United States Department of Labor
Employees' Compensation Appeals Board

J.F., Appellant	)	
and	)	**Docket No. 10-1978**
	)	**Issued: May 16, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On July 27, 2010 appellant filed a timely appeal from a January 27, 2010 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] 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 met his burden of proof to establish that he sustained an injury in the performance of duty on April 16, 2009.

FACTUAL HISTORY

On May 14, 2009 appellant, then a 64-year-old forklift operator, filed a traumatic injury claim (Form CA-1) alleging that on April 16, 2009 he sustained a lower back, left thigh and right leg injury when he was getting off his forklift and felt pain in his low back. The employing

[1] 5 U.S.C. § 8101 *et seq.*

establishment indicated that appellant stopped work on April 24, 2009 and first received medical care on April 22, 2009. It controverted the claim alleging that it had no knowledge of the incident and because of the amount of time it took him to report the incident.

By letter dated May 14, 2009, appellant stated that on April 16, 2009 he was getting off his forklift and experienced pain in his lower back. He told his supervisor and coworkers and was given some pain medication. Appellant did not go to a physician because he felt okay and noted that he had prior back surgery in December 2006 and would take Tylenol for pain. On April 27, 2009 he got up to use the restroom but could not stand because the pain was severe from his low back to his right foot. It was then that appellant went to Southern Region Hospital Emergency room and was diagnosed with chronic back pain.

An April 27, 2009 Southern Regional Medical Center Emergency Discharge report diagnosed appellant with chronic back pain and prescribed methylprednisolone, lioresal, hydrocodone and acetaminophen. Robert Prafford, a nurse practitioner, noted that appellant could return to work on April 29, 2009 with no work restrictions.

Return to work notes dated April 28 to May 5, 2009 from Dr. Christopher Haraszti, a Board-certified orthopedic surgeon, reported that appellant was unable to work and was under the physician's care.

By letter dated May 22, 2009, the Office informed appellant that the evidence received failed to establish that he sustained an injury. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

In a May 20, 2009 medical report, Dr. Haraszti noted that appellant was getting off forklift at work and felt pain in his lower back. On April 27, 2009 appellant woke up with excruciating pain running down the right leg to the big toe and had pain on the lateral side of the lower leg with some tingling on the anterior of the left thigh. Dr. Haraszti noted that appellant's pain was still bothering him and was similar to the pain experienced from his back injury in December 2006. Upon physical examination of the low back, he noted palpable paravertebral muscle tightness bilaterally and tenderness over the sciatic nerves at the buttocks. A magnetic resonance imaging (MRI) scan showed a T1 hyperintense and T1 hypointense material within the right lateral recess at L4-5 causing impingement on the descending right L5 nerve root. Dr. Haraszti also noted bilateral neural foraminal stenosis at L4-5 and L5-S1 with some edema in the right paraspinal soft tissues superficial to the sacrum. He diagnosed right lumbar radiculopathy, recommended epidural steroid injections and physical therapy and advised that it would be difficult for appellant to go back to work. Dr. Haraszti referred appellant to Dr. Galan for evaluation and treatment of the right lumbar radiculopathy.

By letter dated June 1, 2009, appellant stated that he had been working for the postal service since August 16, 1986 and had been injured three times before. He reported that he delayed in filing the accident report because he could not walk but that his employer knew of his condition.

By decision dated July 8, 2009, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained an injury.

On July 29, 2009 appellant requested an oral hearing before an Office hearing representative. He submitted a letter and witness statements which attested to the April 16, 2009 incident.

In a June 4, 2009 medical report, Mansour Jazayeri, a physician's assistant, noted appellant's emergency room visits and diagnosis of right leg radiculopathy.

A July 1, 2009 duty status report with an illegible physician signature diagnosed lumbar radiculopathy and noted that appellant was getting off a forklift and felt pain in his lower back, left thigh and right leg.

