United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 07-2401**
	)	**Issued: April 1, 2008**
U.S. POSTAL SERVICE, POST OFFICE, New Brighton, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On September 24, 2007 appellant filed a timely appeal from the July 16, 2007 decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. 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 established that he sustained an injury in the performance of duty on May 21, 2007.[1]

[1] The Board notes that, on appeal, appellant submitted new evidence related to his claim. The record also contains a medical report received by the Office following the issuance of its July 16, 2007 decision. As this evidence was not a part of the record at the time the Office made its final decision, the Board has no jurisdiction to review it for the first time on appeal. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On May 21, 2007 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim, Form CA-1, alleging that on that day he tore the nail off of a finger, bruised his right knee and sprained his back when he fell down steps while running from a dog.

On May 22, 2007 Dr. Louis D'Amico, a chiropractor, diagnosed lumbar sprain and strain. He noted that appellant had a diminished range of motion, difficulty walking and sitting, spasms and subluxation. Dr. D'Amico reported that appellant injured his low back when he was chased by a dog at work and fell down some steps. He treated appellant with a spinal adjustment and ultrasound application.

On June 13, 2007 the Office informed appellant that the medical evidence submitted was not sufficient to establish his claim because his chiropractor had not diagnosed a subluxation demonstrated by x-ray to exist.

On June 13, 2007 appellant submitted additional medical information. In a May 21, 2007 emergency department report, Denise Ramponi, a nurse practitioner, detailed her examination of appellant, which was done in collaboration with Dr. Ruth Perez. Ms. Ramponi stated that appellant was chased by a dog and sustained injuries to the back, right lower leg and left ring finger. Appellant fell down approximately six to eight steps and struck his knee on a step, bent back his left ring fingernail and twisted his lower back. On physical examination Ms. Ramponi noted moderate tenderness, but no spasm, over the right sacroiliac joint. She found two small abrasions and a contusion on the mid-tibial region of appellant's right leg. Appellant's left ring finger showed evidence of the nail having bent back one quarter of the way, with minimal bleeding. His left middle finger had a small ecchymosis and swelling. The diagnosis was musculoskeletal low back strain, contusion and abrasion on the lower right leg, abrasion on the left ring finger and contusion on the left middle finger. Ms. Ramponi opined that there was no reason for an x-ray at that time. She reported that appellant preferred to see his chiropractor for further treatment. Ms. Ramponi provided work restrictions against prolonged walking, prolonged standing, climbing, bending and stooping and a weight restriction of 15 pounds.

A May 22, 2007 x-ray report, requested by Dr. D'Amico and prepared by Dr. Daniel Greenler, indicated that appellant had no significant abnormality in the alignment of his lumbar spine. Dr. Greenler found normal vertebral body height and relatively well-preserved disc height. He noted no fracture or bony lesion, though he did find minimal marginal spurring. Dr. Greenler identified no significant abnormality of the soft tissues. He diagnosed minimal spondylosis without fracture.

In an undated report, received on July 5, 2007, Dr. D'Amico stated that he first treated appellant on May 22, 2007 for complaints of sharp right low back pain. Appellant reported that the treatment prescribed at the hospital had helped a little, but that his pain still made it difficult to walk and bend. He stated that standing or sitting for any amount of time led to increased right low back pain and numbness in the right leg. The underlying pain was constant. Dr. D'Amico ordered a series of lumbar x-rays, which showed subluxation of the pelvis and sacroiliac region, which was elevated and rotated to the right. There was also evidence of disc degeneration at L5-S1. On physical examination, Dr. D'Amico found loss of lumbar range of motion in flexion,

extension and right lateral flexion accompanied by moderate right sacroiliac pain. Appellant had a positive minor's sign, Youmans test and straight leg test, which yielded sharper pain on the right at 40 degrees. He had mild-to-moderate difficulty getting onto and off of the examination table and walked with a noticeable limp on the right. Palpitation showed moderate right lumbosacral spasm and tenderness with right sacroiliac joint subluxation and a right functional leg shortening of approximately half of an inch. Dr. D'Amico diagnosed mild-to-moderate right sacroiliac joint sprain/strain caused by falling down six steps. The sprain resulted in sacroiliac joint dysfunction and muscle spasms. Appellant was removed from work from May 22 to 29, 2007 because of the pain caused by sitting or standing. He returned to work on May 30, 2007 and was released from care on June 1, 2007 with no residuals.

By decision dated July 16, 2007, the Office denied appellant's claim on the grounds that he did not establish an injury under the Federal Employees' Compensation Act. It accepted that appellant fell down stairs on May 21, 2007 as alleged, but that there was no diagnosis connected to the event. The Office found that the reports from the nurse practitioner and the chiropractor did not constitute medical evidence to support his claim.

