

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

F.W., Appellant

and

**DEPARTMENT OF THE ARMY, PINE BLUFF
ARSENAL, Pine Bluff, AR, Employer**

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**Docket No. 10-1447
Issued: January 11, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 27, 2010 appellant filed a timely appeal from an April 14, 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 his back condition was causally related to his employment incident.

FACTUAL HISTORY

On February 18, 2010 appellant, then a 56-year-old materials handler, filed a traumatic injury claim alleging that on January 27, 2010 he pulled a muscle in his legs and back when he stepped off a forklift. He stopped working on January 28, 2010 and returned on February 8, 2010.

Appellant submitted a February 5, 2010 work restriction slip, which noted that he received medical care on February 1, 2010. A January 28, 2010 hospital note from Jefferson

Regional Medical Center stated that he experienced musculoskeletal pain. A February 1, 2010 medical slip from Dr. Paul W. Davis, a family practitioner, listed various medications prescribed to appellant.

On March 2, 2010 the Office requested that appellant provide a detailed, narrative report from a treating physician which included a history of injury, firm diagnosis, findings and test results, treatments provided, prognosis, and the physician's opinion explaining why the diagnosed condition was caused or aggravated by the claimed injury.

January 28, 2010 x-ray results signed by Dr. William Lim, a Board-certified diagnostic radiologist, found that appellant did not sustain a fracture and that his hip joint was still intact.

In February 1 and 2, 2010 treatment notes, Dr. Davis reported that appellant stepped off an item at work when he hurt his back. Appellant still experienced back spasms mainly in the lower back and left hip area. Upon physical examination, Dr. Davis noted diffuse paravertebral muscle spasms on the left side of his lower back and reported that straight leg raising was negative. He suspected that appellant sustained a severe sprain with some irritation of the sciatic nerve in the lumbar area. In a February 5, 2010 note, Dr. Davis reported that appellant's back was doing better but was still tender. He diagnosed a lumbar sprain and recommended that appellant be placed on light duty until February 15, 2010.

Appellant also submitted work restriction forms dated February 22 and March 1, 2010 from an unknown provider and approved absence forms dated February 1 and 8, 2010. The approved absence forms reported that he did not work on January 28, 2010 and from February 1 to 4, 2010.

The Office received an attending physician's report dated March 4, 2010 from Dr. Imran Waheed, a Board-certified family practitioner, who stated that appellant had pain in his left hip since the day he stepped off a forklift and "felt something" in his hip. Dr. Waheed diagnosed musculoskeletal pain, myalgia, myositis and advised that appellant not work for 48 hours.

By decision dated April 14, 2010, the Office denied appellant's claim. It accepted that the January 27, 2010 employment incident occurred as alleged, but determined that he did not submit sufficient medical evidence to establish a causal relationship between his back condition and the January 27, 2010 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative, and substantial evidence² including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

causally related to that employment injury.³ As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background on whether a causal relationship exists between the claimant's diagnosed condition and the established employment incident.⁴ The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁶ 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 specified employment factors or incident.⁷ 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.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that an employee's condition surfaced during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁹

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a back injury on January 27, 2010. The Office accepted that the January 27, 2010 employment incident occurred as alleged. While the medical evidence of record supports a diagnosis of lumbar sprain, it fails to contain a rationalized medical opinion addressing how the January 27, 2010 employment incident resulted in appellant's back condition.

³ *M.M.*, 60 ECAB __ (Docket No. 08-1510, issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *A.C.*, 60 ECAB __ (Docket No. 08-1453, issued November 18, 2008); *Y.J.*, 60 ECAB __ (Docket No. 08-1167, issued October 7, 2008); *George H. Clark*, 56 ECAB 162 (2004).

⁵ *Patricia Bolleter*, 40 ECAB 373 (1988).

⁶ *I.R.*, 61 ECAB __ (Docket No. 09-1229, issued February 24, 2010); *W.D.*, 61 ECAB __ (Docket No. 09-658, issued October 22, 2009); *D.I.*, 59 ECAB 158 (November 6, 2007).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *D.S.*, 61 ECAB __ (Docket No. 09-860, issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007).

⁹ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

Appellant submitted treatment notes from Dr. Davis who reported that appellant hurt his back at work when he stepped off “an item.” Dr. Davis did not obtain a history of the January 27, 2010 incident as alleged by appellant. He suspected that appellant sustained a sprain, but did not provide any opinion explaining how stepping off an item at work resulted in a back sprain. A February 5, 2010 treatment note provided a diagnosis of lumbar sprain with irritation of the sciatic nerve, but Dr. Davis did not provide any opinion regarding whether appellant’s lumbar sprain or sciatic nerve irritation were causally related to the accepted employment incident. Again, he did not report a history of the January 27, 2010 incident. Medical evidence that states a conclusion but does not offer any rationalized medical explanation regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.¹⁰ Dr. Davis did not provide any opinion explaining how stepping off a forklift would cause a lumbar sprain and sciatic nerve irritation. His treatment notes are of limited probative value and are insufficient to support appellant’s claim.

Appellant also submitted x-ray results from Dr. Lim and a March 4, 2010 medical report from Dr. Waheed. Neither doctor provided an opinion explaining how the January 27, 2010 employment incident was causally related to appellant’s back condition. Dr. Waheed merely noted appellant’s own summary that he had experienced his pain since he stepped from a forklift. Accordingly, these reports are of limited probative value as well.

On appeal, appellant contended that he provided enough information from Jefferson Regional Medical Center and Dr. Davis to support his claim. As noted, however, a claimant’s belief that his condition was caused by his employment is insufficient to establish causal relationship.¹¹ The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.¹² Appellant failed to submit sufficient medical opinion evidence explaining how his back condition was causally related to the January 27, 2010 employment incident. He did not meet his burden of proof to establish a traumatic injury on that date.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury on January 27, 2010, as alleged.¹³

¹⁰ *J.F.*, 61 ECAB __ (Docket No. 09-1061, issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹¹ *Roy L. Humphrey*, *supra* note 9; *see also Sharon Yonak*, 49 ECAB 250 (1997).

¹² *W.W.*, 61 ECAB __ (Docket No. 09-1619, issued June 2, 2010); *David Apgar*, 57 ECAB 137 (2005).

¹³ The Board notes that appellant submitted additional evidence to the file following the April 14, 2010 decision. Since the Board’s jurisdiction is limited to evidence that was before the Office at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2010 decision of the Office of Workers' Compensation Program is affirmed.

Issued: January 11, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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