United States Department of Labor
Employees' Compensation Appeals Board

D.A., Appellant	)	
and	)	
ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF INSPECTOR GENERAL, Washington, DC, Employer	)	**Docket No. 10-1133** **Issued: November 12, 2010**

Appearances:
Appellant, pro se
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 March 10, 2010 appellant filed a timely appeal from November 24, 2009 and February 23, 2010 merit decisions of the Office of Workers' Compensation Programs, which denied his claim. 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 that he sustained an injury in the performance of duty on July 26, 2009 causally related to his federal employment.

FACTUAL HISTORY

On August 3, 2009 appellant, a 45-year-old criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that he sustained left side neck, shoulder and forearm injuries on July 26, 2009 while working with his arms raised for an extended period of time, building a law

enforcement booth. He was on temporary duty status at the time of the injury. Appellant stopped work on July 31, 2009.

Appellant submitted a progress note dated August 11, 2009 prepared by Dr. Neeru Jayanthi, a Board-certified orthopedic surgeon, who reported that appellant was seen for "follow up" regarding left cervical radiculitis. Dr. Jayanthi noted that he had discussed multiple etiologies contributing to cervical radiculopathy with appellant, as well as the history of radiculopathy which was typically nonoperative, with improvement within eight to nine weeks postinjury.

In an imaging report dated August 14, 2009, John A. Aikenhead, a chiropractor, noted that x-ray examination of appellant's cervical spine on July 31, 2009 revealed reversal of cervical lordosis, with an anterior translation of the head and degenerative disc disease of the cervical spine.

On October 21, 2009 the Office advised appellant that further evidence was necessary to establish his claim. It requested that he submit a physician's report, which addressed with medical rationale how the reported work incident caused or aggravated the claimed injury.

By decision dated November 24, 2009, the Office denied appellant's claim. It accepted the July 26, 2009 employment event occurred as alleged but denied the claim because the medical evidence of record did not establish that the accepted event caused the diagnosed cervical radiculopathy.

On December 24, 2009 appellant requested reconsideration. He stated that it was not within his control as to when his physician would prepare a report. Appellant stated that he would work with his physician to submit medical evidence.

The Office subsequently received a series of form reports dating from July 31 to September 10, 2009, which do not contain a physician's signature or any identification as to source.

In a September 2, 2009 imaging report, Dr. Aris Musabiji, a Board-certified radiologist, stated findings of disc protrusion of C2-7 and multilevel degenerative changes, most pronounced from C4-7.

In a decision dated February 23, 2010, the Office denied modification of the November 24, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[2] including that he sustained an injury in the performance of duty and that any specific condition

[1] 5 U.S.C. §§ 8101-8193.

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

or disability for work for which he claims compensation is causally related to that employment injury.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[4] The employee must also submit medical evidence to establish that the employment incident caused a personal injury.[5]

ANALYSIS

The Office accepted that appellant worked with his arms raised for an extended period of time, building a law enforcement booth on July 26, 2009. Appellant has not met his burden of proof to establish his claim, as he did not submit sufficient medical evidence to establish that this employment incident caused his diagnosed cervical condition.

Dr. Jayanthi's August 11, 2009 report diagnosed cervical radiculopathy but is of limited probative value in establishing the cause of this condition. Dr. Jayanthi did not relate any information regarding appellant's history of injury. He did not report any history of the July 26, 2009 incident. While stating that Dr. Jayanthi had discussed multiple etiologies with appellant, his report did not offer any opinion regarding the cause of the cervical radiculopathy. 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.[6]

Dr. Musabiji's September 2, 2009 report noted findings of disc protrusion of C2-7 and multilevel degenerative changes, most pronounced from C4-7 this evidence is similarly of limited probative value. This report also lacks any history of the incident of July 26, 2009 on an opinion causally relating the diagnosed conditions to the employment event.

Dr. Aikenhead's report is of no probative medical value. The term "physician" 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

[3] *G.T.*, 59 ECAB 477 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[5] *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

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

to exist.[7] Dr. Finley did not diagnose any spinal subluxation based on the x-ray of July 31, 2009. Therefore, he is not a "physician" as defined. Accordingly, this evidence is of no probative value on the issue of causal relation.

An award of compensation may not be based on surmise, conjecture or speculation.[8] Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[9] The fact that a condition manifests itself or worsens during a period of employment[10] or that work activities produce symptoms revelatory of an underlying condition[11] does not raise an inference of causal relationship between a claimed condition and an identified employment incident.

Appellant has not submitted sufficient probative medical opinion evidence containing a reasoned discussion that explains how the accepted July 26, 2009 employment incident caused or aggravated his diagnosed medical conditions.

CONCLUSION

The Board finds that appellant did not establish he sustained an injury in the performance of duty on July 26, 2009, causally related to his federal employment.

[7] 5 U.S.C. § 8101(2); *see also Jack B. Wood*, 40 ECAB 95 (1988).

[8] *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

[9] *D.I.*, 59 ECAB 158 (2007)*; Ruth R. Price*, 16 ECAB 688, 691 (1965).

[10] *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

[11] *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2010 and November 24, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 12, 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