United States Department of Labor
Employees' Compensation Appeals Board

W.S., Appellant	)	
and	)	**Docket No. 10-1538**
	)	**Issued: April 1, 2011**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Sheridan, WY, 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 May 19, 2010 appellant filed a timely appeal from a January 19, 2010 merit decision. Pursuant to 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 March 15, 2009.

FACTUAL HISTORY

On July 9, 2009 appellant, then a 44-year-old food service worker, filed a traumatic injury claim alleging that he sustained a back fracture in the employing establishment's break room on March 15, 2009 when a coworker pulled a chair from under him and caused him to fall on his buttocks. He did not stop work.[1] The coworker acknowledged in a June 29, 2009

[1] The record indicates that appellant eventually resigned from his position, but no specific date is given.

statement that he pulled a chair from under appellant as a joke on an unspecified date, but appellant did not complain of pain. He added that appellant did not appear angry after the fall and even laughed.

The employing establishment controverted the claim on July 9, 2009, pointing out that appellant did not file until he became the subject of an administrative investigation and more than 30 days after the incident.

In a July 9, 2009 report from Dr. John C. Carmen II, a Board-certified family practitioner, appellant presented back pain and right leg radicular pain and numbness. The symptoms related to an incident involving a coworker pulling a chair from under him and causing him to fall and hit his buttocks on the floor. Initially appellant had right-sided pain that seemed to improve before worsening. Dr. Carmen examined appellant and observed an abnormal gait and hip pain on adduction, abduction and rotation. He diagnosed low back pain and possible sciatica. Dr. Carmen stated that appellant was "talking about workman's comp and changing jobs" due to his pain. He advised appellant to discuss job matters with his supervisor.

On July 9, 2009 an x-ray report from Dr. Alan R. Brautigam, a Board-certified diagnostic radiologist, revealed mild to moderate spondylosis of the L1-L2. Dr. Brautigam noted comparing the current x-ray with an April 13, 2007 x-ray and advised that there was no interval change. A July 9, 2009 magnetic resonance imaging (MRI) scan report for the right hip, from Dr. Nathan D. Hensley, a Board-certified diagnostic radiologist, exhibited a small anterior femoral neck bump in the right hip "which may contribute to femoral acetabular impingement" and was otherwise unremarkable.

The Office informed appellant in a July 14, 2009 letter that the evidence was insufficient and advised about the evidence needed to establish his claim.

Appellant submitted a statement detailing that he hit his head and shoulders against a toilet stall door and scraped his right arm on the floor as a result of the March 15, 2009 fall. He also provided several medical records. In a May 11, 2009 report from Dr. Steven Maertens, a Board-certified emergency physician, appellant complained of left hip pain and stiffness for a three-week duration and denied any recent injury. He observed an antalgic gait and diagnosed left hip arthralgia and possible osteoarthritis.

A physician assistant's June 23, 2009 note detailed that appellant, who presented right hip pain and numbness, "just really does not care and appears to be seeking drugs." Appellant responded both positively and negatively to a straight leg raise test and demonstrated a normal gait. The physician assistant commented that appellant was "not a good historian" and "not being truthful so an accurate exam[ination] cannot be evaluated."

A June 18, 2009 x-ray report from Dr. A. William Stark, a Board-certified diagnostic radiologist, revealed no right hip abnormality. A July 9, 2009 lumbar spine MRI scan report from Dr. Kevin Wanebo, a Board-certified diagnostic radiologist, exhibited mild L1-L2 and L2-L3 broad-based disc bulging, L3-L4 spinal canals narrowing, L4-L5 right eccentric disc herniation and spinal canal stenosis, and L5-S1 bilateral disc/osteophyte complex and bilateral neural foramen narrowing with borderline spinal canal stenosis.

Appellant also submitted notes from various nurses and physician assistants for the period May 11 to July 21, 2009. The employing establishment continued to controvert the claim.

In an August 20, 2009 decision, the Office denied appellant's claim, finding the medical evidence insufficient to establish that the March 15, 2009 work incident caused a back fracture.

On October 30, 2009 appellant requested reconsideration and submitted medical records for the period June 20, 1997 to September 1, 2009.[2] An April 13, 2007 x-ray report from Dr. Gary Thieme, a Board-certified diagnostic radiologist, revealed vertebral body and endplate abnormalities, mild facet arthritis at multiple levels and degenerative disc disease of the L1-L2 that "may be related to old trauma." In a July 30, 2009 report, a nurse practitioner noted that appellant injured his back and right hip when a coworker pulled a chair from under him and was unable to return to work.

