United States Department of Labor
Employees' Compensation Appeals Board

P.L., Appellant	)	
	)	**Docket No. 06-1277**
and	)	**Issued: September 26, 2006**
	)	
FEDERAL DEPOSIT INSURANCE COMPANY, San Francisco, CA, Employer	)	

Appearances:
P.L., 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 15, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 28, 2006 which denied appellant's claim for a neck injury. 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 on appeal is whether appellant has met his burden of proof in establishing that he sustained a neck injury in the performance of duty.

FACTUAL HISTORY

On May 17, 2005 appellant, then a 50-year-old bank examiner, filed a claim alleging that, on May 5, 2005, while on temporary assignment, he sustained a neck injury after carrying his laptop approximately one and a half miles from a motel to a bank examination. Appellant did not stop work. The employing establishment indicated that it considered appellant to be in the performance of duty.

In support of his claim, appellant submitted reports from a physician's assistant dated May 5 and 16, 2005 which noted that appellant presented with neck and upper back pain after he carried a laptop computer to his temporary work assignment. He noted a history of a discectomy and fusion of L4-5 and diagnosed sprain of the cervical spine and cervical radiculopathy. A chest x-ray dated May 13, 2005 revealed scoliosis. Also submitted were reports from Dr. Daniel Rodriguez, Board-certified in neurology and psychiatry, dated May 13 and 18, 2005, which noted that appellant presented with neck and upper back pain. Appellant reported that he was working on assignment and was carrying a laptop for approximately a mile to a bank examination and experienced pain in the lower cervical spine in the C7 area. Dr. Rodriguez diagnosed sprain of the cervical spine and cervical radiculopathy. He advised that appellant could return to work subject to various restrictions. A Form CA-16 dated May 17, 2005 prepared by Dr. Rodriguez diagnosed C6 or C7 radiculopathy and noted with a checkmark "yes" that the condition was caused or aggravated by an employment activity. In reports dated May 23 to 31, 2005, Dr. Rodriguez noted that appellant was slowly improving but still experienced weakness. A magnetic resonance imaging (MRI) scan of the cervical spine dated June 2, 2005 revealed diffuse posterior bony ridging and disc bulge at C3-4, mild degenerative narrowing of the interspace and disc bulge at C5-6, and a superimposed midline disc herniation at C6-7. Appellant submitted a request for authorization for cervical surgery prepared by Dr. Soriya dated July 27, 2005. An MRI scan of the cervical spine dated December 30, 2005 revealed minimal central bulging without cord compression at C2-3, mild to moderate disc protrusion at C3-4, moderate protrusion of the disc at C4-5 and C5-6 and a moderate protrusion with central cord compression at C6-7.

Appellant submitted a statement from Nathan M. Heizer, field office supervisor, dated August 2, 2005, who noted that he was appellant's supervisor in May 2005 and on May 5, 2005 appellant complained of pain in his neck after carrying his computer to a bank examination from his temporary lodging.

By letter dated January 13, 2006, the Office advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. The Office indicated that appellant's claim was administratively handled to allow medical payments up to $1,500.00; however, the merits of the claim had not been formally adjudicated. The Office advised that, because it had received a request for surgery, appellant's claim would be formally adjudicated. The Office requested that appellant submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed neck injury.

Appellant submitted treatment notes from Dr. Lashman W. Soriya, a Board-certified neurologist, dated July 26, 2005, who treated appellant for pain in the neck and right upper extremity with numbness and tingling in his fingers. Dr. Soriya noted that appellant's history was significant for a lumbar disc excision in 1980 and a lumbar fusion in 1982. He noted that while working on May 5, 2005 appellant carried a 30- to 35-pound laptop over a mile to a bank examination and experienced discomfort in the right upper extremity. Dr. Soriya diagnosed severe anatomic spinal cord compression at C5-6 and C6-7 with a right-sided disc protrusion and spondylosis. In a report dated December 22, 2005, he noted that appellant's right upper extremity pain resolved but he was seeking treatment for low back pain. Dr. Soriya advised that

appellant underwent a disc excision in 1980 and a lumbar fusion in 1982 and thereafter experienced occasional lumbar back pain. He recommended additional diagnostic testing. On December 30, 2005 Dr. Soriya noted that the MRI scan of the lumbar spine demonstrated a right L4-5 disc protrusion and an MRI scan of the cervical spine revealed right-sided C5-6 disc protrusion and a C6-7 disc protrusion with cord compression. Also submitted was a statement from Robert B. Ronning, an employing establishment examiner, dated January 25, 2006, who noted that between May 2 and 9, 2005 he was on assignment with appellant and witnessed him carry his laptop approximately one mile to a bank examination. He noted that appellant complained of a stiff neck and discomfort for several weeks. Appellant submitted a statement dated February 8, 2006 detailing his history of his injury and subsequent medical treatment.

The employing establishment submitted a statement from a Workers' Compensation Program Manager, dated February 21, 2006, who noted that, although various modes of transportation were available to appellant, he chose to walk to his bank examination with his laptop. The statement indicated that appellant inconsistently reported the distance from the motel to bank and the weight of the laptop.

In a decision dated February 28, 2006, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by the factors of employment as required by the Federal Employees' Compensation Act.[1]

LEGAL PRECEDENT

An employee seeking benefits under the Act[2] has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition is causally related to factors of his federal employment.[3] Where an employee is on a temporary-duty assignment away from his regular place of employment, he is covered by the Act 24 hours a day with respect to any injury that results from activities essential or incidental to his temporary assignment.[4]

However, the fact that an employee is on a special mission or in travel status during the time a disabling condition manifests itself does not raise an inference that the condition is causally related to the incidents of the employment.[5] A condition that occurs spontaneously during a special mission or in travel status is not compensable. The medical evidence must establish a causal relationship between the condition and factors of employment.[6]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been

[1] 5 U.S.C. §§ 8101-8193.

