United States Department of Labor
Employees' Compensation Appeals Board

K.J., Appellant	)	
and	)	**Docket No. 07-2430**
	)	**Issued: March 18, 2008**
DEPARTMENT OF VETERANS AFFAIRS, DETROIT VETERANS ADMINISTRATION MEDICAL CENTER, Detroit, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 25, 2007 appellant filed a timely appeal from December 7, 2006 and August 29, 2007 merit decisions of the Office of Workers' Compensation Programs denying his traumatic injury claim. 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 sustained a back injury while in the performance of duty on September 29, 2006.

FACTUAL HISTORY

On October 2, 2006 appellant, a 57-year-old nurse, filed a traumatic injury claim alleging that he injured his back on the afternoon of September 29, 2006, as he was descending a flight of stairs at the employing establishment. He stated: "There was a prior injury to my back during

lifting and shooting pain and numbness to my legs. While going down A5N steps on 9/29 at 5:00 p.m. legs felt num[b] and gave way and fell on the first landing B5N."

In a letter dated October 31, 2006, the Office informed appellant that the information submitted was insufficient to establish his claim. It advised him to submit additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion, as to the cause of the diagnosed condition.

Appellant submitted urgent care notes dated September 29, 2006 from Dr. Horst Harold Griesser, an emergency medicine physician, who stated that appellant presented with back pain after lifting boxes. Dr. Griesser noted that appellant's pain and weakness was more pronounced on the left than on the right; that he experienced numbness in both legs; and that his pain was intermittent and sharp. In an urgent care nursing assessment dated September 29, 2006, Donna L. Booker, a registered nurse, provided an assessment of left leg pain with numbness. An urgent care triage assessment reflected that appellant had arrived in a wheelchair and was experiencing pain due to an injury.

Appellant submitted an October 2, 2006 report from Thresiamma Idichandy, a nurse practitioner, who stated that he had fallen on his back on September 29, 2006 while walking down stairs at work. Ms. Idichandy related that, after feeling numbness in his left thigh while sitting at his unit, appellant decided to take the stairs to strengthen his legs. As appellant descended the stairs, his legs went weak and he fell. Ms. Idichandy indicated that appellant was experiencing lumbar back pain, numbness and tingling radiating to the left leg.

Appellant submitted a report of a magnetic resonance imaging (MRI) scan of the lumbar spine dated August 19, 2006. The report reflected the development of annular fissuring in the posterior margin of the disc at L4-5, since appellant's January 21, 2006 MRI scan was conducted. The record contains a job description for a nurse educator and a January 30, 2006 performance review.

In an August 29, 2006 report, Dr. Gregory Krol, an internist,[1] noted that appellant had been a long-standing patient. He stated that appellant had recently developed back pain while lifting a mattress during a training session at work on July 25, 2006. Dr. Krol indicated that an August 19, 2006 MRI scan revealed an annular tear of the lumbosacral disc at the L4-5 level, which was not evident on an MRI scan performed the previous year. He opined that the new annular tear was responsible for appellant's low back pain and radicular symptoms. On October 4, 2006 Dr. Krol treated appellant for bilateral extremity numbness and pain. Appellant reported that, on the previous Friday, he was "bending over to pick some books up." Dr. Krol stated that appellant "must have injured himself." His examination revealed decreased strength in the left lower extremity; decreased deep tendon reflexes in the lower extremities bilaterally; and decreased pinprick sensation in the sacral area. Straight leg testing was positive bilaterally at 30 degrees. Dr. Krol diagnosed "suspected *cauda equina* syndrome." The record also contains his work excuses for the period October 5 through December 4, 2006 and notes dated November 27, 2006, reflecting that appellant received 12 sessions of physical therapy.

[1] The record also contains a report from Dr. Krol dated September 7, 2006, which is a duplicate of his August 29, 2006 report.

On October 27, 2006 the employing establishment controverted appellant's claim.

In a report dated November 22, 2006, Dr. Barbara Saul, a treating physician, stated that appellant originally injured his back at the employing establishment while instructing nurses in an emergency evacuation. A subsequent MRI scan revealed an annular tear in the L4-5 disc. Dr. Saul noted that appellant had been experiencing numbness in his left leg. She diagnosed lumbar radiculopathy with annular tear of L4-5 disc.

