

**United States Department of Labor
Employees' Compensation Appeals Board**

V.D., Appellant)

and)

DEPARTMENT OF THE ARMY, U.S. ARMY)
GARRISON, Fort Sam Houston, TX, Employer)

**Docket No. 08-2466
Issued: July 16, 2009**

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 15, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative's decision dated August 25, 2008 which affirmed the denial of his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits in this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On December 4, 2007 appellant, then a 48-year-old maintenance worker/plumber, filed an occupational disease claim alleging that he sustained diffuse lumbar spondylosis in the performance of duty. He alleged that his condition began on September 17, 2007 and that he first became aware of his condition and its relation to his work on October 23, 2007. Appellant underwent surgery on October 23, 2007. He stopped work on October 17, 2007.

On December 18, 2007 appellant indicated that he previously had a low back injury on October 27, 1999. He noted that he continued to experience intermittent pain on the right side of

his leg and down the right foot. Appellant believed that this incident was the start of his back problems. He described his job duties which included physical exertion when handling heavy bulky building and construction materials and alleged that these activities worsened his condition. Appellant noted that his job duties required that he lift up to 40 pounds unassisted, and occasionally lift heavier items with assistance. He was required to stand for extended periods of time while operating shop equipment and that he was also required to bend, kneel, crawl, stoop, climb ladders, scaffolding and rooftops.

On October 18, 2007 Dr. Lloyd A. Youngblood, a Board-certified neurosurgeon and treating physician, diagnosed a disc extrusion, right L4-5, foraminal and far lateral extraforaminal and severe right L4 radiculopathy. He placed appellant off work, effective that date and advised that appellant would be undergoing spine surgery early next week.¹

An October 5, 2007 magnetic resonance imaging (MRI) scan read by Dr. Robert Daehler, a Board-certified diagnostic radiologist, revealed degenerative changes and a broad-based disc protrusion at L4-5. It also revealed a broad-based disc protrusion which was slightly more prominent on the left with an annular tear and resultant left greater than right foraminal stenosis.

By letters dated December 20, 2007, the Office advised appellant and the employing establishment that additional factual and medical evidence was needed.

The Office received a position description for a maintenance worker and a copy of appellant's October 28, 1999 traumatic injury claim form. An October 28, 1999 duty status report from Dr. Luis G. Cantu, a Board-certified family practitioner, pertaining to an October 27, 1999 injury, indicated that appellant sustained a lumbosacral spine strain. Dr. Cantu noted that appellant hurt his back while digging and filled in "yes" in response to whether the diagnosis was due to the injury.

In a January 8, 2008 letter, appellant further described his duties. He noted that the Office indicated the date of injury was September 17, 2007; however, he indicated that he did not realize that his injury was work related until October 23, 2007. Appellant also noted that his only outside activity or hobby was playing the guitar.

In a letter dated January 11, 2008, Rosie Cardenas Miller, an injury compensation specialist, provided a statement regarding appellant's duties as a maintenance worker and confirmed that he had previously worked as a plumber. She noted that he worked a 10-hour/4-day week compressed work schedule. Ms. Miller indicated the physical requirements of the position.

By decision dated January 23, 2008, the Office denied appellant's claim. It found that the medical evidence did not establish that his low back condition was related to established work-related events.

The Office received a copy of Dr. Cantu's October 28, 1999 report placing appellant off work from October 28 to November 1, 1999.

¹ Appellant also submitted a January 5, 2007 report from a nurse practitioner.

On February 16, 2008 appellant requested a hearing, which was held on May 23, 2008. At the hearing, he described his employment duties, which included shoveling, lifting heavy items such as pipes and crawling.

The Office also received a copy of Dr. Youngblood's October 18, 2007 disability certificate.

In a February 15, 2008 report, Dr. Cantu noted that he first saw appellant for back pain on October 28, 1999 for an incident at work which involved shoveling dirt. Appellant's physical examination at that time revealed no neurological symptoms or severe restrictions of the trunk movements. Dr. Cantu indicated that appellant's symptoms worsened such that he was sent for an MRI scan of the lumbar spine. He advised that it revealed a broad-based disc protrusion at L4-5 with a right lateral disc protrusion component and severe right foraminal stenosis. Dr. Cantu indicated that appellant underwent a lateral extracanalicular foraminotomy and discectomy at right L4-5. He opined that the "incident at his employment contributed to his condition, due to, according to patient, excessive force he needed to perform his duties." The Office also received nurse's notes dated January 5, 2007 and a copy of a previously submitted CA-17 from 1999.