[2] *Id.*

[3] *Cherie L. Hutchings*, 39 ECAB 639, 643 (1988).

[4] *Richard Michael Landry*, 39 ECAB 232, 236 (1987).

[5] *Cherie L. Hutchings*, *supra* note 3.

[6] *See William B. Merrill*, 24 ECAB 215 (1973).

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.[7] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as 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.[8]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 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.[9] 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.[10]

ANALYSIS

In this case, appellant described his injury as occurring when he carried his laptop approximately one and a half miles from a motel to a bank examination while on official travel. As noted above, while on travel status appellant is covered 24 hours a day with respect to any injury that results from activities incidental to these duties. The employing establishment did not challenge his contention that he was on travel status and in the performance of duty at the time of the alleged employment incident of May 5, 2005. Appellant, therefore, would be covered for any injury established as being caused by employment factors while on official travel on May 5, 2005.

Appellant alleged that he sustained a neck injury while carrying his laptop to a bank examination. The Board initially notes that the incident occurred on May 5, 2005 as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained an injury causally related to the May 5, 2005 carrying of the laptop computer. On January 13, 2006 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated his claimed condition.

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

[8] *Id.*

[9] *Leslie C. Moore*, 52 ECAB 132 (2000).

[10] *Duane B. Harris*, 49 ECAB 170 (1997).

Appellant submitted reports from a physician's assistant dated May 5 and 16, 2005; however, the Board has held that treatment notes signed by a physician's assistant are not considered medical evidence as a physician's assistant is not a physician under the Act.[11] Therefore, these reports are insufficient to meet appellant's burden of proof.

Also submitted were reports from Dr. Rodriguez dated May 13 and 31, 2005, which noted that appellant presented with neck and upper back pain. Appellant reported that he was working on assignment and was carrying a laptop for approximately a mile into a bank and experienced pain in the lower cervical spin in the C7 area. Dr. Rodriguez diagnosed sprain of the cervical spine and cervical radiculopathy. However, he did not provide an opinion regarding whether appellant's condition was work related.[12] Dr. Rodriguez did not provide an explanation regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.[13] Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant submitted a Form CA-16 dated May 17, 2005 prepared by Dr. Rodriguez diagnosed C6 or C7 radiculopathy and noted with a check mark "yes" that the condition was caused or aggravated by an employment activity. Dr. Rodriguez indicated with a check mark "yes" that the appellant's condition was caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[14]

Appellant submitted treatment notes from Dr. Soriya dated July 26, 2005 who treated appellant for pain in the neck and right upper extremity with numbness and tingling in his fingers. Dr. Soriya noted that appellant's history was significant for a lumbar disc excision in 1980 and a lumbar fusion in 1982. He indicated that, on May 5, 2005, while appellant was working, he carried a 30- to 35-pound laptop over a mile to a bank examination which caused discomfort in the right upper extremity. Dr. Soriya diagnosed severe anatomic spinal cord compression at C5-6 and C6-7 with a right-sided disc protrusion and spondylosis. The Board finds that, although Dr. Soriya supported causal relationship in a conclusory statement, he did not provide a rationalized opinion regarding the causal relationship between appellant's anatomic spinal cord compression at C5-6 and C6-7 with a right-sided disc protrusion and spondylosis and

[11] *See* 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

[12] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[13] *See Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[14] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

the factors of employment believed to have caused or contributed to such condition.[15] Moreover, Dr. Soriya failed to address how appellant's prior lumbar laminectomy and lumbar fusion surgeries might have affected his current neck and back conditions. The Board notes that a medical opinion based on an incomplete history is insufficient to establish causal relationship.[16] Therefore, this report is insufficient to meet appellant's burden of proof.

Other reports from Dr. Soriya dated December 22 and 30, 2005, noted that appellant's right upper extremity pain resolved but he was seeking treatment for low back pain. He noted that appellant underwent a disc excision in 1980 and a lumbar fusion in 1982 and experienced occasional lumber back pain. Dr. Soriya noted that the MRI scan of the lumbar spine demonstrated a right L4-5 disc protrusion and an MRI scan of the cervical spine revealed right-sided C5-6 disc protrusion and a C6-7 disc protrusion with cord compression. However, as noted above, he neither noted a history of the injury or a rationalized opinion regarding the causal relationship between appellant's diagnosed condition of L4-5, C5-6 and C6-7 disc protrusions with cord compression and the factors of employment believed to have caused or contributed to such condition. Moreover, Dr. Soriya failed to address how appellant's prior lumbar laminectomy and lumbar fusion surgeries might have affected his current cervical and lumbar conditions.

The remainder of the medical evidence, including a chest x-ray and MRI scans of the cervical spine, fail to provide an opinion on the causal relationship between appellant's job and his diagnosed condition of cervical and lumbar disc protrusions. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[17] Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.[18]

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a neck strain causally related to his May 5, 2005 employment incident.

[15] *Id.*

[16] *See Cowan Mullins,* 8 ECAB 155, 158 (1955).

[17] *See Dennis M. Mascarenas,* 49 ECAB 215 (1997).

[18] The Board notes that the opinions of appellant's physicians may suggest a causal connection between the event of May 5, 2005 and the appellant's neck complaints. The Board reiterates its long held position that appellant is responsible for submitting medical evidence which complies with the formal and substantive requirements established by the Board. What ever their potential import, the reports submitted by appellant do not meet this threshold.

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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