In an undated statement, appellant indicated that he sustained his initial injury during a training exercise. At the end of his workday on September 29, 2006, his left leg felt numb. He stated that he casually shared the information with a coworker, Rene Peterson. As appellant descended the stairs to his car, his left leg went completely numb and he fell flat on his back, landing on his buttocks first. He experienced severe pain in his back, left leg and buttocks and was unable to pull himself up. Appellant summoned Ms. Peterson, who assisted him by wheelchair to urgent care.

By decision dated December 7, 2006, the Office denied appellant's claim, finding that the medical evidence did not establish that his claimed medical condition was causally related to the accepted work incident. The Office noted that, in a prior traumatic injury claim, File No. 0952074085, appellant alleged that he injured his back on July 25, 2006 during a training session. This claim was denied on September 14, 2006 for lack of sufficient medical evidence.

Appellant submitted a December 13, 2006 report and accompanying work excuse from Dr. Maria Samuel, an internist, who treated him for "recurrent and ongoing back discomfort." Dr. Samuel stated that appellant's initial injury in July 2006, "when he overstepped," was followed by numbness in the left lower extremity. After a fall in September 2006, appellant experienced severe back discomfort. Examination of the back revealed discomfort with no significant spine tenderness. Straight leg raising (SLR) was negative on the right side, positive at 60 degrees on the left side. Crossed SLR was negative; plantar response was downgoing; muscle strength was 5/5; tone was normal; and reflexes were diminished in both lower extremities. Dr. Samuel provided an assessment of "low back discomfort, recent back injury and annular tear at L4-5." On December 29, 2006 she stated that appellant had been having back pain since July 2006 and was status post fall and injury. Dr. Samuel assessed "low back discomfort following a previous back injury, annular tear at L4-5."

On January 11, 2007 Dr. Samuel stated that she treated appellant on that date for recurrent back pain due to an annular tear of his L4-5 disc. She indicated that the initial injury occurred on July 25, 2006 while he was "lifting." Dr. Samuel related that, on September 29, 2006, while simultaneously leaning over a box and lifting books and folders, appellant's left leg became numb. Later that day, while descending stairs, appellant's left leg again became numb and he fell down the steps, reinjuring himself.

Appellant submitted a follow-up report dated January 15, 2007 from Dr. Krol, who provided the following assessment: "Slowly resolving back pain related to an initial fall and annular tear of his L4-5 disc in the stairwell during the training procedure and then subsequent recurrent injury with low back pain after leaning forward to move books and files."

On August 19, 2007 appellant, through his representative, requested reconsideration of the December 7, 2006 decision. In a September 7, 2006 report, Dr. Krol stated that appellant developed back pain following a July 25, 2006 injury, which occurred in a training session. He indicated that an August 19, 2006 MRI scan showed a newly-developed annular tear at the L4-5 level. Dr. Krol's August 28, 2006 examination of appellant revealed persistent back pain, with radiculitis to both lower extremities and tenderness over the lower lumbar spinous processes. He opined that appellant's symptoms "were likely due to [the] new annular tear of his L4-5 disc." Dr. Krol stated that appellant had known facet degenerative joint disease, which was asymptomatic until his July 25, 2006 injury.

By decision dated August 29, 2007, the Office denied modification of its December 7, 2006 decision. The Office found that the medical evidence was insufficient to establish that appellant's current medical condition was causally related to the September 29, 2006 employment incident.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[3]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his 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, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury.[5]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a

[2] 5 U.S.C. § 8102(a).

[3] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *Robert Broome*, 55 ECAB 339 (2004).

[5] *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Deborah L. Beatty*, 54 ECAB 340 (2003). *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury," as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). *See* 20 C.F.R. § 10.5(q)(ee).

specific employment incident or to specific conditions of employment.[6] An award of compensation may not be based on appellant's belief of causal relationship.[7] 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.[8] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[10]

ANALYSIS

The Office accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the September 29, 2006 workplace incident occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy his burden of proof.

On September 29, 2006 Dr. Griesser stated that appellant presented with back pain after lifting boxes. He noted that appellant's pain and weakness was more pronounced on the left than on the right; that he experienced numbness in both legs; and that his pain was intermittent and sharp. Dr. Griesser did not provide a definitive diagnosis or render an opinion as to the cause of appellant's condition. The Board has long held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[11] Moreover, Dr. Griesser did not obtain a history of the September 29,

[6] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[7] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[8] *Id.*

[9] 20 C.F.R. § 10.303(a).

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

[11] *A.D*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006); *Michael E. Smith*, 50 ECAB 313 (1999).

