occurred on either March 11 or 24, 2005. In fact appellant was seen in the emergency room at Winthrop University Hospital on March 24, 2005. The inherent conflict between Dr. Avella's notes combined with the discrepancy concerning the date upon which appellant allegedly fell are significant factual inconsistencies tending to cast serious doubts upon the validity of appellant's traumatic injury claim and preclude appellant from establishing that he sustained an injury on March 10, 2005 in the performance of duty.

CONCLUSION

The Board finds that appellant has not established that he sustained a traumatic injury on March 10, 2005 in the performance of duty.

[15] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.3(g) (April 1993).

[16] *Joseph A. Fournier*, 35 ECAB 1175 (1984); *Ernest N. Krome*, 20 ECAB 363 (1969).

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board