LEGAL PRECEDENT

An employee seeking benefits under the Act[2] 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 the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office must first determine whether "fact of injury" has been established. "Fact of injury" consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component of "fact of injury" is whether the incident caused a personal injury and, generally, this can be established only by medical evidence.[4]

When determining whether the implicated employment factors caused the claimant's diagnosed condition, the Office generally relies on the rationalized medical opinion of a physician.[5] To be rationalized, the opinion must be based on a complete factual and medical

[2] 5 U.S.C. §§ 8101-8193.

[3] *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

background of the claimant[6] and must be one of reasonable medical certainty,[7] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

ANALYSIS

The Office accepted that appellant fell down some stairs when he was being chased by a dog in the performance of duty on May 21, 2007. The issue is whether he has established an injury causally related to this accepted event.

The issue of causal relationship is medical in nature and must be resolved by probative medical evidence. On May 21, 2007 the day of the accepted events, Ms. Ramponi, a nurse practitioner, examined appellant in the emergency department. She stated that appellant sustained injuries after falling down approximately six to eight steps and striking his knee on a step, bending back his left ring fingernail and twisting his lower back. Ms. Ramponi noted moderate tenderness over the right sacroiliac joint, but felt no spasm. She reported that there were two small abrasions and a contusion on the mid-tibial region of appellant's right leg, that his left ring finger showed evidence of the nail having bent back one quarter of the way and that his left middle finger had a small ecchymosis and swelling. The reported diagnosis was musculoskeletal low back strain, contusion and abrasion on the lower right leg, abrasion on the left ring finger and contusion on the left middle finger. Ms. Ramponi opined that there was no reason for an x-ray at that time. She provided work restrictions against prolonged walking, prolonged standing, climbing, bending and stooping and a weight restriction of 15 pounds. The report was electronically signed by Ms. Ramponi. Dr. Perez did not sign the document or give any other evidence of participation in its preparation.

The Board notes that a nurse practitioner is not a "physician" as defined under the Act and any report from such an individual does not constitute competent medical evidence.[9] Though Ms. Ramponi stated that Dr. Perez collaborated on the examination, he did not sign the May 21, 2007 report. The Board has held that a report may not be considered probative medical evidence unless it can be established that the person completing the report is a "physician" as defined by the Act.[10] Because the May 21, 2007 report was not completed by a physician, the Board finds that it does not constitute medical evidence.

In an undated report, Dr. D'Amico, a chiropractor, stated that he treated appellant on May 22, 2007 for complaints of sharp right low back pain. Dr. D'Amico stated that the lumbar x-rays he ordered showed subluxation of the pelvis and sacroiliac region, which was elevated

[6] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[7] *John W. Montoya*, 54 ECAB 306 (2003).

[8] *Judy C. Rogers*, 54 ECAB 693 (2003).

[9] *Sean O'Connell*, 56 ECAB 195, 200 note 11 (2004); *see also* 5 U.S.C. § 8101(2) (defining the term "physician").

[10] *Thomas L. Agee*, 56 ECAB 465 (2005).

and rotated to the right and evidence of disc degeneration at L5-S1. Palpation showed moderate right lumbosacral spasm and tenderness with right sacroiliac joint subluxation. Dr. D'Amico diagnosed mild to moderate right sacroiliac joint sprain/strain resulting in sacroiliac joint dysfunction and muscle spasms.

Under the Act, the term "physician" 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.[11] Though Dr. D'Amico stated that appellant's sacroiliac subluxation was established by x-ray, the record of evidence does not support this diagnosis.[12] The May 22, 2007 x-ray report, prepared by Dr. Greenler, indicated no significant abnormality in the alignment of the lumbar spine or the soft tissues. He found normal vertebral body height, relatively well-preserved disc height, no fracture or bony lesion and minimal marginal spurring. Dr. Greenler diagnosed minimal spondylosis without fracture. He made no findings of subluxation. The Board therefore finds that Dr. D'Amico is not a physician as defined under the Act. His report is not probative medical evidence.

The Board finds that appellant did not meet his burden of proof to establish an injury under the Act.

CONCLUSION

The Board finds that appellant did not establish that he sustained an injury in the performance of duty on May 21, 2007.

[11] 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *see also* 20 C.F.R. § 10.311.

[12] *See Sean O'Connell*, *supra* note 9 at 199 (the Board found that a chiropractor who stated that appellant had a subluxation diagnosed by x-ray was not a physician under the Act when the report for the x-ray cited did not include the diagnosis of subluxation).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 16, 2007 is affirmed.

Issued: April 1, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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