United States Department of Labor
Employees' Compensation Appeals Board

L.T., Appellant	)	
and	)	**Docket No. 10-21**
	)	**Issued: July 9, 2010**
DEPARTMENT OF THE AIR FORCE, CIVIL ENGINEERING SQUADRON, ELMENDORF AIR FORCE BASE, AK, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 26, 2009 appellant filed a timely appeal from the September 26, 2008 merit decision of the Office of Workers' Compensation Programs, which denied his claim for degenerative disc disease. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case. The Board has no jurisdiction to review the Office's December 31, 2008 nonmerit decision denying reconsideration because appellant did not file an appeal within 180 days of that decision.[1]

ISSUE

The issue is whether appellant's degenerative disc disease is causally related to his federal employment.

[1] *See* 20 C.F.R. § 501.2(c). For Office decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008).

FACTUAL HISTORY

On June 25, 2008 appellant, then a 55-year-old retiring sheet metal mechanic leader, filed a claim for compensation alleging that his degenerative disc disease, for which he had surgery in 2001, was a result of his federal employment: "In metal fabrication and welding heavy tools, equipment and material are a part of your everyday work."

Appellant's supervisor confirmed that appellant performed sheet metal fabrication, welding and carpentry duties through his retirement on June 30, 2008. He explained that appellant was required to handle large sections of duct work and pieces of various gauge metals. Appellant was required to work with heavy hand tools while standing, lifting, stooping, pulling and bending. He performed these tasks most of the workday.

On July 7, 2008 the Office asked appellant to submit additional information to support his claim, including a comprehensive medical report from a treating physician providing, among other things, the physician's opinion, with medical reasons, on the cause of his claimed condition. "Specifically, if your [physician] feels that exposure or incidents in your [f]ederal employment contributed to your condition, an explanation of how such exposure contributed should be provided." The Office asked appellant to submit this evidence within 30 days.

On August 19, 2008 Dr. L. Trevor Tew, a chiropractor, reported that appellant had been under his care since January 2000. He stated that a November 2000 magnetic resonance imaging scan confirmed a moderate central disc herniation at the L4-5 level with facet degeneration at the L4-5 and L5-S1 levels. A March 2001 nerve conduction study showed decreased nerve conduction to the left lower extremity. Dr. Tew stated that lumbar disc decompression treatments were tried with minimal results and surgery was performed on May 8, 2001.

Following surgery, appellant continued to experience various levels of low back pain on a daily basis. Dr. Tew treated him with heat, electrical muscle stimulation, chiropractic manipulative therapy and lumbar disc decompression. On the issue of causal relationship, he stated: "[Appellant's] past job duties in the military have no doubt contributed to his current situation. His many years of on-the-job physical labor coupled with working with pain much of the time, appears to be the main factor contributing to his ongoing pain symptoms."

In a decision dated September 26, 2008, the Office denied appellant's claim for compensation on the grounds that the medical evidence did not establish that his degenerative disc disease was causally related to the accepted factors of employment.

On appeal, appellant contends that the Office did not properly review his claim, as he had more than one active claim and the other was approved. He added that a claims examiner called him to ask for more information but issued the decision denying his claim that same day. Appellant stated: "I feel that the history of my back claims (attached), my back surgery and my continued need to seek treatment from my chiropractor make this an open and shut case."

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[2] An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.[3]

Causal relationship is a medical issue[4] 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 of the physician must be based on a complete factual and medical background of the claimant,[5] must be one of reasonable medical certainty[6] 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.[7]

Section 8101(2) of the Act[8] provides that the term "physician," as used therein, "includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary." Without diagnosing a subluxation from x-ray, a chiropractor is not a "physician" under the Act and his opinion on causal relationship does not constitute competent medical evidence.[9]

ANALYSIS

The Office accepts the duties appellant performed in the course of his federal employment as a sheet metal mechanic leader. Appellant has established that he performed the metal fabrication duties at the time, place and in the manner alleged. The question that remains is whether the degenerative disc disease for which he claims compensation is causally related to these specific duties.

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[2] 5 U.S.C. § 8102(a).

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[8] 5 U.S.C. § 8101(2).

[9] *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).

The only evidence appellant submitted addressing causal relationship was the August 19, 2008 report of Dr. Tew, a chiropractor. It was Dr. Tew's opinion that many years of physical labor at work, coupled with working with pain much of the time, was the main factor contributing to appellant's ongoing symptoms. However, there are two problems with his stated opinion. As a chiropractor, Dr. Tew is not a "physician" as defined under the Act. His report does not disclose a diagnosis of subluxation demonstrated by an x-ray. Dr. Tew's capacity to address the issue of causal relationship is therefore not established. Moreover, even if he qualified as a physician under the statute, he would not be competent, as a chiropractor, to address the issue of degenerative disc disease. Dr. Tew's expertise is limited to treatment of a spinal subluxation. As a result, his August 19, 2008 report is not sufficient to support appellant's claim for compensation.

Because appellant has not submitted a well-reasoned medical opinion from a physician explaining how the specific duties he performed as a sheet metal mechanic leader caused or contributed to his degenerative disc disease, he has not met his burden of proof. The Board will affirm the Office's September 26, 2008 decision denying his claim for compensation.

On appeal, appellant argues that his history of back claims and his surgery in 2001 and need for treatment speak for themselves. However, as the party claiming benefits, he has the burden of establishing causal relation with a medical opinion from a competent physician. Appellant must submit a medical opinion that addresses how the specific duties he performed caused the development of degenerative disc disease. That the Office has approved a different claim is irrelevant to evidence appellant must submit in this case to discharge his burden of proof. As for the telephone call he states that he received on the date the Office denied his claim, the record shows that the Office properly advised him of the evidence he needed to submit and properly gave him a reasonable period of time to submit it.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his degenerative disc disease is causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2010
Washington, DC

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

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

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