United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 10-907**
	)	**Issued: November 9, 2010**
TRANSPORTATION SECURITY ADMINISTRATION, LIHUE AIRPORT, Lihue, Hawaii, 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 February 1, 2010 appellant filed a timely appeal of an August 13, 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 met his burden of proof to establish that he sustained a low back injury due to a February 4, 2009 employment incident.

FACTUAL HISTORY

On February 13, 2009 appellant, then a 39-year-old transportation security administration officer, filed a claim for traumatic injury on February 4, 2009.[1] He stated that he felt a tear in his

[1] Appellant initially filed a CA-2 form for an occupational disease claim. 20 C.F.R. § 10.5(ee) defines a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift. 20 C.F.R. § 10.5(q) defines an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. The Office adjudicated appellant's claim as one for traumatic injury.

low back and down his left leg while lifting a heavy bag onto a machine. Appellant stopped work on February 4, 2009 and returned to light duty on March 21, 2009.

In a March 18, 2009 letter, the Office advised appellant that he had not submitted sufficient evidence to support his claim for compensation and requested additional factual and medical evidence. It requested that he further describe how he was injured, how often he performed specific duties, the immediate effects of the injury, and activities he participated in outside of his employment. The Office also requested that appellant provide medical reports from treating physicians regarding the injury, including any test results, diagnosis and an explanation as to how the diagnosed condition was caused by his federal employment.

On March 26, 2009 appellant responded to the Office's request for more factual information. He stated that during his shift on February 4, 2009 at around 8:00 p.m., he felt a "pop" in his low back as he lifted a large bag onto a machine. Appellant did not initially feel pain so he did not file a report, but began to experience low back and hip pain after he returned home. As the pain became progressively worse the next morning and during his work shift, he reported the injury.

The record reflects that appellant sought medical treatment from Dr. Raymond Martinez, a Board-certified osteopathic physician specializing in family practice. In a February 4, 2009 note, Dr. Martinez advised that appellant was under his medical treatment for an injury date of August 18, 2008. He did not provide any diagnosis or findings on examination. On February 19, 2009 Dr. Martinez again listed the date of injury as August 18, 2008 and recommended physical restrictions, noting appellant should not walk or stand continuously for more than one to two hours without a break. On March 17, 2009 he advised that appellant was seen for symptoms of lumbar radiculopathy, but that diagnostic testing had yet to be performed. Dr. Martinez listed the date of injury as August 18, 2008 and set forth findings on examination. He stated that the lumbar and lumbosacral spine revealed no abnormality, muscle spasm or neurological dysfunction. Straight leg raising was reported as negative. Dr. Martinez recommended physical therapy and appellant submitted records pertaining to therapy dated February 23 to April 2, 2009.

In an April 24, 2009 decision, the Office denied appellant's claim. It accepted that he lifted baggage on February 4, 2009 but found that the medical evidence was insufficient to establish that he sustained a back condition causally related to the accepted incident.

On May 10, 2009 appellant requested a review of the written record before the Branch of Hearings and Review and provided additional medical evidence. In an April 13, 2009 report, Dr. Martinez again listed the date of injury as August 18, 2008 and noted that he was awaiting approval for diagnostic testing. He advised that appellant was tolerating light-duty work without complaint and recommended against returning him to normal duties "without knowing what the etiology of his back pain is." Dr. Martinez listed findings on physical examination, again noting no abnormalities or the lumbar or lumbosacral spine, normal appearance without back spasm and that pain was not elicited by motion. Straight leg raising and reverse leg raising tests were negative.

In an August 29, 2009 addendum, Dr. Martinez stated that appellant's low back pain was a direct result of lifting baggage. In response to a question as to whether appellant's radicular symptoms were a direct result of a lifting injury that occurred on "August 18, 2009," he

responded "Yes … from his constellation of symptoms it also appears that likely that there may be some neurological effects as a result of the radicular symptoms that he had." In response to a question asking whether appellant's symptoms were a result of a new injury or a reinjury from August 18, 2009, Dr. Martinez stated that he had a "high clinical suspicion" that appellant's pain resulted from a reinjury. In a May 19, 2009 note, he released appellant to full work duty without restrictions effective May 20, 2009.