An August 4, 2009 report from a physician assistant and signed by Dr. Thomas H. Niethammer, a Board-certified internist, noted that although appellant claimed that a chair was pulled from under him at work on March 15, 2009, Dr. Maertens' May 11, 2009 report indicated that appellant presented a sudden onset of back and hip pain, did not provide documentation of a work-related fall and denied any recent injury. It was noted that appellant was able to continue light-duty work.

In an October 30, 2009 letter on his behalf, appellant's sister asserted that he had no preexisting back or hip problems until the March 15, 2009 fall, which resulted in a pinched sciatic nerve. She stated, "While the doctors cannot confirm that this was caused by the fall, they can[no]t disprove it either. And considering [appellant's] history of no back problems, this does seem to be telling." Appellant's sister also questioned the physician assistant's June 23, 2009 note.

By decision dated January 19, 2010, the Office denied the claim finding that the medical evidence was insufficient to establish a causal relationship between the March 15, 2009 incident and a diagnosed medical condition.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,[4] including that he is an "employee" within the meaning of the Act and that he filed his claim within the applicable time limitation.[5] The employee must

[2] Most of appellant's medical records predate the March 15, 2009 incident and concern other health conditions, including Asperger syndrome, hypertension, hyperlipidemia, abnormal liver function, depression and substance abuse. None of these conditions are at issue in this case.

[3] 5 U.S.C. §§ 8101-8193.

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

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

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.[6]

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.[7]

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.[8]

ANALYSIS

The evidence supports that appellant fell on March 15, 2009 when a coworker pulled a chair from under him. However, he has not submitted sufficient medical evidence to establish that this work incident caused or aggravated a back or leg injury.

Dr. Carmen's July 9, 2009 report related a history of an incident involving a coworker pulling a chair from under appellant and diagnosed low back pain and possible sciatica. However, he did not specifically opine that the work incident caused an injury nor did he provide reasoning to explain the pathophysiological process by which this employment incident caused or contributed to appellant's injuries. Likewise, the August 4, 2009 physician assistant's report cosigned by Dr. Niethammer did not elaborate on the causal connection between the March 15, 2009 fall and appellant's condition. Medical opinion not fortified by medical rationale is of little probative value.[9] The need for rationale is particularly important in this case where Dr. Thieme's April 13, 2007 x-ray report suggests that appellant may have sustained preexisting lumbar trauma. In addition, although Dr. Martens' May 11, 2009 report and Drs. Brautigam, Hensley and Wanebo's June 9, 2009 radiological reports assessed various back and hip ailments, all are of limited probative value as none offered an opinion regarding the cause of injury.[10] Other

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

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

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

[9] *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

[10] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (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).

medical reports submitted by appellant that predate the time of the claimed injury also are of limited probative value.

Appellant submitted medical records from nurses and physician assistants. These documents have no probative medical value because nurses and physician assistants are not "physicians" as defined under the Act.[11] Therefore, appellant failed to establish his claim.

Appellant argues on appeal that the March 15, 2009 fall necessarily caused his back, hip and leg condition because he was not involved in any earlier incidents. He also argues that the medical personnel who attended to him "attest to the fact that [appellant] had sustained an injury resulting from his fall, and that his back, hip and leg pain was most likely a result of this fall," but were unwilling to "to give a definite yea or nay." Causal relationship is a medical issue and, in general, can only be addressed by a qualified physician.[12] A physician's opinion need not reduce the cause or etiology of a disease or condition to an absolute medical certainty but the opinion supporting causal relationship must be one of reasonable medical certainty and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[13] As discussed above, however, the medical evidence of record is insufficient as it does not provide a reasoned opinion explaining how the March 15, 2009 incident caused or aggravated a diagnosed medical condition.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a traumatic injury in the performance of duty on March 15, 2009.

[11] 5 U.S.C. § 8102(2); *Roy L. Humphrey*, 57 ECAB 238, 242 (2005).

[12] *See I.J.*, *supra* note 8 at 415; *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

[13] *A.D.*, 58 ECAB 149, 157 (2006).

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 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