United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 10-1330**
	)	**Issued: January 10, 2011**
DEPARTMENT OF THE ARMY, Fort Leavenworth, KS, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 14, 2010 appellant filed a timely appeal from the January 25 and April 2, 2010 merit decisions of the Office of Workers' Compensation Programs denying his claim for a back injury. 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 sustained a back injury on October 22, 2009 while in the performance of duty.

On appeal appellant contends that the medical evidence is sufficient to establish causal relationship.

FACTUAL HISTORY

On October 23, 2009 appellant, then a 28-year-old telecommunications mechanic, filed a traumatic injury claim alleging that he injured his upper back on October 22, 2009 while lifting a tool bag.

On December 18, 2009 the Office asked appellant to provide additional information, including a physician's report with a rationalized explanation of how his back condition was causally related to work activity on October 22, 2009.

In reports dated December 2, 7 and 22, 2009, Mark Miller, a physician's assistant, noted that appellant had experienced severe back pain for the prior week. He diagnosed lumbago (lower back pain).

In a December 11, 2009 magnetic resonance imaging (MRI) scan report, Dr. Douglas W. Nemmers, a radiologist, noted a small right paracentral disc extrusion at L4-5 that could be impinging the L5 nerve root and a small central disc extrusion at L5-S1 that did not appear significant.

By decision dated January 25, 2010, the Office accepted that the October 22, 2009 lifting incident occurred as alleged but denied appellant's claim on the grounds that the medical evidence failed to establish causal relationship between his back condition and his work activity that day.

In a January 21, 2010 attending physician's report, Dr. Robert M. Beatty, a Board-certified neurosurgeon, diagnosed a small disc protrusion at L4-5, minimal at L5-S1 with radiculopathy. In answer to the form question as to whether the condition was caused or aggravated by an employment activity, he wrote "unknown." Dr. Beatty noted that he saw appellant on January 7, 2010 and they did not discuss his job.

On February 1, 2010 appellant requested reconsideration and submitted additional medical evidence. In an attending physician's report dated February 22, 2010, Dr. Peter Cristiano, a family practitioner, provided a history of lifting a tool bag at work, causing lower back pain. He diagnosed lumbago. Regarding causal relationship, Dr. Christiano indicated that appellant had no history of back pain.

By decision dated April 2, 2010, the Office denied modification of the January 25, 2010 decision.[1]

LEGAL PRECEDENT

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.[2] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[3] An

[1] Subsequent to the April 2, 2010 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

[2] *Bonnie A. Contreras,* 57 ECAB 364 (2006); *Edward C. Lawrence,* 19 ECAB 442 (1968).

[3] *T.H.,* 59 ECAB 388 (2008); *John J. Carlone,* 41 ECAB 354 (1989).

employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.

To establish a causal relationship between an employee's condition and any disability claimed and the employment event or incident, he or she 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 physician's opinion on the issue of 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 claimant.[4]

ANALYSIS

Appellant alleged that he injured his back on October 22, 2009 while lifting a tool bag. The Office accepted that he lifted a tool bag on October 22, 2009 as alleged, but denied the claim on the grounds that he had not established causal relationship between this incident and his diagnosed condition. The Board affirms this finding.

The December 11, 2009 MRI scan report, revealed a small right paracentral disc extrusion at L4-5 that could be impinging the L5 nerve root. Dr. Nemmers did not explain how the lumbar disc pathology found was related to the October 22, 2009 incident when appellant lifted a tool bag. The MRI scan report does not establish causal relationship between his back condition and his employment.

On January 21, 2010 Dr. Beatty diagnosed a small disc protrusion at L4-5 with radiculopathy. Appellant's job activities were not discussed. In answer to the form question as to whether the condition was caused or aggravated by an employment activity, he wrote "unknown." As Dr. Beatty did not find that appellant's disc problem was causally related to lifting a tool bag on October 22, 2009, this report does not establish a work-related back injury.

On February 22, 2010 Dr. Cristiano provided a history that appellant lifted a tool bag at work and experienced back pain. He diagnosed lumbago. Regarding causal relationship, Dr. Christiano indicated that appellant had no prior history of back pain. The Board has held that the opinion of a physician that a condition is causally related to an employment injury simply because the employee was asymptomatic before the injury is insufficient, without supporting medical rationale, to establish causal relationship.[5] Lacking sufficient medical rationale on the issue of causal relationship, Dr. Christiano's report is of diminished probative value and does not establish a work-related back injury.

[4] *I.J.,* 59 ECAB 408 (2008); *Victor J. Woodhams,* 41 ECAB 345, 352 (1989).

[5] *Jaja K. Asaramo,* 55 ECAB 200 (2004).

Mr. Miller noted that appellant had experienced severe back pain for the past week. A physical therapist does not qualify as a physician as defined under the Federal Employees' Compensation Act.[6] Physician's assistants and physical therapists are not physicians as defined under the Act and their opinions are of no probative value.[7] Mr. Miller's reports do not establish that appellant's back pain was causally related to the October 22, 2009 lifting incident at work.

The Board finds that the medical evidence is insufficient to establish that appellant sustained a back injury on October 22, 2009 while in the performance of duty.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a back injury on October 22, 2009 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 2 and January 25, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 10, 2011
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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[6] *See* 5 U.S.C. § 8101(2) which provides: "'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law." *See Roy L. Humphrey,* 57 ECAB 238 (2005); *Jennifer L. Sharp,* 48 ECAB 209 (1996).

[7] *Id.*