United States Department of Labor
Employees' Compensation Appeals Board

J.K., Appellant	)	
and	)	**Docket No. 10-1055**
	)	**Issued: April 21, 2011**
DEPARTMENT OF THE AIR FORCE, PITTSBURGH IAP AIR RESERVE STATION, Coraopolis, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 8, 2010 appellant filed a timely appeal from a January 29, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on May 11, 2009.

FACTUAL HISTORY

On June 29, 2009 appellant, then a 55-year-old supply technician, filed a traumatic injury claim alleging that he sustained injuries to his right shoulder, neck and arm on May 11, 2009

[1] 5 U.S.C. § 8101 *et seq.*

when a box of body armor that he stacked fell and struck his right shoulder. He did not stop work.

In a May 14, 2009 report from Dr. Donald L. Aivalotis, a chiropractor, appellant presented localized pain and numbness of the right shoulder and neck that began two weeks earlier at work. He examined appellant, observed limited range of motion (ROM) due to pain and noted C2, C5-C7 and T5-T7 subluxations.

A May 28, 2009 x-ray report from Dr. Frank Papa, a diagnostic radiologist, revealed bony anterior fusion of the C2-C3 and C3-C4, mild narrowing of the left foramen at C4-C5, straightening of the lordotic curvature on flexion view and mild exaggeration on extension view and disc space narrowing at C5-C6 and to a mild extent at C6-C7. He stated that "there is no acute fracture or subluxation" in any of the seven views obtained. Dr. Papa also commented that appellant's right shoulder had no acute fracture or dislocation.

In Dr. Aivalotis' July 15, 2009 report, appellant related that he was counting body armor jackets when he "turned and twisted" to catch a falling, 200-pound box of armor. He denied any preexisting injuries. On physical examination, Dr. Aivalotis observed moderate to severe segmental dysfunction at the cervical, thoracic and right shoulder areas with significant cervical-brachial radiculitis in the right hand, a mild increase in paresthesia with right cervical compression, diminished cervical ROM, limited right shoulder abduction and flexion with pain and acromioclavicular joint crepitus. He concluded that appellant's injuries were work related and diagnosed cervical and thoracic strain complicated by cervical segmental dysfunction, thoracic segmental dysfunction that was causing cervical radiculitis and a right shoulder sprain possibly involving the rotator cuff or anterior capsule. Dr. Aivalotis also supplied progress notes for the period May 14 to July 23, 2009.

An August 14, 2009 report from Dr. Jon A. Levy, a Board-certified orthopedic surgeon, noted that appellant was moving boxes of body armor at work "when he essentially got trapped and developed the acute onset of pain in the right trapezial area, radiating down the right arm, with paresthesia in the hand on the right." He examined appellant and found positive Spurling, Neer and Hawkins signs. Dr. Levy reviewed appellant's prior x-rays and pointed out diffuse cervical osteoarthritis, bridging anterior osteophytes and mild listhesis of the C6-C7. He diagnosed cervical radiculopathy and subacromial bursitis.

An August 18, 2009 magnetic resonance imaging (MRI) scan report from Dr. Thomas Kavic, a Board-certified diagnostic radiologist, identified mild C5-C6 disc space narrowing, minimal posterior C4-C5 and C5-C6 disc bulging and the absence of cervical dislocation or compression fractures. He advised that the findings were compatible with mild degenerative C5-C6 disc disease.

In an August 21, 2009 report, Dr. Levy specified that appellant was injured at the employing establishment in May 2009 and commented that appellant experienced ongoing intermittent neck pain and numbness in his right forearm. He noted that a cervical MRI scan showed only mild degenerative changes at the C5-C6.

On September 23, 2009 the Office notified appellant that the evidence submitted was insufficient and advised him about the evidence needed to establish his claim.

Appellant subsequently provided an October 9, 2009 report from Dr. Levy, which noted that appellant "is clinically doing reasonably well in terms of his shoulder" but experienced intermittent headaches and neck pain, hand paresthesia and a cold sensation in his feet and underwent a computerized tomography scan during an emergency room evaluation. Dr. Levy examined appellant and found no demonstrable sensory deficit in the upper or lower extremities. He assessed that appellant's clinical complaints were consistent with cervical radiculopathy, but no focal neurological deficits existed. Dr. Levy added that a previous MRI scan showed degenerative changes but no high-grade cord compression or canal compromise and that "physical therapy undertaken was referable to the trauma sustained in the workplace."

In an October 14, 2009 addendum, Dr. Aivalotis asserted that vertebral subluxation complex was demonstrated and confirmed by a May 28, 2009 x-ray.

