United States Department of Labor
Employees' Compensation Appeals Board

M.D., Appellant	)	
and	)	**Docket No. 10-39**
	)	**Issued: September 2, 2010**
DEPARTMENT OF DEFENSE, DEFENSE CONTRACT MANAGEMENT AGENCY, San Antonio, TX, Employer	)	

Appearances:
Mary Lou Kelley, 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 the August 26, 2009 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a traumatic injury to his back while in the performance of duty on January 11, 2008.

FACTUAL HISTORY

On August 26, 2008 appellant, a 52-year-old procurement technician, filed a traumatic injury claim alleging that he became aware of extreme lower back pain on January 11, 2008 when his supervisor advised him that he was no longer going to satisfy his reasonable accommodation request.

In a statement dated January 18, 2008, appellant noted that he had sustained an employment-related back injury on November 12, 1985, which was accepted by the Office.[1] Following a nonwork-related back surgery in May 1997, the employing establishment granted him reasonable accommodations, which included hourly 15-minute breaks. On January 11, 2008 appellant's supervisor informed appellant that his breaks would be limited to one 15-minute break in the morning and one 15-minute break in the afternoon. On the date in question appellant attempted to work all morning with only one 15-minute break; but "it proved to be too stressful for [his] back," and he "started having throbbing pain in his lower back." He stated that there was no doubt in his mind that the terrible pain and injury to his back was due to the elimination of his hourly breaks.

On August 29, 2008 the employing establishment controverted the claim. The establishment contended that appellant had failed to establish the fact of injury; that he had not been injured in the performance of duty; and that he had not established a causal relationship between a diagnosed condition and the alleged incident.

Appellant submitted a January 14, 2008 report from Mireya C.P. Vanderslice, a nurse practitioner. Examination revealed normal curvature of the spine; no vertical spine tenderness; normal motor systems; normal sensory examination; and negative straight leg raise. Ms. Vanderslice diagnosed cervicalgia, as well as neck, back and joint pain.

Appellant was treated by Dr. Holly Kaufman, a Board-certified family practitioner. On June 19, 2008 Dr. Kaufman restricted him from heavy lifting and excessive bending and twisting. She recommended that appellant be provided a workstation that allowed him to adjust positions for back comfort and that he be permitted to take breaks to stand and walk to relieve pain. In a July 8, 2008 follow-up report, Dr. Kaufman stated that he managed his condition well when he was able to take 15-minute breaks every hour.

On July 28, 2008 Dr. Kaufman reported that appellant suffered from lower back pain and had previously undergone an L4/5 discectomy and disc spacer placement, in addition to an L5 laminectomy. Recent x-rays showed multilevel endplate degenerative changes,[2] which were the "likely source of his symptoms." Dr. Kaufman indicated that, for the past 10 years, appellant was able to complete a full workday, with the accommodation of lying down for 15 minutes every hour.

In a report dated September 12, 2008, Dr. Kaufman noted that appellant's employer had recently withdrawn work accommodations allowing him to take hourly 15-minite breaks, which had helped him cope with his chronic back pain for several years. Appellant's condition reportedly worsened to the point that he sought treatment by Armando Flores, a nurse practitioner. Dr. Kaufman stated that he was not yet treating appellant on the date of the alleged injury in January 2008.

[1] Information regarding this alleged claim does not appear in the Office's computer system (iFECS).

[2] The record contains a June 16, 2008 report of an x-ray of the lumbar spine.

On September 22, 2008 appellant reiterated his claim that he injured his back at work on January 11, 2008 by working through the morning with only one 15-minute break. He stated that he delayed seeking medical treatment until January 14, 2008 because of a change in his insurance coverage.

The record contains a February 4, 2008 report from Dr. Ramon Figueroa, a Board-certified family practitioner, who noted that he had been treating appellant for several years. He stated that appellant had a "chronic disability" due to a "chronic low back condition." Permanent restrictions included lifting no more than 20 pounds and no excessive or repetitive bending, pushing, pulling, twisting, stooping or stair climbing. Appellant was also advised to avoid prolonged sitting (to get up every 45 minutes for comfort and, if necessary, to lie down on a couch to relieve pressure on his back).

Appellant submitted an August 13, 2008 physical therapy report from Veronica Huerta, a physical therapist, who diagnosed lumbago and stated that he was unable to tolerate sitting or standing for more than 30 minutes without lying down.

