United States Department of Labor
Employees' Compensation Appeals Board

F.T., Appellant	)	
and	)	**Docket No. 08-1659**
	)	**Issued: January 2, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Wrangell, AK, Employer	)	

Appearances:
Brett E. Blumstein, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 23, 2008 appellant filed a timely appeal from the March 27, 2008 merit decision of the Office of Workers' Compensation Programs, which denied his request to expand his claim for additional medical conditions. The record also contains an April 22, 2008 nonmerit decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review these denials.

ISSUES

The issues are: (1) whether appellant's additional medical conditions of headaches, fatigue, ataxia and neck pain are causally related to his January 19, 2005 employment injury; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On January 19, 2005 appellant, then a 71-year-old custodian, alleged that he hit the back of his head and lost consciousness when he slipped and fell on a handicap ramp while putting out ice melt. The fall was not witnessed. The Office accepted appellant's claim for concussion with

loss of consciousness of unspecified duration. Appellant stopped work on January 19, 2005 and has not returned. The record indicates that he underwent a cardiac stint in February 2005.

In a January 19, 2005 report, Dr. Lynn E. Prysunka, a family practitioner, noted the history of the fall and appellant's complaint of loss of consciousness, blurred vision and neck pain. She noted that appellant's vision had cleared, that x-rays showed a possible abnormality at C7 but no skull fracture. Dr. Prysunka assessed a fall with a closed head injury and loss of consciousness and neck spasms. In a January 20, 2005 report and hospital discharge summary, she diagnosed a head injury with mild residual headache and no further neurologic deficit.

On January 7, 2006 appellant requested his claim be expanded to include cervical spondylosis with myelopathy; ataxia, chronic daily headaches; injury to his chest wall and injury to abdominal wall muscles. The medical evidence reflects that since his January 19, 2005 job injury appellant had progressive problems of ataxia, neck pain and chronic headaches. In September 2005, Dr. Prysunka, a family practitioner and appellant's treating physician, referred appellant to Dr. Susan Hunter-Joerns, a Board-certified neurologist.

In a September 26, 2005 report, Dr. Hunter-Joerns noted seeing appellant for persistent headaches and balance problems since a January 2005 workers' compensation injury when he slipped and fell on ice. She noted that appellant fell backward, hit his head and lost consciousness for an unknown time. Dr. Hunter-Joerns reported that appellant had persistent daily headaches, balance problems, neck and mid-thoracic pain and a feeling of a "band around his chest" since the injury. She noted that appellant had a stint put in a coronary artery in February 2005 but that the cardiac issues did not affect appellant's underlying workers' compensation issues. Dr. Hunter-Joerns advised appellant's walking, neck pain and headaches had worsened over time. She stated that, after appellant's January 2005 fall, the computerized tomography (CT) scan showed no fracture or bleeding in appellant's cervical or thoracic spines, but his preexisting bony spurs predisposed him to a spinal-cord problem after the fall. Dr. Hunter-Joerns opined that appellant's sensation of a "band around his chest" and progressive ataxia implied a spinal cord problem that could be cervical or thoracic or both. She opined that this was due to his January 2005 work injury and was progressively worsening. Dr. Hunter-Joerns advised a magnetic resonance imaging (MRI) scan of the cervical and thoracic spine were needed.

In a February 6, 2006 report, Dr. Prysunka diagnosed ataxia, headaches and thoracic pain. In her February 6 and 9, 2006 reports, she advised appellant has had progressive problems of ataxia, back pain and chronic headaches since his January 2005 job injury. The history of injury was noted as appellant slipping on an icy surface while trying to walk carrying a bucket of salt. Appellant fell backwards knocking himself unconscious for an unknown amount of time. Dr. Prysunka advised that, although there were no acute fractures, the fall caused neck and thoracic spine problems as he has had chronic headaches, progressive thoracic pain and ataxia ever since. She noted that appellant saw Dr. Hunter-Joerns, a neurologist, for those problems in September 2005 and it was her opinion that his symptoms of headaches, chest wall pain and ataxia were due to spinal cord problems secondary to his January 2005 work injury. Dr. Prysunka advised that, while appellant also had an episode of coronary artery disease in the same time frame of his fall, the chest pain symptoms which he experienced secondary to his heart were not similar or related to the thoracic pain he experienced due to his fall. She further

opined that appellant's fatigue, balance issues and chronic headaches prevented him from working.

