

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

N.M., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
ILIANA HEALTH CARE SYSTEM, Danville, IL,)
Employer)

Docket No. 10-283
Issued: August 19, 2010

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 November 9, 2009 appellant, through counsel, filed a timely appeal from an October 1, 2009 merit decision of the Office of Workers' Compensation Programs. 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 a low back condition causally related to his federal employment.

FACTUAL HISTORY

On October 10, 2008 appellant, then a 30-year-old food server, filed an occupational disease claim alleging that his back and neck conditions began in July 2, 1999. He did not realize these problems were due to the use of new equipment in his employment duties until October 10, 2008.

Appellant submitted medical evidence from Dr. Joyce K. Brunt, a treating physician, stating that he was restricted from performing duties involving repetitive twisting and bending of his trunk. He also provided progress notes from the Veterans Administration (VA) Health Clinic.¹

By letter dated February 5, 2009, the Office informed appellant that the evidence of record was insufficient to support his claim. It advised him as to the medical and factual evidence to submit.

In response, appellant submitted a January 23, 2009 lumbar spine magnetic resonance imaging scan; progress notes from the VA Health Clinic and disability notes signed by a physician's assistant. He noted that he accepted a limited-duty job offer on February 3, 2009.

In an undated statement responding to questions posed by the Office, appellant related that he began having problems with back pain after he started using new equipment at work. He attributed his back pain to the repetitive work with equipment he alleged was too heavy to be pushed and pulled.

In a February 17, 2009 attending physician's report, Dr. Brunt diagnosed a low back strain and checked "yes" to the form question of whether the condition was employment related. She attributed the cause to appellant's repetitive lifting and bending at work. Dr. Brunt noted that appellant had previously been involved in a motor vehicle accident which caused a fractured foot, backache and loss of consciousness. She found that he was capable of work within restrictions, including no prolonged standing or repetitive bending or lifting.

By decision dated March 27, 2009, the Office denied appellant's claim. While it accepted that the occupational exposure occurred as alleged, it found that the medical evidence was not sufficient to establish causal relation.

In a letter dated April 1, 2009, appellant's counsel requested a hearing that was held on July 16, 2009. The Office received a March 12, 2009 report from Dr. Brunt, who noted that appellant was restricted from performing any repetitive bending or twisting of his trunk.

The Office received progress notes concerning restrictions of no repetitive bending and limiting appellant to lifting no more than 10 pounds, no repetitive twisting and bending of the trunk and limited stooping and bending.

On June 4, 2009 Dr. Brunt noted that appellant had been diagnosed with traumatic myofasciitis, a condition similar to fibromyalgia. Appellant was restricted from performing duties of repetitive twisting and bending of the trunk. On July 2, 2009 Dr. Brunt reiterated the diagnosis of myofasciitis but as a result of a July 1999 motor vehicle accident. She noted that appellant's work duties included pulling and pushing units containing dirty dishes, food and left over food multiple times during the day. Dr. Brunt opined that the repetitive bending and reaching involved in his job had aggravated his back, neck and shoulder pain.

¹ The signatures on the progress notes are illegible and do not appear to be signed by a physician.

On August 7, 2009 Dr. Brunt diagnosed myofascial pain syndrome as a result of a preexisting condition but aggravated by appellant's employment duties. In an August 7, 2009 certification of health care provider form, she indicated that appellant was capable of working with restrictions. Dr. Brunt repeated that appellant's work duties aggravated his preexisting condition.

In a decision dated October 1, 2009, the Office hearing representative found that the medical evidence was insufficient to establish that the claimed back condition was causally related to the accepted work factors.

LEGAL PRECEDENT

An occupational disease or illness means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection, continued or repeated stress or strain or other continued or repeated conditions or factors of the work environment.²

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

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁴ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated employment factors.⁵ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed conditions and the specific employment factors identified by the employee.⁶

² *Donald W. Wenzel*, 56 ECAB 390 (2005); *William Taylor*, 50 ECAB 234 (1999); *see also* 20 C.F.R. § 10.5(q).

³ *D.D.*, 57 ECAB 734 (2006); *Donna L. Mims*, 53 ECAB 730 (2002).

⁴ *I.R.*, 61 ECAB ____ (Docket No. 09-1229, issued February 24, 2010); *David Apgar*, 57 ECAB 137 (2005).

⁵ *G.G.*, 58 ECAB 389 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁶ *J.M.*, 58 ECAB 303 (2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

ANALYSIS

Appellant filed an occupational disease claim alleging that his work duties as a food server had aggravated his myofasciitis. He attributed his condition to the use of new equipment which was heavy to push and pull and that the repetitive use of such equipment aggravated his condition. The Office accepted appellant's exposure to the implicated employment factors, but found that the medical evidence was insufficient to establish that his myofasciitis condition was caused or aggravated by his federal employment. The issue is whether appellant supported his claim that his preexisting myofasciitis condition was aggravated by his employment duties.

The Board finds that appellant submitted insufficient medical evidence to establish that his myofasciitis condition was aggravated by his federal employment. The medical evidence of record fails to provide any adequate explanation by a physician of how his federal work duties caused or contributed to his diagnosed condition. The Office informed appellant of the evidence needed to establish his claim in its letter of February 5, 2009.

Appellant was treated by Dr. Brunt, who diagnosed a low back strain in a February 17, 2009 attending physician's report. Dr. Brunt checked "yes" to the question of whether the condition was aggravated by work and noted repetitive lifting and bending at work in the comments section. It is well established that a physician's opinion on causal relationship that consists of a checkmark to a form report is not sufficient to establish causal relation.⁷ Dr. Brunt subsequently diagnosed myofasciitis which she advised had been aggravated by appellant's repetitive work duties of pushing and pulling. It is appellant's burden of proof to establish causal relationship between the diagnosed condition and his federal employment.⁸ Dr. Brunt's brief notes stated a conclusion without rationale or explanation in support of her opinion that appellant's myofasciitis or low back strain were due to repetitive lifting and bending. On July 2, 2009 she noted only that appellant's work duties involved pushing and pulling units containing dirty dishes, food and leftovers. Dr. Brunt did not explain the nature of the work, the weight of the units involved or how it would aggravate appellant's preexisting myofasciitis or low back strain.⁹ The Board has previously held that mere conclusory statements not fortified by explanation are insufficient to establish causal relationship between employment factors and a diagnosed condition.¹⁰ The Board finds that Dr. Brunt did not provide sufficient medical opinion to establish that appellant's myofasciitis or low back strain was caused or aggravated by his employment duties. The remainder of the medical evidence of record does not address causal relation.

⁷ See *Donald T. Pippin*, 54 ECAB 631 (2003).

⁸ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁹ *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹⁰ *Id.*

CONCLUSION

The Board finds that appellant has not established that his low back condition was causally related to the factors of employment he identified.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 1, 2009 is affirmed.

Issued: August 19, 2010
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