United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 11-249**
	)	**Issued: August 11, 2011**
UNIVERSITY OF UTAH, ROTC DETACHMENT 850, Salt Lake City, UT, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 8, 2010 appellant filed a timely appeal from an October 7, 2010 Office of Workers' Compensation Programs' (OWCP) merit decision denying his claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish that his constipation is causally related to a July 30, 2010 employment incident, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the October 7, 2010 OWCP decision and on appeal, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal appellant requests that OWCP pay an outstanding medical bill in the amount of $1,379.12 for medical services rendered on July 30 and August 1, 2010 at Memorial Health System, Colorado Springs, CO.

FACTUAL HISTORY

On August 2, 2010 appellant, then a 23-year-old Air Force ROTC cadet, filed a traumatic injury claim (Form CA-1) alleging that on July 30, 2010 he sustained abdominal pains while participating in a Freefall Airmanship Program in the performance of duty. He submitted an Authorization for Examination and/or Treatment Form (CA-16) by Dr. Richard E. Loehr, a Board-certified emergency medicine physician, who reviewed a computerized axial tomography (CAT) scan and diagnosed abdominal pain. Dr. Loehr indicated by check mark that he did not believe the condition was caused or aggravated by factors of appellant's federal employment. He released appellant to his regular duties.

In an August 4, 2010 letter to OWCP, the employing establishment stated that appellant was injured in the line of duty. On July 30, 2010 appellant was transported from a clinic and to the emergency room at Memorial Health System where a CAT scan was performed. He was diagnosed with a severe case of constipation. On August 1, 2010 appellant retuned to the emergency room at Memorial Health System due to reoccurrence of severe stomach pain and vomiting. He was discharged from the hospital that same day. On August 3, 2010 appellant received a new medical clearance from a flight surgeon to continue participation in the Freefall Airmanship Program.

In an August 7, 2010 medical report, Dr. George L. Hertner, a Board-certified undersea, hyperbaric and emergency medicine physician, diagnosed constipation and abdominal pain. He reported that a CAT scan of the abdomen and pelvis was performed with contrast and revealed a lot of fecal material within the colon consistent with constipation but not obstruction. Dr. Hertner opined that appellant did not appear to have appendicitis and needed no further diagnostic studies, testing or imaging.

By letter dated August 26, 2010, OWCP informed appellant that, because his medical bills had exceeded $1,500.00, it must formally adjudicate his claim. It further noted that the medical evidence submitted did not contain a firm diagnosis and was insufficient to support his claim. OWCP requested a detailed report from appellant's physician, including a history of injury, examination findings, test results, diagnosis, treatment provided and an opinion supported by medical explanation as to how the reported employment incident caused or aggravated the claimed injury. It allotted appellant 30 days to submit additional evidence and respond to its inquiries.

In an August 1, 2010 medical report, Dr. Loehr diagnosed abdominal pain, uncertain cause. He indicated that the exact cause of appellant's abdominal stomach pain was not certain and that his condition did not seem serious at that time. He advised appellant to rest until he was feeling better, eat a light diet with easily digestible foods and watch for any new symptoms of a worsening of his condition.

By letter dated September 9, 2010, the employing establishment requested a 30-day extension on behalf of appellant to submit additional medical evidence.

By decision dated October 7, 2010, OWCP denied appellant's claim on the basis that the factual and medical evidence submitted was insufficient to establish fact of injury. It found that, although the described employment activities occurred as alleged, the medical evidence did not provide a firm medical diagnosis causally related to the employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury[4] was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[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]

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[3] 5 U.S.C. §§ 8101-8193.

[4] OWCP's regulations define 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. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[5] *T.H.*, 59 ECAB 388 (2008). *See Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *Id. See John J. Carlone*, 41 ECAB 354 (1989); *Shirley A. Temple*, 48 ECAB 404 (1997).

[7] *Id. See Gary J. Watling*, 52 ECAB 278 (2001).

ANALYSIS

OWCP accepted that the July 30, 2010 incident occurred as alleged. In its October 7, 2010 decision, it found that there was insufficient evidence submitted to establish a firm medical diagnosis for appellant's alleged injury. The Board finds, however, that, contrary to OWCP finding, the medical evidence of record establishes a firm medical diagnosis of constipation.[8] Given that appellant has established a July 30, 2010 employment incident and a diagnosed condition, the question becomes whether the employment incident caused his constipation.[9] The Board finds that he did not submit sufficient medical evidence to support that the accepted employment incident caused or aggravated his constipation.[10]

In a July 30, 2010 Authorization for Examination and/or Treatment Form, Dr. Loehr diagnosed abdominal pain based on the review of a CAT scan. Dr. Loehr indicated by check mark that he did not believe the condition was caused or aggravated by factors of appellant's federal employment. On August 1, 2010 Dr. Loehr reiterated his diagnosis of abdominal pain and indicated that the exact cause was not certain. In an August 7, 2010 medical report, Dr. Hertner diagnosed constipation and ruled out appendicitis. He reported that a CAT scan of the abdomen and pelvis revealed a lot of fecal material within the colon consistent with constipation but not obstruction.

While the Board finds that the reports of Dr. Loehr and Dr. Hertner establish a diagnosis, they failed to directly address the issue of causal relationship as they did not explain how the mechanism of the July 30, 2010 employment incident caused or aggravated appellant's condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[11] The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[12] The medical reports of Drs. Loehr and Hertner do not provide medical rationale explaining how appellant's constipation was caused or aggravated by the July 30, 2010 employment incident. Lacking thorough medical rationale on the issue of causal relationship, the reports are of limited probative value and not sufficient to establish that appellant sustained an employment-related injury in the performance of duty on July 30, 2010.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the July 30, 2010 employment incident, he has failed to meet his burden of proof.

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[8] *See Sue Hatfield (William A. Hatfield),* 37 ECAB 380 (1986) (constipation discussed as a firm diagnosis).

[9] *See L.N.*, Docket No. 10-1695 (issued May 3, 2011).

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

[11] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[12] *See Lee R. Haywood*, 48 ECAB 145 (1996).

OWCP, however, did not adjudicate the issue of appellant's incurred medical expenses. On appeal appellant requested payment of medical bills for medical services rendered on July 30 and August 1, 2010 at Memorial Health System hospital. Ordinarily, the employing establishment will authorize treatment of a job-related injury by providing the employee a properly executed CA-16 within four hours.[13] Under section 8103 of FECA, OWCP has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances, to be determined on a case-by-case basis.[14] The Board finds that the circumstances of the case warrant additional development of this issue. The case will be remanded to OWCP for further development, to be followed by the issuance of a *de novo* decision on this issue.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not submitted sufficient rationalized medical opinion evidence to establish that the July 30, 2010 employment incident was causally related to the constipation. The case will be returned to OWCP for consideration of whether appellant's medical expenses related to his treatment on July 30 and August 1, 2010 should be reimbursed.

[13] *See Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (September 1995).

[14] 5 U.S.C. § 8103; 20 C.F.R. § 10.304. *See L.B.*, Docket No. 10-469 (issued June 2, 2010); *see also* Chapter 3.300.3(a)(3), *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2010 decision of the Office of Workers' Compensation Programs is affirmed and the case is remanded for further development regarding the reimbursement of medical expenses.

Issued: August 11, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board