In an August 13, 2009 decision, an Office hearing representative affirmed the denial of appellant's claim of injury on February 4, 2009. She found that appellant failed to provide sufficient medical evidence to establish a causal relationship between the accepted work incident and his back condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of his claim by the weight of the evidence[3] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[4] As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[5] The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.[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, 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]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that an employee's condition surfaced during a period of employment nor his

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *George H. Clark*, 56 ECAB 162 (2004); *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

[6] *Patricia Bolleter*, 40 ECAB 373 (1988).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[8]

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a back condition causally related to lifting heavy baggage on February 4, 2009. The Office accepted that the lifting incident that date occurred as alleged. Although appellant submitted medical evidence diagnosing lumbar radiculopathy, the reports of Dr. Martinez are not sufficient to establish his claim.

The primary deficiency in the medical evidence of record is that Dr. Martinez did not provide an accurate history of the employment injury as alleged in this case. As noted, appellant alleged injury on February 4, 2009 after lifting heavy luggage at work. The reports from Dr. Martinez listed a date of injury as "August 18, 2008" or "August 18, 2009," without any detail as to how an injury was sustained. The record is not clear as to whether appellant previously sustained injury on August 18, 2008 and received prior medical treatment from the physician pertaining to his low back or lumbosacral spine. The initial two reports from Dr. Martinez consisted of one to two sentences, noting only that appellant was under medical treatment and recommending physical restrictions for work. It was not until the February 17, 2009 report that the physician noted that appellant was being treated for symptoms of lumbar radiculopathy. Dr. Martinez noted that appellant had yet to undergo diagnostic testing and listed findings on examination that were largely reported as normal, without back spasm, negative straight leg raising and no neurological dysfunction. While noting symptoms of lumbar radiculopathy, he did not provide a firm medical diagnosis as to the nature of appellant's back condition.[9] None of these reports provided any opinion on causal relationship.[10] A person who claims benefits for a work-related condition has the burden of establishing by the weight of the medical evidence a firm diagnosis of the condition claimed and a causal relationship between that condition and factors of federal employment.[11]

The subsequent report of April 13, 2009 did not cure any of these deficiencies; rather, Dr. Martinez introduced more ambiguity on causal relationship by stating that he did not know the etiology of appellant's back pain. The findings on physical examination were largely similar to those set forth in the February 17, 2009 report. In the August 29, 2009 addendum, Dr. Martinez listed questions he addressed but then sent forth the history of the lifting injury at work as occurring on "August, 18, 2009." He stated that, from the constellation of symptoms, it appeared that there might be some neurological component to the radicular symptoms appellant experienced; but this was not explained in light of the normal motor neurological findings listed in the physician's reports. The Board finds that the reports of Dr. Martinez fail to provide a firm medical diagnosis for appellant's radicular symptoms or a well-explained statement on causal

[8] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[9] *See Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that a treatment note without a firm diagnosis was of insufficient probative value).

[10] *See Mary E. Marshall*, 56 ECAB 420 (2005).

[11] *See Roy L. Humphrey*, *supra* note 8; *see Naomi A. Lilly*, 10 ECAB 560, 574 (1959).

relationship based on an accurate history of the February 4, 2009 incident alleged in this case. For these reasons, the opinion of Dr. Martinez is not one of reasonable medical certainty and is of diminished probative value. His reports are not sufficient to establish appellant's claim of traumatic injury.

The Board notes that appellant also submitted physical therapy notes to the record. These have no probative value in establishing his claim. Section 8101(2) of the Act 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 State law. A physical or occupational therapist is not a "physician" as defined under the Act; their opinions are of no probative medical value.[12]

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained injury on February 4, 2009, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 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

[12] *A.C.*, 60 ECAB ___ (Docket No. 08-1453, issued November 18, 2008).