

**United States Department of Labor
Employees' Compensation Appeals Board**

G.G., Appellant)
and) Docket No. 10-1329
U.S. CAPITAL POLICE, DIGNITARY) Issued: January 5, 2011
PROTECTION DIVISION, Washington, DC,)
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 April 14, 2010 appellant, through his attorney, filed a timely appeal of a December 23, 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he developed a back injury due to his employment duties.

FACTUAL HISTORY

On April 9, 2009 appellant, then a 50-year-old law enforcement officer, filed a traumatic injury claim alleging that on March 20, 2009 he developed low back pain and lower extremity pain in the performance of duty. He stated that he developed a recurrence of pain and stiffness in

his low back from his prior employment-related surgery in February 1987.¹ Appellant's physician, Dr. Andres Michalak, completed an authorization for examination or treatment on April 17, 2009 and diagnosed back pain. He found that appellant was totally disabled. The Office requested additional factual and medical evidence in support of this claim by letter dated May 8, 2009. Dr. Michalak completed a duty status report on April 24, 2009 and again diagnosed back pain. By decision dated June 11, 2009, the Office denied appellant's claim finding that he had not submitted any medical evidence of a diagnosis other than pain.

Appellant, through his attorney, requested a telephonic hearing on June 23, 2009. On May 21, 2009 appellant stated on March 20, 2009 that he experienced pain in his low back which expanded over the next few weeks to encompass his right leg. Dr. Edward F. Aulisi, a Board-certified neurosurgeon, examined appellant on May 19, 2009 and diagnosed herniated disc in the lumbar spine and indicated that this diagnosis was due to appellant's injury.

Appellant submitted factual and medical records relating to his previous employment injury in 1987. He responded to the Office's request for factual evidence and stated that he did not know what he was doing when his acute pain began on March 20, 2009. Appellant first believed that his condition was a muscle pull. He submitted medical records from Georgetown University Hospital dated April 10, 2009 diagnosing a herniated disc at L5.

Appellant testified at his telephonic hearing on October 26, 2009 and stated that he was working as the lead supervisor for the Democratic convention in August 2008 which required walking, standing and sitting for 16 hours a day. He stated that his position required him to provide protection for members of congress from any potential wrongdoer. Appellant stated that in addition to the previously mentioned special assignment he was assigned to protect the Republican Minority Leader and had other special assignments in the election year and inauguration in 2009 which required him to walk and stand for 16 hours a day. He stated that his position required him to wear a heavy ballistics vest, to wear a belt with a sidearm, handcuffs, radio and telephone weighing a total of 19 pounds. Appellant testified that the accumulation of work resulted in pain and soreness in his back in March 2009. He denied fighting with a suspect or other overt incidents on or off the job.

In a report dated May 8, 2009, Dr. Aulisi noted appellant's history of injury in 1987 and resulting back surgery. He diagnosed a new disc herniation with lumbar stenosis as well as weakness in his legs and radiculopathy.

Dr. Aulisi performed a bilateral L4-5 and L5-S1 laminectomy with microdissection on June 11, 2009. He completed a form report on September 9, 2009 and diagnosed a new disc herniation with stenosis and disc protrusion. Dr. Aulisi indicated with a checkmark "yes" that this condition was related to appellant's previous injury and lumbar surgery in 1987. He also indicated that appellant's condition was caused or aggravated by appellant's employment in law enforcement which required long periods of standing and sitting as well as "activities that can be physically vigorous and aggravating." In a report dated June 24, 2009, Dr. Aulisi stated that appellant was making excellent progress and returned him to light duty.

¹ Appellant filed a recurrence of disability claim on May 5, 2009 alleging that he had sustained a recurrence of his February 3, 1987 employment injury on March 20, 2009 as the symptoms and pain were similar.

By decision dated December 23, 2009, the hearing representative found that appellant was contending that his employment duties in the year preceding March 2008 resulted in a worsening of his back condition. The hearing representative found that appellant had established fact of injury in an occupational disease claim based on the employment duties of standing for up to 16 hours a day while wearing a vest weighing 15 pounds and a belt with a weapon and other items. The hearing representative found however, that Dr. Aulisi's reports were not sufficient to establish appellant's claim as he failed to provide sufficient medical reasoning to establish a causal relationship between appellant's accepted employment duties and his currently diagnosed condition.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,³ including that she is an "employee" within the meaning of the Act⁴ and that she filed her claim within the applicable time limitation.⁵ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁶

The Office's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."⁷ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁸

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ See *M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); See 5 U.S.C. § 8101(1).

⁵ *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); see 5 U.S.C. § 8122.

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ 20 C.F.R. § 10.5(q).

⁸ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

ANALYSIS

The Board finds that the Office properly determined that appellant's claim should be developed as an occupational disease claim as his factual statements before the hearing representative establishes that appellant believes that his condition arose from his work duties occurring over several days and shifts.⁹ The Board further finds that the medical evidence diagnoses a condition, herniated lumbar disc and stenosis and that appellant has provided the factual basis for his claim through his statements that he was required to work for 16 hours a day standing, walking and sitting while wearing protective gear weighing approximately 19 pounds.

The Board, however, finds that the medical evidence is not sufficiently well rationalized to establish that appellant's diagnosed condition was the result of his implicated employment duties. The medical evidence addressing causal relationship consists of a form report from Dr. Aulisi dated September 9, 2009 diagnosing a new disc herniation with stenosis and disc protrusion. Dr. Aulisi indicated with a checkmark "yes" that appellant's condition was caused or aggravated by appellant's employment. He noted that appellant's position in law enforcement required long periods of standing and sitting. Dr. Aulisi also stated that appellant was required to perform "activities that can be physically vigorous and aggravating." While he implicated a portion of appellant's implicated employment duties, standing and sitting for long hours, he also attributed appellant's condition to other activities which appellant has not specifically confirmed as occurring during the period March 2008 through March 2009. Specifically appellant testified that he had not had any incidents such as fighting with a suspect during the year prior to his pain onset in March 2009 which could be considered vigorous or aggravating. Dr. Aulisi did not mention appellant's employment duty of wearing and carrying protective equipment weighing 19 pounds.

In addition to the factual deficiencies in his report, he also failed to offer any explanation of how appellant's duties of standing and sitting for long hours would result in the diagnosed condition. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.¹⁰ As Dr. Aulisi did not provide a detailed report based on a clear factual background and providing medical reasoning supporting his opinion that appellant's condition was due to his employment, this report is not sufficient to meet appellant's burden of proof and the Office properly denied his claim.

CONCLUSION

The Board finds that appellant did not submit the necessary rationalized medical opinion evidence to meet his burden of proof in establishing that his herniated disc was due to his employment duties.

⁹ See *supra* note 7.

¹⁰ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

ORDER

IT IS HEREBY ORDERED THAT December 23, 2009 decision of Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2011
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