United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 11-1004**
	)	**Issued: November 8, 2011**
DEPARTMENT OF THE ARMY, ARMY NATIONAL GUARD, Lincoln, NE, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 8, 2011 appellant, through his representative, filed a timely appeal from a January 21, 2011 merit decision of the Office of Workers' Compensation Programs' (OWCP) hearing representative which denied his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)[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 sustained a back injury causally related to the March 3, 2010 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 16, 2010 appellant, then a 24-year-old allied trades worker, filed a traumatic injury claim alleging that on March 3, 2010 he jarred and twisted his back when he was moving metal sheets. He did not stop work.[2]

In a March 11, 2010 note, Dr. April C. Brinkhoff, a Board-certified family practitioner, examined appellant due to an injury and restricted him from lifting until March 18, 2010. In a March 12, 2010 progress note, she restricted him from lifting for one week and excused him from the physical test for guard next week.

In progress notes dated March 17 to 23, 2010, a nurse practitioner noted that appellant was first seen on March 3, 2010 for a mid-back injury after lifting metal sheets weighing nearly 110 pounds at work. Appellant described the pain as worse in the mid back radiating down the back and down into his low back with some right leg pain. He was excused from work from March 17 to 25, 2010 and restricted to lifting no more than 10 pounds and any standing, sitting, rotating or forward flexion. The nurse practitioner assessed that appellant suffered from a back strain due to increased pain in his back and leg numbness.

In a March 30, 2010 progress note, Dr. Steven J. Saathoff, a Board-certified family practitioner, stated that appellant injured his back on March 3, 2010 when he lifted 100 pound sheets of metal and experienced pain in his mid to low back. He noted that x-ray results were negative. Appellant was capable of work but complained of severe pain in the mid back right radiating down the right leg into his foot.

In an April 2, 2010 progress note, Dr. Saathoff noted appellant's continued complaints of severe mid to lower back pain and pointed out that a March 31, 2010 magnetic resonance imaging (MRI) scan of his lumbar spine revealed a normal lumbar spine, old T12 mild vertebral body compression deformity without acute injury, mild degenerative disc disease and tiny T2-3 disc protrusion without canal stenosis or nerve impingement. He further observed tenderness and spasm throughout appellant's thoracic and lumbar musculature and diagnosed him with mid to lower back pain. Dr. Saathoff also excused appellant from work until April 14, 2010 due to his illness.

In an April 14, 2010 letter, Dr. David S. Diamant, Board-certified in physical medicine and rehabilitation, examined appellant for his mid-back pain and observed a certain sense of paresthesia in the right lower limb and pain in the right upper limb. He observed that MRI scans of appellant's thoracic and lumbar spine were unremarkable other than increased T2 signal within the facet joint at T6-7 and T7-8. Dr. Diamant stated that appellant "wondered if that is not the cause of his symptoms. I wonder if [appellant] just does not have a sprain of those joints."

In an April 14, 2010 report, Dr. Diamant stated that on March 3, 2010 appellant experienced mid-back pain when he lifted a very heavy piece of sheet metal at work and has complained of constant mid-back pain in the mid-thoracic region since then. The examination

[2] OWCP administratively accepted appellant's claim to allow medical payments up to $1,500.00.

revealed intermittent numbness in appellant's right lower limb and intermittent pain in the right posterior brachial region but no radicular symptomatology, leg pain and postural abnormality. Appellant complained of increased pain half-way down on forward flexion and beyond neutral on extension. He was palpably tender in the midline, mid-thoracic region around T6, T7 and T8. Dr. Diamant noted that a March 31, 2010 MRI scan showed no evidence of spinal cord abnormality and impingement but did show T2 signal within the T7-8 and T6-7 facet joint bilaterally. He diagnosed acute mid-back pain, right arm discomfort, right leg paresthesias. Dr. Diamant further explained that appellant had T2 signal in the facet joint at T6-7 and T7-8 bilaterally and opined that "this may have something to do with his pain."