In the history portion of a January 17, 2006 physician's report to Dr. Hunter-Joerns, appellant described the January 2005 work-related injury as "splat on back and head with full bucket of ice melt on top of abdomen on cement."

In a February 28, 2006 report, Dr. Hunter-Joerns related that on January 2005 appellant was spreading salt, holding a bucket of salt in his arm, pressed against his chest and abdomen, when he fell backwards and hit his head and the 20-pound bucket hit his abdomen and chest. Appellant has had chronic neck pain, ataxia, chronic daily headache, thoracic, chest and abdominal pain since the January 2005 workers' compensation injury. Dr. Hunter-Joerns advised that the November 14, 2005 cervical and thoracic MRI scans showed disc bulging at T8-9 and T10-11 and opined that the disc bulging was likely related to the January 2005 work injury. The cervical spine MRI scan also showed spondylosis and bilateral foraminal narrowing, a longstanding preexisting problem. Dr. Hunter-Joerns opined that the January 2005 work injury aggravated his preexisting condition and caused new symptoms. She stated that appellant's medication trials and physical therapy sessions have made minimal difference or improvement. Appellant further stated that appellant's chest pain, abdominal pain and rib/thoracic pain arose from the bucket hitting his chest during the January 2005 work-related injury. She advised that, while appellant's cardiac pain, elevated enzymes and eventual cardiac stint were not related to his work-related injury, the mechanical chest, rib thoracic and abdominal pain were related to the January 2005 work-related injury and required treatment. Dr. Hunter-Joerns opined that appellant should remain off work from his work-related injury.

On March 31, 2006 Dr. Hunter-Joerns diagnosed postconcussion syndrome; cervical spondylosis with myelopathy; chest wall injury; and abdominal wall muscle injury. She stated that the initial diagnoses due to the January 19, 2005 injury were cervical spondylosis with myelopathy; chronic daily headaches and ataxia. Dr. Hunter-Joerns advised that a more proper diagnosis to reflect the etiology would be daily headaches; postconcussion syndrome; cervical spondylosis with new myelopathy and ataxia. She opined that these conditions were secondary to the January 19, 2005 fall as appellant did not have any myelopathy or ataxia before the injury. Dr. Hunter-Joerns advised that the cardiac issue appellant had was not related to the workers' compensation injury. As appellant demonstrated mechanical chest and abdominal pain from the January 19, 2005 work injury, Dr. Hunter-Joerns opined that the diagnostic codes for an abdominal wall muscle injury and chest wall injury were more appropriate as there was a question about the cardiac versus mechanical pain. Dr. Hunter-Joerns explained that appellant had a 20-pound bucket of salt in one arm when he slipped and fell backwards and the bucket smacked his lower chest at that time.

In an April 3, 2006 report, Dr. Prysunka noted Dr. Hunter-Joerns' diagnoses of postconcussion syndrome; cervical spondylosis with myelopathy; chest wall injury; and abdominal wall muscle injury and concurred with Dr. Hunter-Joerns that these injuries resulted from appellant's January 19, 2005 work injury.

By decision dated March 27, 2008, the Office denied appellant's claim for additional medical conditions of headaches, fatigue, ataxia and neck pain. It found that there was no basis

in fact that appellant was struck in the chest area by a container of salt when he slipped and fell. The Office further found that the medical evidence did not demonstrate that appellant's claimed conditions were related to the accepted work-related event of January 19, 2005.

On April 9, 2008 appellant, through his attorney, requested reconsideration of the Office's March 27, 2008 decision.

