United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 06-1061**
	)	**Issued: August 4, 2006**
DEPARTMENT OF THE NAVY, NAVAL AIR STATION BRUNSWICK FIRE DEPARTMENT, Brunswick, ME, Employer	)	

Appearances:
R.M., 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

JURISDICTION

On April 3, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated October 17, 2005 and February 13, 2006 denying his claim for compensation benefits. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On August 25, 2005 appellant, then a 41-year-old firefighter, filed a traumatic injury claim alleging that he sustained injuries to his back as a result of repetitive use of air packs; pulling fire hoses; heavy lifting while crouching under aircraft; and slipping and falling twice on an icy ramp in 1995. The employing establishment controverted the claim, contending that the

condition developed over more than one shift and, therefore, appellant should have filed a CA-2 form.

In support of his claim, appellant submitted a September 5, 2005 request for authorization for a left L3-4 discectomy; an August 24, 2005 physical therapy referral bearing an illegible signature; an August 26, 2005 physical therapy assessment signed by Cheryl A. Goding, a physical therapist, which provided a diagnosis of lumbar disc displacement; and an August 30, 2005 physical therapy assessment signed by Kristine St. Pierre, a physical therapist, which provided a diagnosis of lumbar disc displacement.

On September 14, 2005 the Office notified appellant that the information previously submitted was insufficient to substantiate his claim. The Office informed appellant that the evidence provided appeared to apply more to an occupational disease claim than to a traumatic injury claim, in that the claimed injury developed over a period of time. Accordingly, the Office indicated that it would treat the claim as an occupational disease claim. The Office advised appellant to submit within 30 days from the date of its letter a comprehensive medical report from his treating physician providing a diagnosis and a reasoned medical opinion as to the cause of his condition.

In response to the Office's request, appellant provided physical therapy notes dated August 26 and 29, 2005 from Ms. Goding and physical therapy notes from Kristine St. Pierre dated September 2, 2005. Appellant also submitted an August 24, 2005 practitioner's report bearing an illegible signature, completed on a State of Maine Workers' Compensation Board form. The form reflected that appellant was treated for low back and leg pain due to a July 12, 2005 injury. The author of the report checked a box on the form indicating that the condition was "not work related." On an identical form dated September 7, 2005, also bearing an illegible signature, the author checked a box on the form indicating that the condition was "not yet identified as to cause." Appellant submitted an unsigned narrative statement dated September 18, 2005 from David Lewis, assistant fire chief operations, who stated that there was "no doubt" that appellant aggravated his back as a result of work routinely performed at the employing establishment.

By decision dated October 17, 2005, the Office denied appellant's claim on the grounds that the medical evidence failed to demonstrate that the claimed medical condition was causally related to the established work-related events.

In a September 9, 2005 narrative statement, appellant reiterated the alleged causes of his injury, including wearing a 40-pound air pack while performing strenuous firefighting duties; climbing in and out of firefighting vehicles while wearing firefighting gear; and lifting heavy equipment inside cramped trucks and trailers while bending over and fighting both aircraft and building fires. He indicated that his symptoms began on the 12th or 13th of July 2005, with a sore lower back and minor pain in his buttocks while lying in bed at night. Appellant was treated by his chiropractor, Dr. Phil McLean, on July 20 and 27, 2005, and on August 9, 2005 by Dr. Daniel Kary, a Board-certified osteopath specializing in osteo manipulative medicine. He was also treated by, Dr. Patricio H. Mujica, a Board-certified neurosurgeon. Appellant stated that he sustained a lower back injury on October 20, 1987 while moving a television at work in the fire

station, and a low back injury on May 12, 1992 while training at the fire station. He indicated that a magnetic resonance imaging (MRI) scan revealed a bulging and ruptured disc.

Appellant submitted a copy of a May 13, 1992 CA-1 claim form for a lumbar spine injury and a position description for a lead firefighter. He also submitted treatment notes dated November 5, 1987 from by G. Evans, a physician's assistant, reflecting treatment for L5 strain, as well as October 24, 1987 clinic notes signed by Commander F.H. Jenkins following a back injury. Supervisors' reports dated October 20 and 24, 1987 reflected that appellant injured his back while lifting a television. The record contains numerous unsigned notes from Dr. McLean for the period December 15, 1999 through July 27, 2005. Notes dated October 8, 2004 reflected an assessment of lumbar subluxation, low back pain, sacral subluxation and myofascitis subluxation, together with muscle spasm. On April 15, 2005 Dr. McLean opined that appellant suffered from lumbar subluxation, sciatica, sacral subluxation and myofascitis and that his symptoms were worsening. None of Dr. McLean's notes contain an opinion on the cause of appellant's diagnosed condition.