In medical reports dated May 5 to October 20, 2009, Dr. Haraszti reiterated appellant's traumatic incident on April 16, 2009 and diagnosed impingement on right L5 nerve root due to extruded disc verse postoperative scar and bilateral neural stenosis at L4-5 and L5-S1. He noted that appellant continued to have back pain and should continue physical therapy.

At the November 18, 2009 hearing, the Office hearing representative found that the April 16, 2009 incident occurred as alleged. The hearing representative noted, however, that the medical evidence was insufficient to establish a causal relationship between the claimed bad condition and the employment incident. She advised appellant as to the necessary medical evidence and held the record open for 30 days.

In a November 24, 2009 medical report, Dr. Haraszti opined that appellant's low back pain and numbness of the lateral calf and big toe were due to his injury from December 2006 and seemed to be an exacerbation of his chronic radiculopathy that started in December 2006.

In a December 15, 2009 electromyogram (EMG) and nerve conduction study (NCS), Dr. Sara Shuler, a Board-certified neurologist, reported that appellant's study showed no evidence of active radiculopathy, myopathy or peripheral neuropathy of the lower extremities.

By decision dated January 27, 2010, the Office hearing representative affirmed the July 8, 2009 decision, as modified, to reflect that the April 16, 2009 incident occurred as alleged. The hearing representative found, however, that the medical evidence did not support that appellant's back condition was causally related to the April 16, 2009 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Act 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; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the

employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or 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, 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. 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.[6]

ANALYSIS

The Office accepted that the April 16, 2009 incident occurred as alleged. The issue is whether appellant established that the incident caused a lower back or leg injury. The Board finds that he did not submit sufficient medical evidence to support that his injury is causally related to the April 16, 2009 employment incident.[7]

In medical reports dated May 5 to November 24, 2009, Dr. Haraszti noted that appellant was getting off the forklift at work and felt pain in his lower back. An MRI scan was obtained and he diagnosed right lumbar radiculopathy and impingement on right L5 nerve root due to extruded disc verse postoperative scar and bilateral neural stenosis at L4-5 and L5-S1.

[2] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

[4] *Elaine Pendleton*, *supra* note 2.

[5] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[6] *James Mack*, 43 ECAB 321 (1991).

[7] *See Robert Broome*, 55 ECAB 339 (2004).

Dr. Haraszti recommended epidural steroid injections, physical therapy and restricted appellant from returning to work. In his November 24, 2009 report, he opined that appellant's low back pain and numbness of the lateral calf and big toe were due to his injury from December 2006 and seemed to be an exacerbation of his chronic radiculopathy that started in December 2006.

The Board finds that the opinion of Dr. Haraszti is not well rationalized. While Dr. Haraszti diagnosed appellant's condition, he failed to address the causal relationship between the low back radiculopathy and the April 16, 2009 employment incident. The reports provided a detailed explanation of the MRI scan but failed to provide any opinion on the cause of the injury. The reports suggest that appellant's back condition resulted from a previous injury in December 2006 rather than a new traumatic injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8] Without medical reasoning explaining how the April 16, 2009 employment incident caused or contributed to his back and leg injury, Dr. Haraszti's report is insufficient to meet appellant's burden of proof.[9]

The remaining medical evidence of record is also insufficient to establish a causal relationship between appellant's injury and the April 16, 2009 employment incident. Registered nurses, licensed practical nurses and physicians assistants are not physicians as defined under the Act and their opinions are of no probative value.[10] The return to work notes from Dr. Haraszti and the December 15, 2009 EMG and NCS from Dr. Shuler failed to address the causal relationship between appellant's injury and the April 16, 2009 employment incident. Moreover, Dr. Shuler reported that appellant's study showed no evidence of active radiculopathy, myopathy or peripheral neuropathy of the lower extremities.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[11] An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.[12] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a traumatic injury on April 16, 2009 in the performance of duty, as alleged.

[8] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[9] *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

[10] 5 U.S.C. § 8102(2) of the Act provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

[11] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[12] *D.D.*, 57 ECAB 734 (2006).

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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