United States Department of Labor
Employees' Compensation Appeals Board

J.L., Appellant	)	
and	)	**Docket No. 11-452**
	)	**Issued: November 25, 2011**
DEPARTMENT OF THE NAVY, MARINE CORPS -- AIR STATIONS, Camp Lejeune, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 14, 2010 appellant filed a timely appeal from an August 10 and November 26, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 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 met his burden of proof to establish that he sustained deep vein thrombosis (DVT) of the left arm in the performance of duty on April 26, 2010.

[1] 5 U.S.C. § 8101, *et seq.*

FACTUAL HISTORY

On May 3, 2010 appellant, then a 51-year-old equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that, on April 26, 2010, he sustained DVT of his left forearm elbow when he suddenly caught a ladder with his left hand after it slipped off the top of his truck. He notified his supervisor on April 26, 2010, stopped work on May 3, 2010 and returned to work on May 10, 2010 with no restrictions.

In a May 3, 2010 emergency medical report, Dr. Joseph Dell'aria, Board-certified in emergency medicine, reported that appellant visited the emergency room with a history of DVT. He reported that appellant tried to catch a four foot ladder that was falling off of his truck approximately one-week prior and noted that he experienced redness, pain and swelling of the upper extremity on the left side with a cord like feeling. In a report of the same date, James Helm, a physician's assistant (PA), noted appellant's past medical history which included DVT and osteoblastoma removed from the left femur in the 1980's. Mr. Helm also reported that appellant had been off of his Coumadin medication for a right lower extremity DVT since February 2010. He diagnosed left upper extremity DVT. Dr. Dell'aria reported that he independently evaluated, reviewed, discussed and adopted findings and treatment decisions from PA Helm.

In a May 3, 2010 report, Dr. James K. Tarver, a Board-certified diagnostic radiologist, reviewed appellant's left upper extremity deep venous ultrasound and diagnosed left deep basilic vein thrombosis.

In a May 5, 2010 authorization for examination and treatment from (Form CA-16), Debbie Templeton, a human resources specialist, noted that appellant was injured on April 26, 2010 when he caught a ladder with his left arm. She approved hospital treatment for the effects of this injury.

By letter dated July 6, 2010, OWCP informed appellant that his medical bills exceeded $1,500.00 and that it must formally adjudicate his claim. It requested additional medical evidence to support his claim and provided him 30 days to respond.

In medical reports dated May 4 to July 2, 2010, Mark Stevens, a nurse practitioner (NP), reported that appellant related the DVT in his left arm to mild trauma. He noted this as appellant's second occurrence of DVT, the first instance occurring in his right calf in January 2010. Nurse Stevens sent labs to screen for anticardiolypin defect and clotting defect and he later diagnosed arterial embolism and thrombosis of the upper extremity.

In a July 21, 2010 medical report, Nurse Stevens reported that appellant was treated for 3 to 6 months after his first DVT episode when therapy was stopped per protocol for first time DVT patients. Appellant also stopped his DVT medication and was not taking Coumadin when his second episode of DVT occurred. Nurse Stevens opined that, in general terms, DVT's generally occur in response to trauma, even mild trauma as appellant described his injury. He stated that it was reasonable that trauma precipitated appellant's DVT.

By decision dated August 10, 2010, OWCP denied appellant's claim finding that the medical evidence did not demonstrate that the injury was related to the established April 26, 2010 employment incident. It specifically noted that all evidence must be signed by a medical physician and that NPs and PAs are not considered medical physician.

On September 9, 2010 appellant requested reconsideration of OWCP's decision.

By letter dated September 17, 2010, OWCP requested that appellant submit a detailed statement regarding his work and medical history pertaining to DVT and copies of medical records pertaining to previous treatments received for DVT.

By letter dated September 25, 2010, appellant stated that he had a history of DVT since August 2009 and his Coumadin medication was stopped in February 2010 based on protocol because it was his first DVT injury. He reported that he initially thought appellant pulled a muscle when he caught the falling ladder on April 26, 2010. When the pain continued, he went to the emergency room on May 3, 2010, was diagnosed with a blood clot and had to go back on his Coumadin medication. He stated that he would be submitting additional medical documentation.

By letter dated October 5, 2010, OWCP requested that appellant provide earlier medical records about his preexisting DVT condition.

By letter dated October 23, 2010, appellant stated that, prior to his injury, he had DVT in his right leg but was unable to locate any of the medical records because his physician's office closed in April 2009. He also stated that he had an appointment with a hematologist on November 12, 2010 to review his lab work.

