

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

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R.L., Appellant)	
)	
and)	Docket No. 10-1893
)	Issued: May 19, 2011
DEPARTMENT OF THE NAVY, NORTH)	
ISLAND NAVAL AIR STATION, San Diego, CA,)	
Employer)	
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<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Appellant, pro se</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 21, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 14, 2010 which denied his claim. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a neck, back or right shoulder injury in the performance of duty.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On February 18, 2009 appellant, then a 54-year-old material handler, filed a claim for traumatic injury to his neck, back and right shoulder on February 12, 2009 after lifting and rearranging boxes of ammunition onto a pallet. He did not stop work.

Appellant submitted February 17 and 26, 2009 treatment notes from Dr. C.M. Schindler, an osteopath, who treated him for pain at the base of the neck radiating into his back which began on February 12, 2009 while loading ammunition boxes. He reported being a swimmer and heavy weight lifter who was trying to cut back on his weight lifting. Appellant reported injuring his neck and muscles at the base of his occiput which progressed later to his upper and mid back. He noted lifting weights the prior Thursday and his neck pain began later that day into the next day. Dr. Schindler noted appellant's history was significant for degenerative disease in his hips, lumbar spine, S1 joints and knees. He diagnosed thoracic back strain and stated that it was unclear whether the injury was work related. Dr. Schindler treated appellant for neck pain with radicular symptoms and diagnosed intervertebral cervical disc degeneration with radiculopathy. He released appellant to work with restrictions.

Appellant was also treated by Dr. Paul A. Jain, a Board-certified internist, on February 17, 2009, who noted that appellant presented with a subacute onset of neck and right shoulder pain for three days. Dr. Jain noted that appellant was an active weight lifter and swimmer and recently underwent a left medial meniscectomy in October 2008. He diagnosed osteoarthritis of the cervical and lumbar spine, arthralgia and left medial meniscal tear. In reports dated February 17 to March 16, 2009, Dr. Jain treated appellant for cervical pain secondary to degenerative disc disease of the cervical spine and bilateral shoulder pain secondary to joint osteoarthritis and rotator cuff tendinitis. He noted appellant could work with restrictions. Appellant submitted dispensary notes signed by a physician's assistant dated February 17, 2009, which noted he was treated for pain in the right side.

On April 13, 2009 the employing establishment controverted the claim as the medical evidence did not attribute appellant's condition to a work injury but to degenerative changes and weight lifting activities.

By letter dated April 30, 2009, the Office advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. Appellant's claim was administratively handled to allow medical payments up to \$1,500.00 but that the merits of the claim had not been formally adjudicated. Since his employer challenged the claim, it would formally adjudicate the claim. It requested that appellant submit additional information including a comprehensive medical report that included a reasoned explanation of how specific work factors or incidents contributed to his claimed neck, back or shoulder conditions.

Appellant submitted May 16, 2009 statement noting that he was treated for cervical spine spasms and was working subject to restrictions. He submitted an April 29, 2009 physical examination performed by a physician's assistant.

In a June 4, 2009 decision, the Office denied appellant's claim finding that the medical evidence was insufficient to establish that his claimed conditions were caused by the February 12, 2009 incident at work.

On July 20, 2009 appellant requested an oral hearing which was held on November 9, 2009. After the hearing, he submitted medical records from the employing establishment and the Department of Veterans Affairs. Dispensary records from 1997 and 1998 noted appellant's treatment for low back and right arm pain. A September 24, 2004 lumbar spine x-ray revealed multilevel degenerative disc disease affecting the L4-S1 levels. An x-ray of the cervical spine revealed multilevel degenerative changes, worse at C4-7. On March 1, 2004 appellant was treated by Juan C. Falls, Board-certified in occupational medicine, for an elbow injury. A March 20, 2009 x-ray of the left shoulder revealed no evidence of fracture or dislocation with osteophytosis. A March 28, 2009 magnetic resonance imaging (MRI) scan of the shoulders revealed a moderate intrasubstance partial thickness tear of the left supraspinatus and infraspinous tendons with tendinosis, a intrasubstance partial thickness tear of the right supraspinatus and infraspinous tendons with tendinosis, and moderate bilateral glenohumeral osteoarthritis with circumferential degenerative changes of the labrum bilaterally. The records included documents from second physician's assistants, nurses and nurse practitioners. Appellant also submitted work injury reports from August 6, 2001 to September 14, 2005 in which he alleged injuries to his hip, finger and elbow.

