United States Department of Labor
Employees' Compensation Appeals Board

THEODORE WUSKELL, Appellant	)	
and	)	**Docket No. 06-893**
	)	**Issued: June 20, 2006**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Wellfleet, MA, Employer	)	

Appearances:
John L. Whitehouse, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 8, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated January 20, 2006, adjudicating his claim for a traumatic injury on April 11, 2005. 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 sustained an injury to his right upper torso on April 11, 2005 causally related to factors of his federal employment.

FACTUAL HISTORY

On April 22, 2005 appellant, then a 71-year-old painter, filed a traumatic injury claim alleging that on April 11, 2005 he injured the right side of his upper torso when he moved a desk. He went to the hospital on April 11, 2005 and x-rays were reported as negative for a fracture.

On May 5, 2005 the Office requested additional information, including a medical report explaining how his claimed injury on April 11, 2005 was causally related to his employment.

Appellant submitted a May 4, 2005 report from Dr. Kevin Lowey, a chiropractor, who diagnosed spondylosis and degenerative disc disease. A June 6, 2005 telephone memorandum indicates that appellant was treated by Dr. Lowey for panniculitis, radiculopathy, spinal stenosis and sternum strains. Appellant submitted notes and other documents dated May 16 to 23, 2005 in which Dr. Pamela Latimer, a chiropractor, indicated that appellant had pain in his rib cage and noted that x-rays showed degeneration in the spine but no fracture or dislocations.

By decision dated June 8, 2005, the Office denied appellant's claim on the grounds that the medical evidence did not establish that he sustained an injury on April 11, 2005 causally related to his employment.

Appellant requested a hearing that was held on November 9, 2005.

In a January 7, 2004 report, Dr. John Arthur, an attending Board-certified internist specializing in cardiovascular disease, indicated that appellant had undergone triple bypass heart surgery performed by Dr. Robert Rizzo, a Board-certified thoracic surgeon, and was improving. A January 19, 2005 report of a chest x-ray revealed a discontinuity of sternal wires related to his heart surgery. In a February 3, 2005 report, Dr. John tenBroeke, a Board-certified internist specializing in cardiovascular disease and associate of Dr. Arthur, noted that appellant had two fractured sternal wires but no intervention was planned. He diagnosed a stable cardiac status with no evidence of angina, no significant arrhythmias, and he was not in congestive heart failure.

In a report dated April 14, 2005, Dr. Peter M. McKay, an attending general practitioner, stated that appellant was lifting a desk a few days prior and felt pain in his right chest and rib. X-rays showed no rib fracture. He diagnosed a right rib strain. Dr. McKay stated that appellant had been experiencing chest pressure since February 2005 which increased with exertion or lifting. On April 19, 2005 his heart muscle enzymes were slightly elevated and appellant was referred to a specialist for his atypical chest pain. In two reports dated April 21, 2005, Dr. McKay indicated that appellant had sharp and constant pain after lifting a desk at work on April 11, 2005 and he diagnosed a right rib strain. He checked the block marked "yes," indicating that the condition was causally related to appellant's employment. On May 2, 2005 Dr. McKay indicated that appellant moved two desks on April 11, 2005 and had right anterior chest pain. He noted that during the Fall of 2004 appellant had broken metal wire sutures in his chest and experienced pain when bending, turning or twisting. On May 31, 2005 Dr. McKay stated that appellant developed right anterior chest pain and right shoulder pain while moving furniture at work. He diagnosed right thoracic radiculopathy. On June 24, 2005 Dr. McKay checked "yes" to the question of whether the condition of thoracic nerve compression as seen on a magnetic resonance imaging (MRI) scan was causally related to moving furniture at work on April 11, 2005.

In an April 15, 2005 report, Dr. Shawn Rader, a radiologist, indicated that x-rays of appellant's chest showed post sternotomy changes and chronic obstructive pulmonary disease (COPD).

In a report dated April 21, 2005, Dr. tenBroeke stated that appellant was moving furniture approximately one week prior and pulled something in his right mid chest area. X-rays were negative.

In an April 21, 2005 report, Dr. Lawrence McAuliffe, a Board-certified internist specializing in cardiovascular disease and an associate of Dr. Arthur and Dr. tenBroeke, indicated that appellant was moving furniture at work when he pulled something in his right mid chest area. He indicated that chest x-rays were negative. Dr. McAuliffe diagnosed coronary artery disease and hyperlipidemia.

In reports dated June 9 and July 5, 2005, Dr. Latimer requested permission to perform chiropractic treatment of appellant's rib cage.

In a June 16, 2005 report, Dr. Robert Ronan, a radiologist, indicated that an MRI scan of appellant's thoracic spine revealed extensive thoracic spondylosis and a probable large hemangioma at T4 but no thoracic vertebral body compression fracture.

In reports dated July 21 and October 23, 2005, Dr. Natalie Mariano, an attending Board-certified internist, indicated that appellant had persistent anterior right lower rib cage pain that began when he moved a desk at work on April 11, 2005. She indicated that, although x-rays were negative for a fractured rib, his physical examination was suggestive of a rib fracture.

By decision dated January 20, 2006, an Office hearing representative affirmed the June 8, 2005 decision.

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the 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.[1] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[2] An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical 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 of the claimant, must be one of

[1] *John J. Carlone*, 41 ECAB 354 (1989).