Appellant submitted medical records dated November 6, 1978 to January 10, 1979 from Dr. John L. Coscia, a Board-certified diagnostic radiologist, who reported that appellant underwent a curettement of a lesion of the left proximal femur on December 19, 1978. Based on changes postsurgery, Dr. Coscia had diagnosed left proximal femoral osteoblastoma.

Appellant resubmitted medical reports from Nurse Stevens dated May 3 to July 2, 2010. In medical reports dated July 30 to September 24, 2010, Nurse Stevens diagnosed appellant with arterial embolism and thrombosis of the upper extremity, memory loss, other malaise and fatigue, organic insomnia and dysthymic disorder.

In medical reports dated September 7 and 30, 2010, Dr. Robert J. Brockman, a Board-certified surgeon, reported that appellant was referred to him for evaluation of a history of DVT of his left upper extremity. He also noted that appellant had a history of DVT of his right lower extremity from several years ago. Appellant reported that in April 2010 he caught a falling ladder with his left arm, causing him to jerk his left upper extremity. Thereafter, he developed swelling and pain in his left arm and went to the emergency room about a week later. Upon review of his medical reports, Dr. Brockman noted that appellant underwent a venous ultrasound of the left upper extremity which showed a clot in the basilic vein. Appellant had been on Coumadin in the past for DVT of his right lower extremity but the medication was stopped after therapy was completed. He denied any history of pulmonary embolism or pulmonary symptoms. Dr. Brockman also noted that appellant had a previous history of osteoblastoma of the left hip

years ago and stated that there was no relationship between his former osteoblastoma and his recent DVT of his upper left extremity.

Upon physical examination, Dr. Brockman noted that appellant's neurovascular examination was intact. The left upper extremity had a palpable radial pulse, there was no swelling of the arm or forearm, no palpable cords and no edema. Dr. Brockman diagnosed minor trauma of the left upper extremity with subsequent thrombosis of the basilica vein noted on the venous ultrasound. Based on appellant's history, Dr. Brockman opined that it was reasonable that the work incident with the ladder caused the DVT of his upper left extremity because he had no residual effects of that clot.

By decision dated November 26, 2010, OWCP denied modification of its August 10, 2010 decision on the grounds that the medical evidence of record failed to establish the causal relationship between appellant's injury and the accepted April 26, 2010 employment incident. It noted that he failed to submit medical records regarding his prior right leg DVT to establish an aggravation of the condition and failed to provide sufficient medical rationale establishing that the traumatic incident caused his left arm DVT.[2]

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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[2] The Board notes that appellant submitted additional evidence after OWCP rendered its November 26, 2010 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

[3] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Pendleton*, *supra* note 3 at 1143 (1989).

To establish a causal relationship between the condition and any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[6] 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. This medical opinion must include an accurate history of the employee's work-related injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

The term physician is defined under section 8101(2), as follows: "physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."[8] Registered nurses, licensed practical nurses and physicians assistants are not physicians under FECA, therefore, their reports do not constitute competent medical evidence in support of a claim.[9]

ANALYSIS

The Board finds that this case is not in posture for decision as to whether appellant sustained an injury in the performance of duty.

An employee who claims benefits under FECA has the burden of establishing the essential elements of his claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.[10] However, it is well established that, proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[11]

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[6] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[7] *James Mack*, 43 ECAB 321 (1991).

[8] 5 U.S.C. § 8101(2).

[9] *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Barbara J. Williams*, 40 ECAB 649 (1988).

[10] *See Virginia Richard, claiming as executrix of the estate of (Lionel F. Richard)*, 53 ECAB 430 (2002); *see also Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

[11] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard*, *id.*; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

OWCP accepted that the April 26, 2010 incident occurred as alleged. It denied appellant's claim, however, on the grounds that the evidence failed to establish a causal relationship between that incident and his DVT of the left arm. The Board finds that the medical evidence of record is sufficient to require further development of the case record.