The record contains a report of an August 10, 2005 x-ray of the lumbar spine, reflecting an impression of degenerative disc disease, and a report of an August 16, 2005 MRI scan of the lumbar spine, reflecting an impression of disc narrowing with left-sided herniation.

Appellant submitted an August 9, 2005 report from Dr. Kary, who stated that appellant complained of left buttock pain going down the back of his thigh, then laterally and anteriorally in the lower leg, with knee pain also present. Appellant told Dr. Kary that his pain had begun three weeks before, but that he could not remember a specific incident causing the injury. Dr. Kary diagnosed somatic dysfunction; low back pain; and leg symptoms that were generally in the L4 distribution. In an August 15, 2005 report, Dr. Kary diagnosed persisting low back pain and generally L4-5 radiculitis, left sided. He noted that appellant's August 10, 2005 x-ray showed some degenerative changes. Dr. Kary's musculoskeletal examination revealed that appellant's trunk flexibility was a little better than 2/3 normal in a forward bend. Appellant had no pain with percussion of the spine or CVA, and no somatic dysfunction. Neurologically, SLR was negative. Appellant had normal EHL strength and plantar flexor strength. He also had normal lower extension strength and thigh flexor strength. His left knee jerk was trace, and the right was +2. In unsigned notes dated August 18, 2005, Dr. Kary indicated that a lumbar MRI scan showed degenerative changes at L3-4, L4-5 and L5-6, as well as relatively large free fragment disc herniation extending inferiorly, centrally and to the left from L3-4, compressing the L4-5 nerves on the left. The MRI scan also showed disc bulging circumferentially at L4-5 and L5-S1. None of Dr. Kary's reports contained any discussion of the cause of appellant's condition.

Appellant submitted an unsigned report dated August 24, 2005 from Dr. Mujica,[1] who indicated that appellant had provided a history of low back and leg pain consistent with lumbar radiculopathy, with no history of trauma, starting approximately four weeks prior to her examination. Motor testing revealed traces of weakness to dorsiflexion of the left foot. Reflexes

[1] The Board notes that the August 24, 2005 report has a notation that it was electronically signed. However, no signature appears on the document.

were normal and symmetric, except for absence of a left knee jerk. Neurologic examination revealed some limitation to range of motion of the lumbosacral spine, with negative sciatic signs bilaterally. Radiographic evaluation with MRI scan showed some degenerative disc disease and a left L3-4 disc herniation with an inferiorly migrated fragment. In unsigned physician's notes dated September 7, 2005,[2] Dr. Mujica indicated that appellant continued to complain of numbness and pain radiating down his left leg. His examination revealed mildly restricted range of motion of the lumbosacral spine, especially flexion, which was limited to about 60 degrees. Straight leg raising was positive on the left at 60 degrees and negative on the right. Motor examination showed weakness to dorsiflexion of the left foot, as reflected in appellant's difficulty with left heel walking. Dr. Mujica stated that although appellant believed that his condition was work related, in the absence of any precipitating event, he could not determine that work activities, in fact, caused his diagnosed condition. He noted that he previously completed a form indicating that appellant's condition was not work related, based on appellant's statement that his condition began in the middle of the night, four weeks prior to his initial consultation.

On October 31, 2005 appellant requested a review of the written record. In support of his request, appellant submitted duplicates of previously submitted documents, as well as illegible progress notes bearing illegible signatures from February 4 through August 1, 2005.

By decision dated February 13, 2006, an Office hearing representative affirmed the Office's October 17, 2005 decision. The hearing representative found that although appellant had established the presence of his claimed medical condition, he had failed to submit evidence establishing that the diagnosed condition was caused or aggravated by employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his claim, including the fact 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 is causally related to the employment injury.[4]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[5] The medical evidence required to establish a causal relationship, generally, is rationalized

[2] The Board notes that the Dr. Mujica's September 7, 2005 notes contain a notation that they were electronically signed. However, no signature appears on the document.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

[5] *Solomon Polen*, 51 ECAB 341, 344 (2000).

medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to a claimant's diagnosed condition. To be of probative value, 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.[6] Furthermore, the Board has consistently held that unsigned medical reports are of no probative value[7] and that any medical evidence upon which the Office relies to resolve an issue must be in writing and signed by a qualified physician.[8]

An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.[9]

ANALYSIS

The Office correctly treated appellant's claim as an occupational injury claim, in that his claimed condition allegedly developed over a period of time due to activities related to his job as a firefighter, rather than as a result of a single event. The Board finds, however, that the medical evidence of record is insufficient to establish that appellant's alleged injury was causally related to his employment.

