United States Department of Labor
Employees' Compensation Appeals Board

W.M., Appellant	)	
and	)	**Docket No. 08-63**
	)	**Issued: April 17, 2008**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Chicago, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 October 9, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative's decision dated September 11, 2007 which affirmed a March 27, 2007 decision denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issues in this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on January 26, 2007.

FACTUAL HISTORY

On February 1, 2007 appellant, then a 53-year-old medical supply technician, filed a traumatic injury claim alleging that, on January 26, 2007, he sustained a herniated disc at L4-5

and chronic lower back pain as a result of an elevator malfunction at work.[1] He stopped work on January 26, 2007.

In support of his claim, appellant submitted physical therapy notes dating from February 7 to 12, 2007. He also submitted the January 29, 2007 disability certificate and February 1, 2007 report from Dr. Mangala Yeturu, Board-certified in internal medicine, who indicated that appellant had low back pain, and L4-5 radiculopathy, which radiated to both lower extremities. Dr. Yeturu noted that a recent injury on the elevator on January 26, 2007 "aggravated the pain." He indicated that appellant could not return to work until February 20, 2007.

By letter dated February 26, 2007, the Office advised appellant that additional factual and medical evidence was needed. The Office explained that a physician's opinion was crucial to his claim and allotted him 30 days within which to submit the requested information.

The Office subsequently received physical therapy notes dated February 7 to March 8, 2007. It also received a March 6, 2007 treatment prescription from Dr. Aruna Kandula, Board-certified in internal medicine.

On February 21, 2007 Dr. Yeturu diagnosed a disc herniation and chronic low back pain. He advised that appellant was unable to return to work until he finished therapy and he saw a neurosurgeon. A June 9, 2006 electromyogram (EMG) read by Dr. Abid M. Ali, a Board-certified neurologist, revealed a very mild compression of the median nerves bilaterally at the wrists involving sensory fibers with demyelinating features, bilateral carpal tunnel syndrome, and electrophysiological evidence of irritation of roots involving L4 to S1 paraspinals on the right and L5-S1 paraspinals on the left. An August 30, 2006 magnetic resonance imaging (MRI) scan read by Dr. Glen Geremia, a Board-certified diagnostic radiologist, revealed degenerative changes within the lower lumbar spine, herniated discs at L4-5 and L5-S1 and foraminal stenosis.

By decision dated March 27, 2007, the Office denied appellant's claim. The Office found that the evidence was insufficient to establish that the events occurred as alleged and further found that the medical evidence did not address how the injury occurred.

The Office subsequently received a July 20, 2004 report from Dr. D.H. Rogers, a Board-certified internist, who noted evaluating appellant that date for worsening back pain, chest pain, and left elbow pain with heavy lifting while at work. Dr. Rogers diagnosed lower back strain and lateral epicondylitis, and a chest strain. In a March 20, 2007 report, he advised that appellant reported "worsening problems with lower back pain." Dr. Rogers also indicated that appellant reported a back injury in 2003 related to straining and pushing items at work. He noted that on January 26, 2007 appellant was involved in a "work-related task when he was violently jostled." Dr. Rogers determined that appellant had difficulty ambulating and used a cane. He stated that appellant had low back pain, "which is reported to be exacerbated by an injury sustained while at work." Dr. Rogers indicated that appellant was "not able to perform work-related duties

[1] The record reflects that appellant has four other claims, Nos. 102033102, 102037493, 102054300 and 102059335. These other claims are not before the Board on this appeal.

assigned to him secondary to the lower back pain." He opined that appellant could not return to full duty for at least six months after the injury. In a separate March 20, 2007 report, Dr. Rogers noted that appellant related that he had "persistent problems with lower back pain since experiencing an injury while on an elevator at work." He noted that appellant had back pain since 2003, and that he reported that he was "violently jostled while on an elevator when he was performing his job" in January 2007. Dr. Rogers indicated that appellant had not worked since the episode and reported continued back pain, and pain in the right hip and thigh. He diagnosed back pain. Dr. Rogers stated that appellant had underlying disc disease and irritation of the nerve roots in the lower back. He advised that appellant was undergoing physical therapy and unable to return to full duty for at least six months postinjury.

In a March 22, 2007 report, Dr. Yeturu noted that appellant was in an elevator on January 26, 2007, when it malfunctioned. He diagnosed low back pain with radiation to both extremities. Dr. Yeturu checked the box "yes" in response to whether he believed that appellant's condition was caused or aggravated by an employment activity. He filled in that the injury was aggravated by the recent injury on the elevator. Dr. Yeturu recommended that appellant could return to work with restrictions on March 27, 2007.