In a letter dated November 14, 2008, the Office advised appellant that the information submitted was insufficient to establish his claim and allowed him 30 days to submit additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

Appellant submitted a December 1, 2008 report from Dr. David J. Altman, a Board-certified neurologist, who treated him for persistent low back pain. Dr. Altman noted a history of several herniated discs and lumbar surgeries in 1985 and 1997. Appellant told Dr. Altman that his back pain became severe after sitting for approximately 60 minutes or by bending over, walking prolonged distances or mowing the lawn. His employer accommodated his condition for many years by allowing him to get up and walk around after approximately an hour to ameliorate his back pain. However, beginning in January 2008, such accommodation was no longer provided. A recent lumbar MRI scan demonstrated postoperative changes at the L4 through S1 levels, with cage placement at the L4/5 level and discectomy/fusion at ES/SI. Neurologic examination revealed tenderness to palpation around the L4/5 level. No spasms were detected. Lower extremity strength testing was 5/5 in the hip flexors, quadriceps, hamstrings, ankle dorsiflexors and ankle plantar flexors. Reflexes were 2+ in the patellae but absent in the ankles. Sensation was intact in the lower extremities. Straight-leg raise test was negative bilaterally. Dr. Altman stated that appellant had a history of L4 through S1 degenerative disc disease and was status post two surgeries. He presented with persistent mid-low back pain, which was exacerbated after prolonged sifting for more than an hour. Dr. Altman noted that appellant "had been apparently functioning well at work until January 2008, when his accommodations were discontinued and now he is having difficulty sitting at his desk for greater than 60 minutes because of exacerbation of his sharp, mid-low back pain." He recommended that appellant's prior accommodations at work be reinstated; that appellant avoid lifting greater than 15 pounds; and that appellant avoid frequent bending activities.

By decision dated January 29, 2009, the Office denied appellant's claim. It found that the evidence was insufficient to establish that the events had occurred as alleged and, therefore, was

insufficient to establish that he had sustained an injury under the Federal Employees' Compensation Act on January 11, 2008.

On February 14, 2009 appellant requested an oral hearing. He submitted December 9, 1998 work restrictions from Lt. Colonel Laura Torres-Reyes, which provided that he should be permitted to get up every 45 minutes "for comfort." In a May 25, 2000 report, Dr. Richard S. Lemos, a treating physician, stated that he had been treating appellant for four years for a chronic low back condition. He recommended that appellant be permitted to rest his back hourly for 15 minutes and that appellant be restricted from lifting more than 20 pounds. The record also contains a June 23, 2008 report of a functional capacity examination prepared by Ms. Huerta.

In a September 22, 2008 report, Dr. Daniel L. Sanya Maria, a treating physician, diagnosed "lumbar spondylosis caused by degeneration of intervetebral discs." He recommended that appellant be permitted to lie down every hour for 15 minutes; avoid prolonged sitting; and avoid lifting more than 20 pounds.

In a February 14, 2009 statement, appellant indicated that the original injury occurred on November 12, 1985.[3] For 10 years, the employing establishment accommodated his low back condition by permitting him to take hourly breaks. On January 11, 2008 appellant's pain was exacerbated by sitting for several hours after his supervisor refused to continue his accommodations. In the April 10, 2009 telephonic hearing, he reiterated his claim that his back pain was exacerbated by sitting for a prolonged period of time on January 11, 2008.

By decision dated August 26, 2009, an Office hearing representative modified the January 29, 2009 decision to accept that the January 11, 2008 event occurred as alleged, namely that appellant sat for approximately 3.5 hours without a 15-minute break every hour. He affirmed the denial of the claim, however, on the grounds that the medical evidence was insufficient to establish that the accepted work event caused or aggravated any diagnosed back condition.

LEGAL PRECEDENT

The Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[4] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[5]

[3] Appellant stated that his November 12, 1985 injury was reported in claim File No. xxxxxx378. *See supra* note 1.

[4] 5 U.S.C. § 8102(a).

[5] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[6] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[7]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[8] An award of compensation may not be based on appellant's belief of causal relationship.[9] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[10] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[11]

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 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 must be based on a complete factual and medical background of the claimant, 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 established incident or factor of employment.[12]

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

[7] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term injury as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q)(ee).

[8] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[9] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[10] *Id.*

[11] 20 C.F.R. § 10.303(a).

[12] *John W. Montoya*, 54 ECAB 306 (2003).

ANALYSIS

The Office accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the January 11, 2008 workplace incident occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy his burden of proof.

