United States Department of Labor
Employees' Compensation Appeals Board

N.H., Appellant	)	
and	)	**Docket No. 10-1748**
	)	**Issued: March 15, 2011**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Richmond, VA, Employer	)	

Appearances:
Charles W. Jackson, for the appellant
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 June 21, 2010 appellant filed a timely appeal from an April 30, 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 has established a back condition causally related to factors of his federal employment.

FACTUAL HISTORY

On June 9, 2009 appellant, then a 56-year-old health technician, filed an occupational claim (Form CA-2) alleging that he sustained injuries due to repetitive activities at work, including lifting, bending, pulling and pushing. On the claim form he described his condition as pain in the mid back, right hip, buttocks and right thigh. Appellant reported a date of injury as May 7, 2009.

In a statement dated July 17, 2009, appellant reported that he worked in a spinal cord injury unit and used shower litters to move patients from the bed to the shower room and back. He described a metal frame litter and a tube-like litter, stating he "was using the tube-like litter when my injury occurred." Appellant's patient load was five to eight patients a day, with patients weighting between 125 and 300 pounds. With respect to the medical evidence, he submitted brief treatment notes dated May 7, 2009 from Dr. William Fleming, an orthopedic surgeon, who diagnosed lumbar arthritis.

By decision dated September 8, 2009, the Office denied the claim for compensation. It found the medical evidence was insufficient to establish causal relation.

Appellant requested reconsideration by letter dated April 15, 2010, submitting additional evidence. In a report dated May 7, 2009, Dr. Fleming indicated that appellant had been having back pain for many years, noting that he did lifting, pushing and pulling at work. He indicated that x-rays showed arthritis and lumbar degenerative disc disease.

In a report dated December 1, 2009, Dr. Gregory Leghart, an occupational medicine specialist, provided a history of chronic low back pain. He diagnosed "right radicular low back pain with L5-S1 protrusion, multilevel degenerative disc disease, probably workers' compensation[-]related injury in September 2008." In a January 26, 2010 report, Dr. Leghart stated that he initially examined appellant on August 14, 2009 with a history of a significant flare up of pain at work on May 8, 2009. He had received documentation dated April 7, 2009,[1] and other than the discrepancy in date, "it appears the major flare this year was related to work injury." Dr. Fleming stated, "Based on my history obtained on [August 14, 2009] and the documentation you sent to me from [April 7, 2009], it appears that [appellant] has a history of subacute low back pain with a significant aggravation requiring treatment on [April 7, 2009]. I believe his current condition and all treatments since [April 7, 2009] are related to his work injury."

By decision dated April 30, 2010, the Office reviewed the case on its merits and found appellant did not establish an injury causally related to the accepted employment factors.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[2] 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.[3]

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

[1] The record contains treatment notes dated April 7, 2009 in which appellant reported injuring his back while trying to transfer a patient. The notes appear to be signed by a nurse and nurse practitioner.

[2] 5 U.S.C. §§ 8101-8193.

[3] 20 C.F.R. § 10.115(e), (f) (2005); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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.[4]

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[5] 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.[6] 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.[7]

ANALYSIS

Appellant filed an occupational disease or illness claim, which is for an injury produced by employment factors occurring over more than one workday or shift.[8] His statements on the claim form refer to repetitive work activities, such as lifting, bending, pushing and pulling. In a July 17, 2009 statement, appellant noted that he used litters to move patients to their shower area. He referred generally to a specific incident using a litter "when my injury occurred." It is not entirely clear from his statement when this incident occurred. On the claim form appellant referred to May 7, 2009 as a date of injury and he did receive treatment on that date from Dr. Fleming. However, he did not provide a history of any specific incident at work. Dr. Fleming reported an incident on May 8, 2009, but also noted he had received documentation for an April 7, 2009 incident.[9] If appellant is claiming that a specific incident caused him injury, this would be a basis for a traumatic injury claim.[10] In the present case, he filed a CA-2 form and referred to repetitive work activities over a period of time in his federal employment. The Office accepted that appellant moved patients while using a litter as employment factors.[11]

The issue is whether appellant has submitted sufficient medical evidence with a rationalized opinion on the causal relationship between his diagnosed condition and the

[4] *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[5] *See Robert G. Morris*, 48 ECAB 238 (1996).

[6] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[7] *Id.*

[8] 20 C.F.R. § 10.5(q).

[9] The April 7, 2009 treatment notes are of no probative medical value as there is no indication they were signed by a physician under the Act. *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

[10] 20 C.F.R. § 10.5 (ee).

[11] The Office stated that "fact of injury" was established, but a claimant cannot establish fact of injury without medical evidence that establishes causal relationship between a diagnosed condition and the employment. *See T.H.*, 59 ECAB 388 (2008).

identified employment factors. Dr. Fleming diagnosed lumbar arthritis and degenerative disc disease, without providing any opinion on causal relationship. Dr. Leghart briefly stated in a December 1, 2009 report that appellant's condition was "probably" related to a work injury in September 2008. Medical opinions that are speculative and not supported by medical rationale are generally entitled to little probative value and are insufficient to meet appellant's burden of proof.[12] Dr. Leghart's opinion is speculative and he did not explain what he believed occurred in September 2008 with respect to federal employment. In his January 26, 2010 report, he referred to a work incident, but he was unclear as to the date and provided no detailed discussion regarding any employment incident or the identified employment factors of lifting, bending, pulling and pushing. Dr. Leghart failed to provide a rationalized medical opinion on causal relationship explaining how appellant's back condition was caused or aggravated by his federal employment. For the above reasons, the Board finds appellant did not meet his burden of proof.

CONCLUSION

The Board finds that appellant did not establish a back condition causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 30, 2010 is affirmed.

Issued: March 15, 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

[12] *Carolyn F. Allen*, 47 ECAB 240 (1995).