By decision dated August 25, 2008, the Office hearing representative affirmed the January 23, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

evidence required to establish causal relationship, generally, is rationalized medical opinion 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.⁵

ANALYSIS

The evidence establishes that appellant has a preexisting lumbosacral condition and was involved in activities such as shoveling, lifting and crawling at work. However, appellant has submitted insufficient medical evidence to establish that his low back condition was caused or aggravated by these activities or any other specific factors of his federal employment.

In an October 18, 2007 report, Dr. Youngblood diagnosed a disc extrusion, right L4-5, foraminal and far lateral extraforaminal and severe right L4 radiculopathy. He placed appellant off work effective that date and advised that he would be undergoing spine surgery early next week. The Board notes that this report does not address whether any factors of appellant's federal employment caused or contributed to his diagnosed condition.⁶ Consequently, the Board finds that this evidence is insufficient to establish appellant's claim.

Appellant also submitted reports dated October 28, 1999 from Dr. Cantu, who noted that he sustained a lumbosacral spine strain on October 27, 1999. Dr. Cantu indicated that appellant hurt his back while digging and filled in "yes" in response to whether the diagnosis was due to the injury and placed appellant off work from October 28 to November 1, 1999. The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.⁷ The Board notes that this report relates to appellant's previous traumatic injury claim and is not directly relevant to the occupational disease claim filed in 2007.⁸

In a February 15, 2008 report, Dr. Cantu noted that he first saw appellant for back pain in 1999 for an incident at work which involved shoveling dirt. At that time, there were no neurological symptoms or severe restrictions of the trunk movements. Dr. Cantu indicated that appellant's symptoms worsened and he was sent for an MRI scan of the lumbar spine, which revealed a broad-based disc protrusion at L4-5, a right lateral disc protrusion and severe right foraminal stenosis. He advised that appellant underwent a lateral extracanalicular foraminotomy

⁵ *Id.*

⁶ *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁷ *Linda Thompson*, 51 ECAB 694 (2000); *Calvin E. King*, 51 ECAB 394 (2000).

⁸ *See* 20 C.F.R. § 10.5(q), (ee) (notes the Office's definition of occupational disease and traumatic injury).

and discectomy at right L4-5. Dr. Cantu opined that the “incident at his employment contributed to his condition, due to, according to patient, excessive force he needed to perform his duties.” The Board notes that it appears that Dr. Cantu attempted to relate appellant’s condition to the 1999 incident at work or to the excessive force needed to perform his duties. However, Dr. Cantu’s report is vague as he did not adequately explain the incident or incidents at work to which he was referring. The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant’s employment injury and must explain from a medical perspective how the current condition is related to the injury.⁹ Dr. Cantu has not adequately explained how appellant’s work duties in 2007 would cause or contribute to his preexisting low back condition or the need for surgery.

Appellant also submitted a diagnostic report from Dr. Daehler dated October 5, 2007, but he did not provide any opinion regarding the cause of the reported condition. Medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.¹⁰

Additionally, the record contains a January 5, 2007 report from a nurse. Section 8101(2) of the Act¹¹ provides that the term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Health care providers such as nurses, are not physicians under the Act. Thus, a nurse is not competent to give a medical opinion.¹²

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.¹³ 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.¹⁴ Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant’s responsibility to submit.

The record establishes that appellant was responsible for the duties in his job description; however, as there is no reasoned medical evidence explaining how appellant’s employment duties caused or aggravated a medical condition involving his spine, appellant has not met his

⁹ *Tomas Martinez*, 54 ECAB 623 (2003); *Joan R. Donovan*, 54 ECAB 615 (2003).

¹⁰ *See supra* note 6.

¹¹ *See* 5 U.S.C. § 8101(2). *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 *See Bertha L. Arnold*, 38 ECAB 282 (1986).

¹³ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁴ *Id.*

burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of his employment.¹⁵

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 causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 25, 2008 is affirmed.

Issued: July 16, 2009
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

¹⁵ The Board notes that appellant submitted evidence subsequent to the August 25, 2008 Office decision. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).