

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

B.P., Appellant

and

**DEPARTMENT OF THE ARMY,
Fort Knox, KY, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 10-1593
Issued: June 8, 2011**

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument May 10, 2011

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 27, 2010 appellant filed a timely appeal from an April 23, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 has established arthritis or other conditions causally related to factors of his federal employment.

FACTUAL HISTORY

On June 16, 2009 appellant, then a 48-year-old materials handler, filed an occupational disease claim (Form CA-2) alleging that he sustained "arthritis in neck, shoulders, hands, knees, constant pain, loss of strength, constant pain in feet."² He noted currently working in a light-

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant also noted hearing loss, which was developed separately and is not before the Board on this appeal.

duty position.³ Appellant submitted a September 24, 2009 statement identifying “heavy lifting, pushing, bending, kneeling, squatting to fix all different types of vehicles” as employment factors contributing to his condition. He noticed back and neck pain approximately five years earlier, with his shoulders, feet, knees and hands slowly getting worse over the last two years.

In a report dated May 17, 2006, Dr. Ajith Nair, a pain specialist, provided a history of an undated incident where appellant was lifting a box weighing 150 pounds and heard his back “popped.” Appellant stated that his back pain was aggravated by bending, climbing stairs, coughing, lying down and with prolonged sitting or standing. Dr. Nair provided results on examination and diagnosed internal disruption of L4-5 and L5-S1 discs, lumbar facet syndrome, cervicgia and cervical facet syndrome. In a report dated October 11, 2007, he noted that appellant received a lumbar epidural steroid injection and a right knee joint injection.

The record contains a February 12, 2009 report from Dr. Russell McKinley, a podiatrist, who provided a history of plantar fascia pain for approximately one and one half years. Dr. McKinley provided results on examination and diagnosed plantar fasciitis. Appellant also received treatment on March 5 and April 2, 2009 from Dr. McKinley for plantar fasciitis.

In a report dated April 28, 2009, Dr. Mladen Djurasovic, an orthopedic surgeon, noted in his history a lumbar work-related injury in 2003.⁴ He provided results on examination and diagnosed lumbar degenerative disc disease with right radiculopathy. In a May 29, 2009 fitness-for-duty report, the employing establishment physician, Dr. Robert Pero, found appellant could work in a sedentary position.

The record contains medical form reports, SF 600, chronological record of medical care, from the employing establishment health unit for the period 2007 to 2009, many prepared by a nurse or nurse practitioner. In a report dated October 24, 2008, Dr. Martin Setter diagnosed plantar fasciitis. By report dated October 22, 2008, Dr. Robert Egbert diagnosed cervicgia and intervertebral disc degeneration. In a report dated September 26, 2008, a Dr. Tammy Ray noted shoulder joint pain and knee osteoarthritis.

In a decision dated January 11, 2010, OWCP denied the claim for compensation. It found the medical evidence was insufficient to establish the claim.

On February 24, 2010 appellant requested reconsideration of his claim. He submitted a February 18, 2010 report signed by Dr. William Welch, an employing establishment physician.⁵ Appellant had multiple medical problems, including chronic low back pain, neck, shoulder, bilateral hand and foot pain. Dr. Welch stated that appellant had worked on track vehicles since 1978 in military and civilian jobs performing heavy lifting with hand pain since a 1995 work-

³ In a September 24, 2009 statement, received by OWCP on September 28, 2009, appellant indicated that he was currently on leave “pending a medical disability decision.”

⁴ OWCP indicated that it had no record of a claim for a 2003 back injury. Appellant’s September 24, 2009 statement reported that he worked in private employment as a truck driver from 2002 to 2004.

⁵ The report was prepared and signed by a nurse practitioner, and Dr. Welch stated that he had read and agreed with the statements.

related crush injury, and noted a 2003 compression fracture in the low back. The report concluded that while the exact cause of appellant's pain could not be determined "heavy lifting and multiple injuries" had contributed to his conditions.

By decision dated April 23, 2010, OWCP reviewed the case on its merits. It denied modification, finding the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁶ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁷

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.⁸

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁹ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.¹⁰ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.¹¹

ANALYSIS

Appellant identified employment factors he believed contributed to his condition. He noted heavy lifting, pushing, bending, kneeling and squatting in his federal employment. With respect to the diagnosed conditions, the medical evidence plantar fasciitis, a degenerative lumbar disc disease, cervicgia and knee osteoarthritis.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ 20 C.F.R. § 10.115(e), (f) (2005); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁸ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁹ *See Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *Id.*

It is appellant's burden of proof to submit medical evidence that establishes the causal relationship between a diagnosed condition and the identified employment factors. The medical opinion on causal relationship does not have to be one of absolute certainty, but it must be one of reasonable medical certainty and not speculative or equivocal in nature.¹² As noted, the opinion of the physician must be based on a complete and accurate factual and medical background and accompanied by medical rationale that explains the nature of the relationship between a diagnosed condition and the employment factors. The Board reviews a medical report for "its reliability, its convincing quality, the care of analysis manifested and the medical rationale expressed."¹³

The medical evidence of record is not of sufficient probative value to meet appellant's burden of proof on the issue of causal relationship between any diagnosed condition and the identified employment factors. A report from a nurse or nurse practitioner is of no probative value, as they are not physicians as defined under FECA.¹⁴ The form reports from the employing establishment health unit that were prepared by physicians do not provide a complete factual and medical history, or an opinion on causal relationship between any diagnosed condition and appellant's employment.

Appellant has worked in military, private and federal civilian employment. It is particularly important in this case to have an accurate factual and medical history, discussing the identified employment duties as well as prior injuries. Dr. McKinley treated appellant for plantar fasciitis, but did not provide a complete history or discuss the employment factors implicated in this case as a materials handler. Dr. Nair, who treated appellant for low back and knee pain, referred to an undated lifting incident without further explanation. Neither of the physicians provided any opinion on causal relationship between the diagnosed conditions and appellant's federal employment factors.

In a February 18, 2010 report, Dr. Welch briefly referred to "heavy lifting" as a cause of pain in appellant's multiple medical problems.¹⁵ He did not provide a complete history or any additional detail regarding the lifting incident. The report referred to a 2003 back injury, which apparently occurred in private employment. There is also little detail regarding the specific diagnosed conditions, other than a general reference to pain and multiple medical problems. Dr. Welch's opinion on causal relationship is not supported by medical rationale or any explanation regarding the employment factors.

The Board finds that the medical evidence of record is of diminished probative value to the issue presented. Appellant did not meet his burden of proof in this case. It is noted that appellant may submit new evidence or argument with a written request for reconsideration to the

¹² *W.W.*, Docket No. 09-1619 (issued June 2, 2010).

¹³ *C.M.*, Docket No. 10-1700 (issued April 22, 2011).

¹⁴ Nurses and nurse practitioners are not physicians under FECA and are not competent to render a medical opinion. See *Vincent Holmes*, 53 ECAB 468 (2002); *F.H.*, Docket No. 10-1359 (issued April 18, 2011).

¹⁵ Although this report was prepared by a nurse practitioner, it was signed by Dr. Welch and as such is considered medical evidence from a physician under FECA. See *L.B.*, Docket No. 09-1989 (issued April 9, 2010).

Office 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 the evidence is not sufficient to establish an injury causally related to the identified employment factors.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 23 and January 11, 2010 are affirmed.

Issued: June 8, 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