Appellant also submitted physical therapy notes for the period September 9 to October 19, 2009.

By decision dated October 26, 2009, the Office denied appellant's claim, finding the medical evidence insufficient to establish that he sustained a work-related right shoulder, neck or arm injury on May 11, 2009.

Appellant requested reconsideration on December 7, 2009 and stated that he was counting and stacking boxes of body armor on May 11, 2009 when the top box struck his right shoulder after he unsuccessfully attempted to stop it from shifting.

In an October 19, 2009 report, Dr. Levy noted that appellant "presented to my office for an evaluation referable to injury sustained in the workplace on May 11, 2009." He opined that appellant sustained a combination of subacromial bursitis and cervical radiculopathy. Dr. Levy noted that there was radiographic evidence of preexisting cervical degenerative disease, but concluded that appellant "now is suffering from cervical radiculopathy as the result of the injury sustained in the workplace." He added that "based on history provided, I do believe [that appellant's] ongoing subjective complaints are consistent with his injury sustained in the workplace."

By decision dated January 29, 2010, the Office denied modification of the October 26, 2009 decision.

LEGAL PRECEDENT

An employee seeking compensation under the Act[2] has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,[3]

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

including that he is an "employee" within the meaning of the Act and that he filed his claim within the applicable time limitation.[4] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[5]

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. There are two components involved in establishing 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. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.[7]

ANALYSIS

The evidence supports that appellant was counting and stacking boxes of body armor on May 11, 2009 when the top box fell and struck his right shoulder. However, he has not submitted sufficient medical evidence establishing that this work incident caused or contributed to a diagnosed medical condition.

Dr. Levy's August 14, 2009 report stated that appellant sustained cervical radiculopathy and subacromial bursitis when he "essentially got trapped" while moving boxes of body armor at the employing establishment. In his August 21, October 9 and 19, 2009 reports, he specified that the incident occurred on May 11, 2009 and reiterated that appellant was injured at work. Nonetheless, Dr. Levy did not offer any medical rationale explaining how moving boxes of body armor caused or contributed to appellant's condition. Medical reports not fortified by rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.[8] The need for rationalized medical opinion evidence regarding causal relationship is particularly important in this case since Dr. Levy acknowledged radiographic evidence of a preexisting cervical degenerative disease in his October 19, 2009

[4] *R.C.*, 59 ECAB 427 (2008).

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

[6] *T.H.*, 59 ECAB 388 (2008).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *S.S.*, 59 ECAB 315, 322 (2008); *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

report. In addition, his opinion was based on appellant being "trapped" while moving boxes of body armor on May 11, 2009, which conflicts with appellant's numerous assertions that a box of body armor fell and struck his right shoulder. Medical opinions based on an incomplete or inaccurate history are of diminished probative value.[9]

Dr. Aivalotis' May 14 and July 15, 2009 chiropractic reports diagnosed cervical and thoracic subluxations related to appellant's federal employment do not constitute medical evidence of causal relationship. A medical issue can only be resolved through the submission of probative medical evidence from a physician.[10] The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[11] While Dr. Aivalotis maintained in his October 14, 2009 addendum that his vertebral subluxation complex diagnosis was confirmed by a May 28, 2009 x-ray, Dr. Papa's May 28, 2009 x-ray report explicitly ruled out such a finding noting that there was "no acute fracture or subluxation." He did not explain how this x-ray confirmed a subluxation diagnosis in light of Dr. Papa's clear finding that there was no subluxation on the x-ray. As Dr. Aivalotis is not a physician under the Act, his opinion lacks probative medical value.[12] Likewise, appellant's physical therapy notes lack probative value because a physical therapist is not a physician under the Act.[13]

Appellant argues on appeal that the medical evidence was sufficient to justify a favorable decision on his claim, that he did not miss any work due to injury and that he simply wanted medical treatment. As discussed above, the medical evidence was insufficient to demonstrate that the May 11, 2009 incident caused or contributed to appellant's condition.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a traumatic injury in the performance of duty on May 11, 2009.

[9] *M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980).

[10] *See Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

[11] 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572, 575 (1988). Subluxation means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays. 20 C.F.R. § 10.5(bb).

[12] Even assuming, for the sake of argument, that Dr. Aivalotis meets the Act's criteria as a physician, his opinion is of probative medical value only with regard to the spine itself. *See George E. Williams*, 44 ECAB 530 (1993).

[13] *Jennifer L. Sharp*, 48 ECAB 209 (1996).

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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