Medical evidence submitted by appellant includes a January 14, 2008 report from Ms. Vanderslice, a nurse practitioner. As a nurse practitioner does not qualify as a "physician" under the Act, this report does not constitute probative medical evidence.[13] For the same reason, Ms. Huerta's June 23, 2008 report of a functional capacity examination and August 13, 2008 physical therapy report do not constitute probative medical evidence.[14]

Reports from Dr. Kaufman are insufficient to establish appellant's claim. On June 19, 2008 she restricted him from heavy lifting and excessive bending and twisting. Dr. Kaufman recommended that appellant be provided a workstation that allowed him to adjust positions for back comfort and that he be permitted to take breaks to stand and walk to relieve pain. In a July 8, 2008 follow-up report, she stated that he managed his condition well when he was able to take 15-minute breaks every hour. Dr. Kaufman did not provide a definitive diagnosis or render an opinion as to the cause of appellant's condition.[15] The Board has long held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.

On July 28, 2008 Dr. Kaufman reported that appellant suffered from lower back pain, which was likely due to multilevel endplate degenerative changes, as demonstrated by x-ray. She indicated that, for the previous 10 years, he had been able to complete a full workday, with the accommodation of lying down for 15 minutes every hour. Dr. Kaufman failed to provide: examination findings; a definitive diagnosis; or an opinion supporting appellant's claim that his back condition was exacerbated by the accepted January 11, 2008 event. Therefore, her report is of diminished probative value.

On September 12, 2008 Dr. Kaufman noted that appellant's employer had recently withdrawn work accommodations allowing him to take hourly 15-minute breaks, which had helped him cope with his chronic back pain for several years. Appellant's condition reportedly

[13] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[14] A physical therapist is not a "physician" under the Act. *See id.*

[15] The Board has held that a diagnosis of pain does not constitute a basis of payment for compensation, as pain is considered to be a symptom rather than a specific diagnosis. *Robert Broom, supra* note 6.

worsened to the point that he sought treatment by a nurse practitioner. Dr. Kaufman's report of September 12, 2008 does not contain a diagnosis, examination findings or a definitive opinion on the issue of causal relationship. Rather, it merely documents appellant's reported history of events, on which she was required to rely, given that she was not yet treating him on the date of the alleged injury in January 2008.

On February 4, 2008 Dr. Figueroa stated that appellant had a "chronic disability" due to a "chronic low back condition." He provided permanent restrictions, which included lifting no more than 20 pounds and no excessive or repetitive bending, pushing, pulling, twisting, stooping or stair climbing. Appellant was also advised to avoid prolonged sitting (to get up every 45 minutes for comfort and, if necessary, to lie down on a couch to relieve pressure on his back). As the report contained no definitive diagnosis, no examination findings and no opinion on causal relationship, it is of limited probative value and is insufficient to establish his claim.

On December 1, 2008 Dr. Altman stated that appellant presented with persistent mid-low back pain, which was exacerbated after prolonged sitting for more than an hour. He noted that appellant had been apparently functioning well at work until January 2008, when appellant's accommodations were discontinued and was having difficulty sitting at his desk for greater than 60 minutes because of exacerbation of his sharp, mid-low back pain. Dr. Altman recommended that appellant's prior accommodations at work be reinstated, that appellant avoid lifting greater than 15 pounds and that he avoid frequent bending activities. He provided examination findings and reported appellant's complaints. Dr. Altman did not, however, provide a diagnosis or a definitive opinion as to the cause of appellant's back condition. To the degree that he implied a causal relationship between prolonged sitting and appellant's back condition, he failed to explain the physiological process whereby a diagnosed condition resulted from or was aggravated by, the accepted event. Medical conclusions unsupported by rationale are of little probative value.[16]

As Dr. Sanya Maria's September 22, 2008 report does not contain examination findings or an opinion on causal relationship, it is of limited probative value. 1998 and 2000 reports from Lt. Colonel Torres-Reyes and Dr. Richard S. Lemos, which do not address the accepted January 11, 2008 incident, are irrelevant and do not constitute probative medical evidence.

Appellant expressed his belief that his back condition was exacerbated by prolonged sitting on January 11, 2008. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[17] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[18] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was exacerbated by the work-related incident is not determinative.

[16] *Willa M. Frazier*, 55 ECAB 379 (2004).

[17] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[18] *Id.*

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how his claimed back condition was caused or aggravated by his employment, he has not met his burden of proof to establish that he sustained an injury in the performance of duty causally related to factors of his federal employment.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a traumatic injury in the performance of duty on January 11, 2008.

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 2, 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