United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 09-2250**
	)	**Issued: June 4, 2010**
DEPARTMENT OF THE ARMY,	)	
Fort Sam Houston, TX, Employer	)	

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 8, 2009 appellant filed a timely appeal from October 10, 2008 and March 6, 2009 merit decisions of the Office of Workers' Compensation Programs denying his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that he sustained a back injury causally related to the August 1, 2006 employment incident or any other employment factors.

FACTUAL HISTORY

On July 14, 2008 appellant, then a 39-year-old lead police officer, filed an occupational disease claim (Form CA-2) alleging that he sustained an on-the-job lower lumbar injury on August 1, 2006, which was subsequently aggravated by wearing his required uniform including an accoutrement belt and body armor. The employing establishment noted that appellant was on administrative leave pending a decision regarding a disciplinary action.

By letter dated July 16, 2008, the Office notified appellant of the deficiencies in his claim and requested additional factual and medical evidence.

On June 26, 2008 Dr. Robert Pinter, a medical officer and Board-certified internist, provided work restrictions through July 10, 2008.

In June 20 and 30, 2008 reports, Dr. Edmundo O. Garcia, Board-certified in family medicine, diagnosed lumbar radiculopathy. He recommended that, due to the caustic circumstances of wearing body armor and an accoutrement belt, appellant be removed from his current law enforcement duties and be reassigned to a position with a lower impact to the back. Dr. Garcia stated that appellant's change should be permanent as his symptoms were progressively worsening due to a depreciating injury in August 2006.

On July 8, 2008 Dr. Christopher D. Medellin, a medical officer Board-certified in occupational medicine, provided work restrictions effective until July 29, 2008.

In an August 1, 2008 statement, appellant stated that in August 2006 he was instructed by his supervisor to move a four-by-seven metal wall locker from the second floor down to the first floor. He was offered no assistance and attempted to move the locker with a dolly. While transporting the locker downstairs, the locker fell on appellant's lumbar back. The incident was witnessed by Wayne Blanco-Cerda. Due to a pending administrative investigation, appellant feared management reprisal and did not file an injury report. On May 9, 2007 he was assigned to the patrol section. Appellant began to experience signs of lower back aggravation by the body armor and duty belt that he was required to wear as part of his uniform. He contended that he believed this aggravation was related to the alleged August 2006 injury as he did not experience any prior complications while wearing the uniform.

By decision dated October 10, 2008, the Office denied appellant's claim on the grounds that there was insufficient evidence to establish that an injury occurred on August 1, 2006 or that a work injury existed in connection with the identified factors.

In an October 30, 2008 statement, Mr. Blanco-Cerda reported that sometime during August 2006 he observed a large, metal wall locker collapse on appellant while he was trying to transport the locker with a dolly but no safety harness or assistance from other personnel.

In an October 30, 2008 report, Dr. Garcia diagnosed lumbar radiculopathy. He stated that, during August 2006, he examined appellant for a lumbar injury sustained at work. Dr. Garcia periodically treated appellant with medication from 2006 through 2008. He reported that appellant was diagnosed with lumbar radiculopathy in 2008 and that the condition was believed to have occurred as a result of the work-related injury sustained in August 2006. Dr. Garcia stated that appellant's symptoms were progressively worsening. He recommended that, due to the initial on-the-job injury and the caustic circumstances of his occupation, appellant seek a lower impact position.

In November 1, 2008 and January 9, 2009 statements, appellant contended that he was filing a claim for the August 1, 2006 injury, as well as the exacerbation of the injury due to wearing body armor and the accoutrement belt. He stated that he experienced constant pain after the August 2006 injury and was treated with medication. During the course of his administrative

duty, from May 2006 through May 2007, appellant endured this pain because his occupational responsibilities were limited. However, his condition worsened when he was placed back on full status duty. Appellant stated that he did not initially file a claim due to a fear of termination. He noted that he was terminated on September 13, 2008.

On November 13, 2008 appellant filed a request for a review of the written record by an Office hearing representative.

By decision dated March 6, 2009, the Office hearing representative affirmed the October 10, 2008 decision, as modified, finding that appellant identified the employment factors which caused his condition and that the evidence supported that the August 1, 2006 incident occurred as alleged; however, appellant did not submit sufficient medical evidence to establish that he sustained a causally related injury.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,[2] including that he is an "employee" within the meaning of the Act[3] and that he filed his claim within the applicable time limitation.[4] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

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 which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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,

[1] 5 U.S.C. §§ 8101-8193.

[2] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[3] *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

[4] *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

[5] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 employee.[7]

ANALYSIS

The Office accepted that the August 1, 2006 employment incident occurred as alleged and that appellant sufficiently identified other employment factors of wearing body armor and an accoutrement belt. The issue is whether appellant established that he sustained a back injury causally related to his employment. The Board finds he has not met his burden of proof.

In support of his claim, appellant submitted medical reports dated June 26 and July 8, 2008 from Drs. Pinter and Medellin, who provided work restrictions. Neither doctor provided a diagnosis or addressed the cause of appellant's condition. Thus, these reports are of diminished probative value and insufficient to establish appellant's claim.[8]

Appellant further provided medical reports dated June 20 and 30, 2008 from Dr. Garcia who diagnosed lumbar radiculopathy and provided work restrictions. Dr. Garcia opined that, due to the caustic circumstances of wearing body armor and an accoutrement belt, appellant should be reassigned to a position with low impact exposure to the back. He also opined that appellant's symptoms were progressively worsening due a depreciating injury during August 2006. Further, in an October 30, 2008 report, Dr. Garcia stated that he examined appellant in August 2006 for a lumbar injury sustained at work. He diagnosed lumbar radiculopathy in 2008 and opined that the condition occurred as a result of the work-related injury sustained in August 2006.

These reports are also insufficient to establish appellant's claim. Although Dr. Garcia attributed appellant's back condition to the August 2006 incident, he did not describe the incident or explain how the mechanism of injury caused the diagnosed lumbar radiculopathy. Further, he did not support his opinion with any physical findings on examination concurrent with the incident.[9] Moreover, Dr. Garcia did not provide an opinion as to the reason for the worsening of appellant's symptoms or clarify whether his back condition had been exacerbated by any subsequent activities. Although he stated that appellant should be reassigned due to the requirement that he wear body armor and an accoutrement belt, he did not specifically provide an opinion that these factors actually caused the progression of appellant's symptoms or that they aggravated his lumbar radiculopathy. Dr. Garcia did not provide a rationalized medical opinion explaining how appellant's August 2006 employment incident or his wearing of body armor and an accoutrement belt caused or aggravated his lumbar radiculopathy. As such, his reports are of diminished probative value on the issue of causation.[10]

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[7] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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

[9] A physician's opinion on causal relationship is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. *See Jean Culliton*, 47 ECAB 728 (1996); *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

[10] *See Victor J. Woodhams*, *supra* note 7.

CONCLUSION

The Board finds that appellant did not establish that he sustained a back injury causally related to the August 1, 2006 employment incident or any other employment factors.

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2009 and October 10, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 4, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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