2006 fall at work. A diagnosis of pain does not constitute a basis of payment for compensation, as pain is considered to be a symptom rather than a specific diagnosis.[12]

Dr. Krol's reports are also insufficient to establish appellant's claim. As his August 29 and September 7, 2006 reports predate the accepted incident, they are irrelevant to appellant's condition after September 29, 2006. On October 4, 2006 Dr. Krol diagnosed "suspected *cauda equina* syndrome," stating that appellant "must have injured himself" the previous Friday, when he was "bending over to pick some books up." This history does not address the accepted fall at work. On January 15, 2007 Dr. Krol indicated that appellant's "slowly resolving back pain [was] related to an initial fall and annular tear of his L4-5 dis[c] in the stairwell during [a] training procedure and [a] subsequent recurrent injury with low back pain after leaning forward to move books and files." Neither of these reports provides a specific diagnosis. Further, they are based on an inaccurate factual history. The reports are vague and equivocal and fail to explain the causal relationship between appellant's condition and the September 29, 2006 work-related incident.[13] Therefore, they are of diminished probative value.

In November 22, 2006 report, Dr. Saul stated that appellant originally injured his back at the employing establishment while instructing nurses in an emergency evacuation. A subsequent MRI scan revealed an annular tear in the L4-5 disc. Noting that appellant had been experiencing numbness in his left leg, she diagnosed lumbar radiculopathy with annular tear of L4-5 disc. Dr. Saul did not acknowledge or express an opinion on the September 29, 2006 incident. She did not relate appellant's current condition to the fall at work. Therefore, Dr. Saul's report is of limited probative value.

Dr. Samuel's reports are also insufficient to establish appellant's claim. On December 13, 2006 she stated that she was treating appellant for "recurrent and ongoing back discomfort." Dr. Samuel noted that appellant's initial injury, which occurred in July, 2006, "when he overstepped," was followed by numbness in the left lower extremity. After a fall in September 2006, appellant experienced severe back discomfort. Dr. Samuel provided an assessment of "low back discomfort, recent back injury and annular tear at L4-5." On December 29, 2006 she stated that appellant had been having back pain since July 2006 and was status post fall and injury. Dr. Samuel assessed "low back discomfort following a previous back injury, annular tear at L4-5." The only definitive diagnosis provided by her in either report was annular tear. However, Dr. Samuel failed to opine when or how the tear occurred. She did not provide a detailed history of injury or explain how appellant's current back condition is causally related to the September 29, 2006 incident. Therefore, these reports are of diminished probative value.

On January 11, 2007 Dr. Samuel stated that she treated appellant on that date for recurrent back pain due to an annular tear of his L4-5 disc. She indicated that the initial injury occurred on July 25, 2006 while he was "lifting." Dr. Samuel related that, on September 29, 2006, while simultaneously leaning over a box and lifting books and folders, appellant's left leg became numb. Later that day, while descending stairs, his left leg again became numb and he

[12] *Robert Broome*, *supra* note 4.

[13] *See Michael E. Smith*, *supra* note 11.

fell down the steps, reinjuring himself. The Board notes that the history of injury provided by Dr. Samuel is inconsistent with that provided by appellant, who indicated that he collapsed on his back on September 29, 2006 while in a stairwell. Moreover, Dr. Samuel offered no opinion as to whether appellant's annular tear was due to the September 29, 2006 incident, as opposed to a prior injury. She did not explain how the incident caused or contributed to any other diagnosed condition. Accordingly, Dr. Saul's report lacks probative value.

The record does not contain an opinion by any qualified physician, supporting appellant's contention that his back condition was causally related to the accepted employment incident. While appellant has submitted chart notes and other medical documents which track his treatment, he has not provided a narrative report containing a physician's rationalized opinion on whether there is a causal relationship between his condition and the established September 29, 2006 work incident. The Board notes that appellant submitted notes and reports signed by a nurse and a physician's assistant. As these reports were not signed by individuals that qualify as "physicians" under the Act, the Board finds that they do not constitute probative medical evidence.[14]

Appellant expressed his belief that his back condition resulted from the September 29, 2006 employment incident. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[15] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[16] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, his belief that his condition was caused by the work-related incident is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how his claimed back condition was caused or aggravated by his employment, appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty causally related to factors of his federal employment.

[14] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2). § 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." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[15] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[16] *Id.*

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a traumatic injury in the performance of duty on September 29, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 29, 2007 and December 7, 2006 are affirmed.

Issued: March 18, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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