In a March 23, 2007 report, Dr. Arnulfo Vielgo, a Board-certified internist, provided restrictions from March 23 to September 30, 2007. He indicated that appellant was able to work for eight hours per day with restrictions and would need a support chair and a cane. In an April 9, 2007 report, Dr. Vielgo diagnosed cervical syndrome at L4-5, and L5-S1 with disc herniation. He recommended that appellant return to work with restrictions.

On April 15, 2007 appellant's representative requested a hearing, which was held on August 9, 2007. In an April 29, 2007 statement, appellant explained that on January 26, 2007 he was on the elevator when it stopped between floors and began moving up in a jerking motion. He stated that his body was "violently jostled from left to right and from front to back." Appellant also submitted numerous copies of physical therapy notes from February 7 to March 8, 2007 and evidence previously of record.

By decision dated September 11, 2007, the Office hearing representative modified the Office's March 27, 2007 decision to reflect that appellant had presented sufficient evidence to establish that an employment incident occurred as alleged. However, the Office hearing representative affirmed denial of his claim as the medical evidence was insufficient to show that the incident caused a diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation 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 timely filed within the applicable time limitation period of the Act[3] and that an injury was

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

sustained in the performance of duty.[4] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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 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. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[6] The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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.[7]

ANALYSIS

Appellant alleged that, on January 26, 2007, he was in an elevator which malfunctioned. He stated that he was violently jostled during the incident. The Office hearing representative found that appellant presented sufficient evidence to establish the incident occurred, as alleged. Therefore, the first component of fact of injury is established. However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical reports of record do not establish that the elevator incident caused a personal injury on January 26, 2007. The medical evidence provides insufficient explanation of how the incident of January 26, 2007 caused or aggravated an injury.[8]

In reports dated January 29 and February 1, 2007, Dr. Yeturu noted that appellant had low back pain and L4-5 radiculopathy, which radiated to both lower extremities. He advised that a recent injury on the elevator on January 26, 2007 "aggravated the pain." The Board notes that Dr. Yeturu did not provide a firm medical diagnosis or provide any explanation of how the accepted incident aggravated appellant's low back condition. Dr. Yeturu also completed a February 21, 2007 report, in which he diagnosed a disc herniation and chronic low back pain. On March 22, 2007 he noted that appellant was in an elevator on January 26, 2007, when it

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Delores C. Ellyet*, 41 ECAB 992 (1990).

[6] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[7] *Michael S. Mina*, 57 ECAB ___ (Docket No. 05-1763, issued February 7, 2006).

[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

malfunctioned. Dr. Yeturu again noted low back pain with radiation to both extremities and checked the box "yes" in response to whether he believed that appellant's condition was caused or aggravated by an employment activity. He noted that appellant's condition was aggravated by the elevator incident but he did not provide his reasoning for his stated conclusion or address appellant's prior history of back problems. The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[9]

The reports from Dr. Rogers are also insufficient to establish appellant's claim. The July 20, 2004 report predated the claimed injury. The March 20, 2007 reports noted that appellant reported "worsening problems with lower back pain," listed his back injury of 2003 and noted the January 26, 2007 elevator incident in which he stated that appellant was "violently jostled." Dr. Rogers opined that appellant had low back pain "which is reported to be exacerbated by an injury sustained while at work." He also indicated that appellant had underlying disc disease and irritation of the nerve roots in the lower back pain. However, Dr. Rogers' opinion is equivocal in that the physician stated that appellant's pain was "reported" to have been exacerbated by his work. He did not provide a full explanation or reasoned opinion addressing how the elevator incident caused a new injury or aggravated appellant's underlying back condition. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.[10] Dr. Rogers did not otherwise provide a reasoned opinion explaining how the elevator incident caused or aggravated a diagnosed condition.

The other medical reports submitted by appellant are insufficient to establish his claim because they do not specifically address whether the January 26, 2007 work incident caused or aggravated a diagnosed condition.[11] Numerous physical therapy reports were also submitted. However, health care providers such as physical therapists are not physicians under the Act.[12]

The medical reports submitted by appellant do not adequately address how the January 26, 2007 incident at work caused or aggravated his low back condition. The reports are of limited probative value.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on January 26, 2007.

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[9] *Calvin E. King*, 51 ECAB 394 (2000).

[10] *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[11] *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[12] *See Jane A. White*, 34 ECAB 515, 518 (1983). *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated September 11, 2007 is affirmed.

Issued: April 17, 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