[2] *Shirley A. Temple*, 48 ECAB 404 (1997).

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.[3]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that a claimant's condition became apparent during a period of employment, nor his belief that his condition was aggravated by his employment, is sufficient to establish causal relationship.[4]

ANALYSIS

The Office accepted that appellant moved a desk at work on April 11, 2005 but denied his claim on the grounds that the medical evidence did not establish that he sustained a work-related injury as a result of this incident. The Office notified appellant of the medical evidence necessary to establish his claim for an injury to his chest or torso on April 11, 2005 but such evidence was not provided.

On April 14, 2005 Dr. McKay noted that appellant was lifting a desk at work and felt pain in his right chest and rib. X-rays showed no rib fracture. He diagnosed a right rib strain. Dr. McKay indicated that appellant had been experiencing chest pressure since February 2005 which increased with exertion or lifting. On April 19, 2005 Dr. McKay indicated that heart muscle enzymes were slightly elevated and appellant should see a specialist for his atypical chest pain. In two reports dated April 21, 2005, he indicated that appellant had experienced a sharp and constant pain after lifting a desk at work on April 11, 2005 and he diagnosed a right rib strain. Dr. McKay checked the block marked "yes," indicating that the condition was causally related to appellant's employment. The Board has held that a physician's opinion on causal relationship which consists only of checking "yes" to a form report is of diminished probative value.[5] On May 2, 2005 Dr. McKay indicated that appellant moved furniture on April 11, 2005 and had right anterior chest pain. He noted that, during the Fall of 2004, appellant had broken metal wire sutures in his chest due to prior heart surgery and experienced pain when bending, turning or twisting. On May 31, 2005 Dr. McKay stated that appellant developed right anterior chest pain and right shoulder pain while moving furniture at work. He diagnosed right thoracic radiculopathy. On June 24, 2005 Dr. McKay checked "yes" to the question of whether the condition of thoracic nerve compression as seen on an MRI scan was causally related to moving furniture at work on April 11, 2005. However, Dr. McKay did not explain, with medical rationale, how appellant's diagnosed conditions were causally related to the incident on April 11, 2005 when he moved a desk. As noted, to establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Medical reports not containing adequate rationale on causal relationship are of diminished probative value and are generally insufficient

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[3] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 2.

[4] *Walter D. Morehead*, 31 ECAB 188 (1979).

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

to meet an employee's burden of proof.[6] The reports from Dr. McKay do not meet this criteria and do not establish that appellant sustained a work-related back injury on April 11, 2005

Dr. tenBroeke stated that appellant was moving furniture approximately one week earlier and pulled something in his right mid chest area. However, he did not provide a firm diagnosis and he noted that x-rays were negative. As Dr. tenBroeke did not opine that appellant had a medical condition causally related to moving furniture on April 11, 2005, this report is not sufficient to establish appellant's claim for a work-related injury on that date. Dr. McAuliffe also indicated that appellant was moving furniture at work when he pulled something in his right mid chest area. He diagnosed coronary artery disease and hyperlipidemia. However, Dr. McAuliffe did not explain how the act of moving furniture could cause these conditions. Therefore, his report is not sufficient to discharge appellant's burden of proof.

Dr. Mariano indicated that appellant had persistent anterior right lower rib cage pain that began when he moved a desk at work on April 11, 2005. She indicated that, although x-rays were negative for a fractured rib, his physical examination was suggestive of a rib fracture. However, she did not provide sufficient explanation as to how the furniture moving incident on April 11, 2005 resulted in a possible fractured rib. Such explanation is particularly important in light of the fact that x-rays were negative for a fractured rib. Further, she did not note appellant's preexisting conditions, such as his heart surgery and broken sternal wires and the thoracic chest compression shown on an MRI scan. Lacking sufficient medical rationale on the issue of causal relationship, Dr. Mariano's reports are not sufficient to establish that appellant sustained a work-related medical condition on April 11, 2005.

The x-ray and MRI scan reports submitted do not establish a work-related medical condition caused by the April 11, 2005 work incident. Dr. Rader indicated that x-rays of appellant's chest showed post sternotomy changes and COPD. Dr. Ronan indicated that an MRI scan of appellant's thoracic spine revealed extensive thoracic spondylosis and a probable large hemangioma at T4 but no thoracic vertebral body compression fracture. However, neither physician explained how appellant's conditions were causally related to the furniture moving incident on April 11, 2005. Therefore, these reports are not sufficient to discharge appellant's burden of proof.

Appellant submitted reports from chiropractors who diagnosed spondylosis and degenerative disc disease, panniculitis, radiculopathy, spinal stenosis and sternum strains. However, under section 8101(2) of the Federal Employees' Compensation Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. As the chiropractors of record did not diagnose a spinal subluxation as shown on x-ray, they are not considered "physicians" as defined under the Act and their reports are of no probative value on the issue of whether appellant sustained an injury on April 11, 2005 causally related to his employment.

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[6] *Ceferino L. Gonzales,* 32 ECAB 1591 (1981).

As appellant failed to establish that he sustained a medical condition causally related to the April 11, 2005 incident when he moved furniture at work, the Office properly denied his compensation claim.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury on April 11, 2005 causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 20, 2006 and June 8, 2005 are affirmed.

Issued: June 20, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board