United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 11-1191**
	)	**Issued: December 16, 2011**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, McAllen, TX, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 19, 2011 appellant filed a timely appeal from a March 11, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for a traumatic injury. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury on November 5, 2010 while in the performance of duty.

FACTUAL HISTORY

On November 8, 2010 appellant, then a 31-year-old transportation security officer, filed a traumatic injury claim alleging that he sustained injury on November 5, 2010 as a result of his

[1] 5 U.S.C. § 8101 *et seq.*

employment. He explained that he pulled his back when he was picking up a shoe that fell from the x-ray belt.

Along with his claim, appellant submitted witness statements dated November 5, 2010 from coworkers Cari Phillips and David Puente, who stated that they saw the incident and heard appellant state that his back was injured.

Appellant submitted a Form CA-16, dated November 8, 2010, signed by Physician Assistant Jack Runyan. This form noted that he pulled his lower back when he was reaching for an object on the floor and noted that without x-ray results, it was too early to tell whether he required surgery or work restrictions.

OWCP received a series of duty status reports and progress notes from Mr. Runyan. A November 8, 2010 duty status report signed by Mr. Runyan indicated that appellant could not return to work until x-ray results were reviewed. In a progress note dated November 8, 2010, he diagnosed appellant's condition as back strain/sprain.

On November 8, 2010 an x-ray report signed by Dr. Allan Kapilivsky, a Board-certified diagnostic radiologist, found that appellant's lumbar spine x-ray showed no evidence of acute osseous trauma.

Appellant also submitted a November 8, 2010 Texas Workers' Compensation Report, bearing an illegible signature, which noted that he sustained an injury to his lower back on November 5, 2010 and which noted his work restrictions.

In a November 9, 2010 progress note, Mr. Runyan indicated that appellant's discomfort had improved significantly and that the x-ray report did not reveal osseous injury. He again diagnosed lumbosacral strain. Mr. Runyan also completed a Texas Workers' Compensation Report on November 9, 2010, noting appellant's restrictions.

In a November 10, 2010 physical therapy evaluation, Physical Therapist John Speights diagnosed appellant with lumbosacral muscle strain and detailed the plan of treatment to be provided for appellant. He subsequently issued a number of daily progress notes, which recorded appellant's exercise routine and recovery results under his treatment.

Appellant also submitted a November 17, 2010 nurse's report, which noted that he was to work on limited duty. The report restricted his work activity to standing for two to four hours, sitting for six hours, slow walking for two to four hours and no kneeling, squatting, bending, stooping or twisting.

Subsequently, appellant submitted several work status reports from Mr. Runyan, each diagnosing appellant with lumbosacral sprain.

Mr. Runyan indicated in a November 23, 2010 report that appellant had improved following physical therapy. He also noted that appellant's back sprain was complicated by his existing knee injury, which was not work related.

In December 7, 2010 progress notes and work status report, Mr. Runyan concluded that appellant's lumbar sprain condition had resolved.

OWCP sent appellant a letter on December 22, 2010, informing him of the deficiencies in his claim. Specifically, the letter advised that his medical reports were not signed by a physician, and as such they were not sufficient to support his claim. Appellant was requested to submit a probative medical report.

Appellant subsequently resubmitted several work status reports dated November 8, 9 and 23, 2010, now cosigned by Dr. Darryl Stinson, M.D., which diagnosed appellant with lumbosacral strain.

In addition, appellant also submitted a progress note dated January 18, 2011, signed by Dr. Stinson, which diagnosed his condition as lumbosacral strain/sprain, but also noted that appellant has recovered from that condition. Dr. Stinson concluded that he was able to return to work without restrictions.

By decision dated March 11, 2011, OWCP denied appellant's claim on the grounds that the medical evidence he submitted was insufficient to establish his claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden 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 FECA, that the claim was timely filed, that an injury 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.[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. 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.[4] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[5]

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a

[2] 5 U.S.C. §§ 8101-8193.

[3] *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (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).

physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated 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]

5 U.S.C. § 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. As nurses, physician's assistants, physical and occupational therapists are not "physicians" as defined by FECA, their opinions regarding diagnosis and causal relationship are of no probative medical value.[7]

ANALYSIS

OWCP has accepted that the incident occurred as alleged. The Board finds, though, that the evidence appellant submitted in support of his claim did not include a rationalized medical opinion explaining how his lumbosacral strain was causally related to the employment incident. Appellant therefore did not meet his burden of proof.

As noted above, the definition of "physicians" does not include physician's assistants, nurses and physical therapists. Therefore, the medical documents signed only by Mr. Runyan, a physician's assistant, the nurse and Mr. Speights, a physical therapist, are not considered medical evidence in evaluation of causal relationship.

The only medical documents submitted that were signed by a doctor were the x-ray report from Dr. Kapvilivsky and the work status reports and progress note dated January 18, 2011 from Dr. Stinson. However, none of these documents contained a rationalized medical opinion explaining how the diagnosed lumbosacral strain was caused by the employment incident.

The x-ray report from Dr. Kapvilivsky did not provide a history of injury or diagnosis of appellant's condition. It concluded that x-ray evaluation showed no evidence of acute osseous trauma. This report does not provide probative medical evidence in support of appellant's claim.

The reports from Dr. Stinson diagnosed lumbar strain/sprain and noted the incident of November 5, 2010. Dr. Stinson however never explained the basis of his diagnosis and never explained how physiologically the incident of November 5, 2010 would have caused the diagnosed condition. The Board has consistently held that medical reports lacking a rationale on causal relationship have little probative value.[8] Therefore, without submitting competent

[6] *Gary J. Watling*, 52 ECAB 278 (2001).

[7] *See Roy L. Humphrey*, 57 ECAB 238 (2005).

[8] *See Mary E. Marshall*, 56 ECAB 420 (2005).

medical evidence to support that his lumbosacral strain resulted from his employment incident, appellant failed to establish his claim.[9]

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 failed to establish that his medical condition was caused by his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 11, 2011 is affirmed.

Issued: December 16, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[9] The Board notes that a (Form CA-16) was issued to Dr. Stinson. The Board has held that a properly completed authorization form from the employing establishment created a contractual obligation to pay for the cost of the necessary medical treatment regardless of the actions taken on the claim. *See Robert F. Hamilton*, 41 ECAB 431 (1990); 20 C.F.R. § 10.300.