United States Department of Labor
Employees' Compensation Appeals Board

L.N., Appellant	)	
and	)	**Docket No. 10-32**
	)	**Issued: September 9, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Sacramento, CA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 5, 2009 appellant filed a timely appeal from a July 31, 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 that he sustained an injury in the performance of duty on February 6, 2008, causally related to his employment.

FACTUAL HISTORY

On February 22, 2008 appellant, a 48-year-old laborer custodian, filed a traumatic injury claim (Form CA-1) in which he related that after operating a blower for roughly an hour and thirty minutes on February 6, 2008, he experienced pain in his arms, shoulder back and legs which he attributed to the vibration produced by the blower.

Appellant submitted a note, dated February 6, 2008, in which he described the events of that day and an illegible progress note also of the same date.

Appellant stopped work and underwent treatment, which included an evaluation by Dr. Bijan Bijan, a Board-certified diagnostic radiologist, who, on February 7, 2008, reported that x-rays revealed moderately straightening "cervical lordosis" and narrowing disc space at the C5-6 level. He also sought treatment from Dr. Dung P. Cao, a general practitioner, who on February 12, 2008 diagnosed cervical radiculopathy. On February 18, 2008 Dr. Cao noted that appellant's condition prevented him from working February 6 through 14, 2008.

Dr. Cao referred appellant for evaluation by Dr. Firdos Sheikh, a Board-certified neurologist, who on February 15, 2008 released appellant to work commencing March 1, 2008. Dr. Sheikh also reviewed appellant's history of injury, presented findings on examination and diagnosed lumbosacral radiculopathy, facet tenderness, bilateral sacroiliac joint pain at the L4-5 and S1 levels, tension headaches, cervical muscle spasm, cervical degenerative joint disease, carpal tunnel syndrome and bilateral occipital neuralgia.

On February 22, 2008 Dr. Hon Woo, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's cervical spine revealed a two-millimeter disc protrusion at the C5-6 and C6-7 level.

On February 29, 2008 Dr. Sheikh presented results from diagnostic tests and diagnosed neck and back pain as well as hand "numbness." He opined that appellant could return to work on April 1, 2008.

On March 6, 2008 Dr. Sheikh presented findings following an electromyography and nerve conduction study. He diagnosed carpal tunnel syndrome, bilateral motor and sensory ulnar entrapment neuropathy, cervical radiculopathy and lumbosacral muscle spasms.

In a subsequent CA-17 report dated March 10, 2008, Dr. Sheikh presented findings on examination and diagnosed neck, back and hand pain. He also provided work restrictions.

On March 20, 2008 Dr. Sheikh reviewed appellant's history of injury and diagnosed neck, back and arm pain which he attributed to a "work[-]related injury."

Appellant submitted a March 26, 2008 note in which he described the events of February 6, 2008, as well as his other workers' compensation claim.[1]

By decision dated April 9, 2008, the Office denied the claim because the evidence of record did not demonstrate that the established employment incident caused appellant's diagnosed conditions.

On April 11, 2008 Dr. Roderick Sanden, a neurosurgeon, presented findings on examination, reviewed appellant's history of injury and diagnosed central disc herniation at the C5-6 and C6-7 levels, carpal tunnel syndrome, ulnar nerve compression, "possible peripheral neuropathy," lumbosacral degenerative disc disease, "loss of lordosis," and an anterior "kyphotic deformity."

[1] Appellant has another claim number xxxxxx464, for arm and back pain which, by decision dated February 11, 2008, the Office denied.

Appellant submitted a note dated May 8, 2008, signed by Dr. Hugh J. Lubkin, a chiropractor, who, after reviewing his understanding of California workers' compensation law and several medical journals and treatises, disputes the Office's April 9, 2008 decision. Dr. Lubkin opines that appellant's osteoarthritis, disc lesions and carpal tunnel syndrome were not "specifically caused by the events of [February 6, 2008]," rather, these "underlying conditions" were "dramatically exacerbated by his work duties."

On May 9, 2008 appellant requested review of the written record.

By decision dated September 5, 2008, the Office denied the claim because the evidence of record did not demonstrate that the established employment incident caused the diagnosed conditions.

In a note dated May 15, 2009, Dr. Sanden clarifies his April 11, 2008 report, noting that the injury appellant sustained on February 6, 2008, "while using a leaf blower was a direct cause of the C5-6 and C6-7 cervical disc herniation." He speculated that appellant's other conditions "may also be related" to the February 6, 2008 "injury."

On July 2, 2009 appellant, through his attorney, requested reconsideration.

By decision dated July 31, 2009, the Office denied modification of its September 5, 2008 decision because the evidence of record did not demonstrate that the established employment incident caused the diagnosed 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 weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

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

[5] *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

[6] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

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. First, 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.[7] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

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.[9]

ANALYSIS

The Office accepted that the February 6, 2008 employment incident occurred as alleged. Appellant's burden is to demonstrate the established employment incident caused a medically diagnosed condition. This is a medical issue that can only be proven by probative medical opinion evidence. Because appellant has not submitted sufficient medical opinion evidence supporting his claim, the Board finds he has not established that he sustained an injury in the performance of duty on February 6, 2008, causally related to his employment.

Dr. Lubkin opined that appellant's osteoarthritis, disc lesions and carpal tunnel syndrome were not "specifically caused by the events of [February 6, 2008]," rather, these "underlying conditions" were "dramatically exacerbated by his work duties." His report has no evidentiary value because he does not qualify as a "physician" for purposes of the Act,[10] which 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.[11] This report does not constitute competent medical opinion evidence and, consequently, does not establish a causal relationship between the established employment incident and a medically diagnosed condition.

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

[8] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

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

[10] 5 U.S.C. § 8101(2).

[11] *Id.*; *see also Jack B. Wood*, 40 ECAB 95 (1988).

The reports signed by Drs. Bijan, Cao, Sanden, Sheikh, and Woo have diminished probative value because they lack an opinion explaining how the established employment incident caused the conditions these physicians diagnosed.[12] The weight of a medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of the stated conclusions.[13]

Furthermore, while Dr. Sheikh attributed appellant's condition to a "work[-]related injury," he did not support this conclusion with a sufficient explanation or adequate medical reasoning. Although Dr. Sanden asserts that the February 6, 2008 incident was a "direct cause of the C5-6 and C6-7 cervical disc herniation," he did not describe the mechanism of injury, that being how and why operating a blower on February 8, 2008 produced the medical conditions he diagnosed.

Moreover, Dr. Sanden's May 15, 2009 note is of diminished probative value because he did not present a diagnosis supported by findings on examination. Rather, he merely repeats appellant's allegations concerning his injury and thus offers no probative evidence supporting appellant's claim. In sum, this evidence lacks the requisite reasoning to establish the causal relationship between appellant's condition and the established employment incident.

An award of compensation may not be based on surmise, conjecture or speculation.[14] 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.[15] The fact that a condition manifests itself or worsens during a period of employment[16] or that work activities produce symptoms revelatory of an underlying condition[17] does not raise an inference of causal relationship between a claimed condition and an employment incident.

Because the medical evidence contains no reasoned discussion of causal relationship, one that soundly explains how the established February 6, 2008 employment incident caused or aggravated a firmly diagnosed medical condition, the Board finds appellant has not established the essential element of causal relationship.

[12] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

[13] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[14] *Edgar G. Maiscott*, 4 ECAB 558 (1952).

[15] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

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

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

CONCLUSION

The Board finds appellant has not established that he sustained an injury in the performance of duty on February 6, 2008, causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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