In support of his claim, appellant submitted unsigned physical therapy notes from Ms. Goding and Ms. St. Pierre. These notes lack probative value in that physical therapists are not considered "physicians" under the Act.[10] Moreover, as the notes were unsigned, they lack proper identification and cannot be considered as probative evidence.[11] Similarly, appellant submitted August 24 and September 7, 2005 practitioner's reports, as well as other medical documents, bearing illegible signatures. Due to the illegibility of the signatures, the identity of the treating physician cannot be determined.[12] Therefore, these reports lack probative value.

David Lewis, assistant fire chief operations, stated that there was "no doubt" that appellant aggravated his back as a result of work routinely performed at the employing

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[6] *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

[7] *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[8] *James A. Long*, 40 ECAB 538, 541 (1989).

[9] *Dennis M. Mascarenas*, *supra* note 4 at 218.

[10] Section 8101(2) of the Act 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.

[11] *See Merton J. Sills*, *supra* note 7.

[12] 5 U.S.C. § 8101(2).

establishment. As a lay person, Mr. Lewis does not qualify as a 'physician' under the Act. Therefore, his opinion has no probative value.[13]

Reports from appellant's chiropractor also lack probative value. The term "physician" under the Act 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.[14] Although Dr. McLean diagnosed lumbar, sacral and myofascitis subluxation, there is no evidence of record that he based his diagnosis on an x-ray. Moreover, none of his reports contains an opinion on the cause of appellant's diagnosed condition. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[15]

In his August 9, 2005 report, Dr. Kary diagnosed somatic dysfunction; low back pain; and leg symptoms that were generally in the L4 distribution. In his August 15, 2005 report, he noted that appellant's August 10, 2005 x-ray showed some degenerative changes. His musculoskeletal examination revealed that appellant's trunk flexibility was a little better than 2/3 normal in a forward bend. Appellant had no pain with percussion of the spine or CVA, and no somatic dysfunction. Neurologically, SLR was negative. Appellant had normal EHL strength and plantar flexor strength. He also had normal lower extension strength and thigh flexor strength. His left knee jerk was trace, and the right was +2. In unsigned notes dated August 18, 2005, Dr. Kary indicated that a lumbar MRI scan showed degenerative changes at L3-4, L4-5 and L5-6, as well as relatively large free fragment disc herniation extending inferiorly, centrally and to the left from L3-4, compressing the L4-5 nerves on the left. The MRI scan also showed disc bulging circumferentially at L4-5 and L5-S1. In that they were unsigned, the August 18, 2005 notes lack probative value. Moreover, none of Dr. Kary's reports contains an opinion on the cause of appellant's condition. Therefore, they are of limited probative value.

Finally, Dr. Mujica's unsigned reports do not support appellant's claim. His neurologic examination revealed some limitation to range of motion of the lumbosacral spine, and an MRI scan showed some degenerative disc disease and a left L3-4 disc herniation with an inferiorly migrated fragment. However, Dr. Mujica did not opine that appellant's diagnosed condition was causally related to the employment factors he identified. On the contrary, Dr. Mujica stated that although appellant believed that his condition was work related, in the absence of any precipitating event, he could not determine that work activities, in fact, caused his diagnosed condition. Dr. Mujica noted that he previously completed a form indicating that appellant's condition was not work related, based on appellant's statement that his condition began in the middle of the night, four weeks prior to his initial consultation. For the additional reason that they are unsigned, Dr. Mujica's reports lack probative value.

[13] *Id.*

[14] *Id. See Merton J. Sills, supra* note 7.

[15] *Dennis M. Mascarenas, supra* note 4.

The Office advised appellant to provide within 30 days from the date of its letter a comprehensive medical report from his treating physician providing the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to provide the requested documentation. An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.[16]

The Board, therefore, finds that none of the reports provided by appellant included a rationalized opinion regarding the causal relationship between appellant's alleged low back pain and the factors of appellant's employment believed to have caused or contributed to such condition. As appellant did not submit medical evidence to establish that he sustained a back injury causally related to factors of employment, he has failed to meet his burden of proof.

CONCLUSION

Appellant has failed to meet his burden of proof that his claimed medical condition is due to his employment as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 13, 2006 and October 17, 2005 are affirmed.

Issued: August 4, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

[16] *James A. Long*, *supra* note 8.