By decision dated April 22, 2008, the Office denied appellant's request for a reconsideration of the merits of his case.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.[1] To establish a causal relationship between the condition claimed, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.[2] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[3] Rationalized medical evidence is evidence which includes a physician's rationalized medical 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 rationalized medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[4] Neither the 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 causal relationship.[5]

ANALYSIS

In this case, the Office accepted that appellant sustained a concussion with loss of consciousness of unspecified duration on January 19, 2005 when he slipped and fell and hit his head while putting out ice melt. However, it denied appellant's subsequent request to expand his claim to include additional conditions of cervical spondylosis with myelopathy, ataxia, chronic daily headaches, injury to his chest wall and injury to abdominal wall muscles based on an alleged change in the history of injury reported by appellant and insufficient medical evidence to establish causal relation between the claimed conditions and the January 19, 2005 work incident.

[1] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[2] *Jennifer Atkerson*, 55 ECAB 317 (2004).

[3] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[4] *Leslie C. Moore*, 52 ECAB 132 (2000); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[5] *Ernest St. Pierre*, 51 ECAB 623 (2000).

The Office found appellant changed the history of injury by alleging a 20-pound bucket of salt hit his abdomen and chest when he fell on January 19, 2005. The Board finds the issue of whether or not the bucket which held the ice melt hit appellant is not dispositive of his claim. There were no witnesses to the January 19, 2005 incident. It is not disputed that appellant was spreading some form of ice melt when he slipped and fell and hit his head on January 19, 2005. Furthermore, he lost consciousness after he hit his head. Thus, it is unknown whether or not the bucket hit appellant when he fell and, if so, where it hit him. While he may be under the impression that the bucket hit his abdomen and chest area, an award of compensation may not be based on appellant's belief of causal relationship.[6] Rationalized medical evidence is required to establish causal relationship between the claimed conditions and the January 19, 2005 incident that caused his accepted concussion and loss of consciousness.

Dr. Prysunka and Dr. Hunter-Joerns advised that, following the January 19, 2005 employment incident, appellant's walking, neck pain and headaches worsened. Dr. Hunter-Joerns' final diagnoses were: daily headaches; postconcussion syndrome; cervical spondylosis with myelopathy; ataxia; chest wall injury and abdominal wall muscle injury. She opined that the disc bulges at T8-9 and T10-11 and the new myelopathy in appellant's cervical spine were secondary to the January 19, 2005 employment incident. Dr. Hunter-Joerns explained that appellant's preexisting bony spurs on the cervical and thoracic spines predisposed him to spinal problems after the fall and that his sensation of a "band around his chest" and progressive ataxia implied a spinal cord problem. She further found that the mechanical pain in appellant's chest, rib, thoracic and abdominal areas arose from the January 19, 2005 work incident, not from appellant's cardiac issues, as he was hit by the bucket when he fell. Dr. Prysunka concurred with Dr. Hunter-Joerns' diagnoses and opinion. Both physicians consistently supported causal relationship.

Although this evidence lacks a well-reasoned medical opinion explaining how the specific incident that occurred on January 19, 2005 caused or aggravated appellant's diagnosed conditions of daily headaches; postconcussion syndrome; cervical spondylosis with myelopathy; ataxia; chest wall injury; and abdominal wall muscle injury, the Board finds that the evidence is sufficiently supportive of appellant's claim that further development is warranted.[7] Proceedings under the Federal Employees' Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[8] Additionally, the Board notes that in this case the record contains no medical opinion specifically negating causal relationship. The Board will remand the case for further development of the medical evidence.

On remand, the Office should prepare a statement of accepted facts that properly denotes the history of injury. It should then obtain a reasoned medical opinion as to whether appellant

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

[7] *See John J. Carlone* , 41 ECAB 354 (1989) (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

[8] *See William J. Cantrell*, 34 ECAB 1223 (1983).

has sustained additional medical conditions causally related to the January 19, 2005 work injury. After such further development as the Office deems necessary, it should issue an appropriate decision.[9]

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained additional injuries causally related to the January 19, 2005 work injury.

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: January 2, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[9] In light of the Board's disposition of the first issue, the issue regarding the Office's denial of appellant's reconsideration request is moot.