In a January 14, 2010 decision, an Office hearing representative affirmed the June 4, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition,

² 5 U.S.C. §§ 8101-8193.

³ *Gary J. Watling*, 52 ECAB 357 (2001).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁶ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS

Appellant alleged that he sustained a back, neck and right shoulder injury while lifting ammunition onto a pallet on February 12, 2009. The Board notes that the evidence supports that the incident occurred as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant's back, neck or right shoulder condition are causally related to the February 12, 2009 work incident. On April 30, 2009 the Office advised him of the medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from a physician that explains how the February 12, 2009 work incident caused or aggravated his claimed conditions.

Appellant submitted treatment notes from Dr. Schindler dated February 17 and 26, 2009, who diagnosed thoracic back strain. He reported loading boxes of ammunition onto a pallet at work on February 12, 2009 and experiencing neck and back pain. Dr. Schindler noted that appellant was a swimmer and weight lifter who injured his neck and muscles at the base of his occiput which progressed to his upper and mid back. Appellant had lifted weights the prior Thursday and his neck pain began later that day into the next day. The Board finds that Dr. Schindler's reports do not provide any clear support that appellant's neck, back or shoulder conditions are work related. Rather, he opined that it was unclear whether the injury was work related. Dr. Schindler treated appellant in follow-up for neck pain with radicular symptoms and diagnosed intervertebral cervical disc degeneration and backache with radicular symptoms. Dr. Schindler did not specifically address how appellant's employment incident caused or aggravated any diagnosed medical condition.⁸ His reports are insufficient to establish

⁵ *Id.*

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁸ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

appellant's claim as he did not explain how lifting ammunition onto a pallet on February 12, 2009 would cause or aggravate the diagnosed degenerative conditions.

On February 17, 2009 appellant was treated by Dr. Jain who diagnosed osteoarthritis of the cervical and lumbar spine, arthralgia and left medial meniscal tear. Dr. Jain also noted that appellant was an active weight lifter and swimmer. He treated appellant for cervical spine symptoms and pain secondary to cervical spine degenerative disc disease and bilateral shoulder pain secondary to joint osteoarthritis and rotator cuff tendinitis. Dr. Jain did not provide a history of the February 12, 2009 incident or address how appellant's work activities caused or aggravated any diagnosed medical condition.⁹ Therefore, the reports are insufficient to meet appellant's burden of proof. The dispensary record of Dr. Falls noted physical restrictions but did not address causal relationship.

The remainder of the medical evidence, including reports of diagnostic testing and employer and VA records, is also insufficient to establish appellant's claim. The x-ray and MRI scan reports are insufficient as they fail to address causal relationship between appellant's diagnosed condition and the February 12, 2009 work incident. Other employing establishment and VA medical records predate the February 12, 2009 traumatic incident and do not support that it caused an injury. The Board also notes that the submitted medical records include documents from physicians' assistants and nurses. However, nurses and physicians' assistants are not physicians as defined under the Act. Their opinions are of no probative medical value.¹⁰ These reports are insufficient to meet appellant's burden of proof. Consequently, the medical evidence is insufficient to establish that the February 12, 2009 lifting incident caused or aggravated a diagnosed medical condition.

On appeal appellant contends that he sustained a muscle spasm at work on February 12, 2009 unrelated to his other injuries and that the Office incorrectly combined all of his injuries together. The Board notes that his claim was denied because the medical evidence was insufficient to establish that the February 12, 2009 lifting incident caused or aggravated a diagnosed medical condition. The medical evidence submitted by appellant, does not provide a rationalized opinion explaining how his diagnosed conditions were caused or aggravated by his activities at work on February 12, 2009.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a back, neck and right shoulder injury causally related to his February 12, 2009 employment incident.

⁹ *Id.*

¹⁰ *S.E.*, Docket No. 08-2214 (issued May 6, 2009). See 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

ORDER

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

Issued: May 19, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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