In medical reports dated September 7 and 30, 2010, Dr. Brockman reported that appellant was referred to him for evaluation of a history of DVT of his left upper extremity.[12] Appellant reported that in April 2010 he caught a falling ladder with his left arm and developed swelling and pain. Upon physical examination and review of his medical reports, Dr. Brockman noted that appellant's neurovascular examination was intact. The left upper extremity had a palpable radial pulse, there was no swelling of the arm or forearm, no palpable cords and no edema. Dr. Brockman diagnosed minor trauma of the left upper extremity with subsequent thrombosis of the basilica vein noted on the venous ultrasound. Based on appellant's history, Dr. Brockman opined that it was reasonable that the work incident with the ladder caused the DVT of his upper left extremity because he had no residual effects of that clot. Though Dr. Brockman's reports did not offer an unequivocal opinion or fully describe the mechanism of the injury, he provided a clear, if limited, opinion based on examination findings and an accurate factual and medical background, that appellant sustained his left arm DVT due to the minor trauma on April 26, 2010.

While the remaining medical evidence of record is insufficient to establish causal relationship between appellant's upper left extremity DVT and the April 26, 2010 employment incident, it tends to support the existence of an initial left arm DVT injury. At first appellant thought he had sprained his left arm on April 26, 2010 but when the pain and swelling continued, he visited the emergency room approximately one week later on May 3, 2010. In a May 3, 2010 emergency medical report, Dr. Dell'aria reported that appellant injured his upper left extremity when he grabbed a falling ladder with his left hand a week before and noted that he experienced redness, pain and swelling of the upper extremity. He diagnosed left upper extremity DVT. In a May 3, 2010 report, Dr. Tarver reviewed appellant's left upper extremity deep venous ultrasound and diagnosed left basilica deep venous thrombosis.

In medical reports dated May 4 to September 24, 2010, Nurse Stevens reported that this was appellant's second occurrence of DVT, following one in his right calf. He noted that appellant had been treated with Coumadin for his first DVT episode but that treatment was stopped per protocol. Nurse Stevens reported an arterial embolism and thrombosis of the upper extremity and arranged lab screening for anticardiolypin defect and clotting defect. While registered nurses are not physicians as defined under FECA,[13] the medical reports from Nurse Stevens confirm that appellant continued to receive treatment for his left arm DVT.

[12] Dr. Brockman also noted that appellant had a history of DVT of his right lower extremity and osteoblastoma of the left hip. He stated that there was no relationship between appellant's prior osteoblastoma and recent DVT of his upper left extremity.

[13] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) "physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."

OWCP's November 26, 2010 decision put emphasis on appellant's failure to submit medical records prior to the April 26, 2010 incident detailing his previous right leg DVT condition and his osteoblastoma. Appellant did submit medical reports dated November 6, 1978 to January 10, 1979 from Dr. Coscia who diagnosed left proximal femoral osteoblastoma. While a prior injury may be relevant in OWCP's determination about a continuing condition or disability resulting from appellant's April 26, 2010 incident, it does not indicate the likelihood of a subsequent injury. The mere fact that appellant's physicians noted a prior condition is not a professional assessment that appellant's upper left arm DVT is not causally related to the April 26, 2010 incident.

Further, the lack of appellant's test results for anticardiolypin defect and clotting defect does not prevent appellant's physicians from determining that his DVT was caused or aggravated by the April 26, 2010 employment incident. This is not a difficult factual situation where the employee continued to work without apparent difficulty or delayed in obtaining medical treatment. Appellant notified his supervisor on the same date as the April 26, 2010 incident and sought treatment and filed his traumatic injury claim within a week of the incident.

After OWCP's initial denial of appellant's claim on April 10, 2010, the senior claims examiner sent him two additional development letters dated September 17 and October 5, 2010 requesting further medical and factual evidence. This indicates that it continued to develop the claim. Once OWCP undertakes development of the record it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.[14]

The Board notes that the reports of appellant's physicians are consistent in indicating that he sustained an employment-related injury to his upper left extremity.[15] While the reports are not sufficient to meet his burden of proof to establish his claim, they are sufficient to require OWCP to further develop the medical evidence and the case record.[16]

The Board will remand the case for further development of the medical evidence. On remand, OWCP shall obtain a rationalized opinion from an appropriate Board-certified physician as to whether appellant's claimed condition is causally related to the accepted April 26, 2010 employment incident, either directly or through aggravation, precipitation or acceleration.

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant sustained upper left extremity DVT in the performance of duty on April 26, 2010.

[14] Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996).

[15] There is no evidence in the record before the Board which provides an alternative diagnosis or a contradicting factual explanation for the occurrence.

[16] *See P.K.*, Docket No. 08-2551 (issued June 2, 2009); *see also Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the November 26 and August 10, 2010 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further development consistent with this decision.

Issued: November 25, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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