United States Department of Labor
Employees' Compensation Appeals Board

R.L., Appellant	)	
	)	
and	)	**Docket No. 10-1891**
	)	**Issued: April 5, 2011**
U.S. POSTAL SERVICE, ST. LOUIS PROCESSING & DISTRIBUTION CENTER, St. Louis, MO, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 13, 2010 appellant filed a timely appeal from the May 13, 2010 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 medical conditions due to his January 6, 2006 employment injury in addition to those already accepted.

FACTUAL HISTORY

The Office accepted that on January 6, 2006 appellant, then a 37-year-old mechanic, sustained a lumbosacral sprain/strain, lumbago, sciatica and lumbar radiculopathy while climbing over a machine he was repairing. Appellant stopped work on January 7, 2006 and later

returned to work for the employing establishment.[1] The Office paid him compensation for various periods of compensation.[2]

In a February 28, 2008 report, Dr. Faisal J. Albanna, an attending Board-certified neurosurgeon, diagnosed lumbago, myofascial pain, sciatica and status post lumbar fusion and microdiscectomy in April 2006. In a February 28, 2008 note, Dr. Albanna stated that appellant could return to work on March 2, 2008 with restrictions (through April 2, 2008) including no lifting more than 25 pounds. The Office found that the reports of Dr. Albanna did not contain a rationalized opinion detailing total disability for the claimed periods. In a July 8, 2008 decision, it denied appellant's claim that he sustained total disability for the period February 13 to March 27, 2008 due to his January 6, 2006 employment injury.[3] Appellant submitted additional reports in which Dr. Albanna described the treatment of his back condition. In a September 12, 2008 decision, the Office affirmed its July 8, 2008 decision.

The findings of an October 31, 2008 magnetic resonance imaging (MRI) scan showed no evidence of disc herniation or foraminal stenosis at L5-S1. These results were similar to those found in a February 26, 2008 MRI scan study.

Appellant alleged that he sustained medical conditions due to his January 6, 2006 employment injury in addition to those already accepted, including failed back surgery syndrome, right leg muscle atrophy and left knee degeneration. In a November 13, 2008 letter, the Office requested that he submit additional factual and medical evidence in support of his claim. Appellant responded in a November 18, 2008 letter and argued that scar tissue from surgery required by his January 6, 2006 employment injury caused him to sustain right leg muscle atrophy, nerve damage and abnormal posture and gait.

In a November 11, 2008 report, Dr. Albanna noted that appellant presented with complaints of lumbar pain which radiated into both legs. Appellant also complained of tightness and weakness in his leg muscles. Dr. Albanna indicated that on physical examination appellant had some limitation of lumbar range of motion and that he had atrophy of his right leg muscles and 4/5 strength in his right foot dorsiflexors. He diagnosed lumbago and lumbar degenerative disc disease. Dr. Albanna also submitted chiropractic notes from October and November 2008.

In a January 20, 2009 decision, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained additional medical conditions due to his January 6, 2006 employment injury.

In December 8, 22 and 29, 2008 reports, Dr. Albanna diagnosed lumbago and described his treatment of appellant's lumbar spine with an epidural steroid injection. In a December 10, 2008 note, he diagnosed lumbago and indicated that appellant was off work on

[1] Appellant began working as a electronics technician in April 2007.

[2] On April 20, 2006 appellant underwent decompressive lumbar microlaminectomy, bilateral microdiscectomy, removal of scar and posterior lumbar interbody fusion at L5-S1 with instrumentation. The procedures were authorized by the Office. Appellant had previously undergone surgery at L5-S1 in 1989.

[3] Appellant had filed a claim for this period of total disability on April 30, 2008.

December 11, 2008. In June 15, 29, July 13 and 27, 2009 reports, Dr. Gurpreet Padda, an attending Board-certified physical medicine and rehabilitation physician, diagnosed various conditions, including lumbosacral spondylolysis without myelopathy, lumbar disc displacement, degenerative disc disease, postlumbar laminectomy syndrome, lumbar radiculopathy and back pain/lumbago. He described his treatment of appellant's low back with selective nerve root injections, including injections of Depomedrol and Lidocaine.

The findings of July 1, 2009 electromyogram (EMG) and nerve conduction velocity (NCV) testing showed decreased conduction velocity and amplitude of the right peroneal motor nerve, increased distal latency of the right peroneal F-wave, increased insertional activity and abnormal morphology in a predominantly L5 distribution in the right leg suggestive of a proximal lesion at the L5 root level. It was noted that these findings had to be correlated clinically.

Appellant again requested reconsideration of his claim alleging that he had failed back surgery syndrome due to his January 6, 2006 employment injury. In a May 13, 2010 decision, the Office affirmed its January 20, 2009 decision finding that he did not submit well-rationalized medical evidence in support of his claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing the essential elements of his or her 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.[5] The medical evidence required to establish a causal relationship between a claimed condition or period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant'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 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 specific employment factors identified by the claimant.[6]

ANALYSIS

The Office accepted that on January 6, 2006 appellant sustained a lumbosacral sprain/strain, lumbago, sciatica and lumbar radiculopathy while climbing over a machine he was repairing. On April 20, 2006 appellant underwent decompressive lumbar microlaminectomy,

[4] 5 U.S.C. §§ 8101-8193.

[5] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

bilateral microdiscectomy, removal of scar and posterior lumbar interbody fusion at L5-S1 with instrumentation. The procedures were authorized by the Office. Appellant had previously undergone surgery at L5-S1 in 1989. He alleged that he sustained medical conditions due to his January 6, 2006 employment injury in addition to those already accepted, including failed back surgery syndrome, right leg muscle atrophy, left knee degeneration, nerve damage and abnormal posture and gait. In January 20, 2009 and May 13, 2010 decisions, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence in support thereof.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained additional medical conditions due to his January 6, 2006 employment injury.

Appellant submitted reports dated in November and December 2008 in which Dr. Albanna diagnosed such conditions as lumbago and lumbar degenerative disc disease and detailed his treatment of the lumbar spine with epidural steroid injections. Dr. Albanna did not provide any indication that appellant sustained medical conditions due to his January 6, 2006 employment injury in addition to those already accepted.[7] In reports dated in June and July 2009, he diagnosed various conditions, including lumbosacral spondylolysis without myelopathy, lumbar disc displacement, degenerative disc disease, postlumbar laminectomy syndrome, lumbar radiculopathy and back pain/lumbago. Dr. Albanna described his treatment of appellant's low back with selective nerve root injections, including injections of Depomedrol and Lidocaine. Although some of the conditions diagnosed by Dr. Padda were not among the conditions accepted by the Office, Dr. Padda did not provide any opinion that these conditions were related to appellant's January 6, 2006 employment injury.

The findings of the July 1, 2009 EMG and NCV testing showed decreased conduction velocity and amplitude of the right peroneal motor nerve, increased distal latency of the right peroneal F-wave, increased insertional activity and abnormal morphology in a predominantly L5 distribution in the right leg suggestive of a proximal lesion at the L5 root level, but there is no opinion in the record showing that these abnormal findings were related to the January 6, 2006 employment injury or other employment factors.

For these reasons, appellant has not established that he sustained additional medical conditions due to his January 6, 2006 employment injury.[8]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained medical conditions due to his January 6, 2006 employment injury in addition to those already accepted.

[7] In a December 10, 2008 note, Dr. Albanna diagnosed lumbago and indicated that appellant was off work on December 11, 2008. He did not describe the cause of this disability.

[8] On appeal, appellant argued that the medical evidence showed that he had failed back surgery syndrome, but he did not identify rationalized medical evidence which supported this argument.

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board