In an April 21, 2010 work excuse slip, Dr. Diamant noted that appellant should not work due to a work-related injury.

Appellant also submitted physical therapy reports dated March 25 to May 6, 2010.

On May 6, 2010 OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested additional information. It specifically requested a detailed description of how the incident occurred, statements from any witnesses and his response to several questions. OWCP also requested a detailed, narrative medical report which included a history of injury, firm diagnosis of any condition, findings and test results, treatment provided and a medical opinion as to how the March 3, 2010 incident caused the diagnosed condition.

In an April 21, 2010 office note, Dr. Diamant noted appellant's continued complaints of mid-back pain and described new pain in his right arm. He observed that appellant's appreciation of light touch was diffusely diminished in the right upper limb as compared to the left and that his gait, station and manual muscle testing were normal. Regarding appellant's mid back, Dr. Diamant noted that it may be thoracic facet joint mediated based on the increased T2 signal within those facet joints. He diagnosed subacute mid-back pain and right arm and leg pain.

In a May 10, 2010 office note, Dr. Diamant noted appellant's complaints of mid-back pain and intermittent right arm and right leg pain. He reported that an MRI scan of the cervical spine came back essentially normal and did not reveal any disc protrusion, extrusion, spinal cord impingement and abnormality of bone that would account for his symptoms. Dr. Diamant observed increased T2 signal within the facet joint at T6-7 and T7-8 and opined that he did not know if this was the cause of appellant's symptoms or not. He stated that appellant's pain seemed out of proportion to what was on the diagnostic imaging and diagnosed subacute primarily right mid-back pain with intermittent pain spread to the right arm and right leg.

In a May 10, 2010 MRI scan of appellant's cervical spine, Dr. Kevin R. Gillespie, a Board-certified diagnostic radiologist, observed anatomic alignment with no recent or remote fracture, normal marrow signal and unremarkable cervical cord, foramen, magnum, soft tissue and visualized posterior fossa. He noted some trace marginal hypertrophic spurring at a few levels and diagnosed minimal degenerative changes, otherwise negative.

In a June 21, 2010 letter, Dr. Diamant stated that appellant's prognosis was unclear and that his pain seemed quite out of proportion to any findings on his diagnostic imaging and out or proportion to the mechanism of injury.

In a decision dated July 14, 2010, OWCP denied appellant's claim on the grounds of insufficient medical evidence. It accepted that the March 3, 2010 incident occurred as alleged but determined that the medical evidence failed to provide a firm diagnosis from a physician and did not establish a causal relationship between his alleged condition and the March 3, 2010 employment incident.

On July 20, 2010 appellant, through his representative, requested a telephone hearing. He later changed his request to a review of the written record.

By decision dated January 21, 2011, OWCP's hearing representative affirmed the July 14, 2010 denial decision based on insufficient medical evidence. It determined that the medical evidence of record did not contain a definitive diagnosis and medical opinion on whether the March 31, 2010 employment incident caused or contributed to his alleged condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence.[4] To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the two components of "fact of injury" have been established.[5] First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[7]

Casual relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical opinion evidence.[8] 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.[9] The opinion of the physician must be based on a complete

[3] 5 U.S.C. §§ 8101-8193.

[4] *J.P.*, 59 ECAB 178 (2007); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

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

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.[10]

ANALYSIS

Appellant alleges that on March 3, 2010 he sustained a back injury when he lifted heavy sheets of metal at work. In its July 14, 2010 decision, OWCP accepted that the incident occurred as alleged, but denied his claim finding insufficient medical evidence demonstrating that he sustained a diagnosed condition causally related to the March 3, 2010 incident. The Board finds that the medical evidence fails to establish that appellant sustained a diagnosed back condition as a result of the accepted employment incident.

Appellant submitted medical reports from Dr. Diamant. In an April 14, 2010 report, Dr. Diamant noted that x-rays were normal and MRI scans were unremarkable other than increased T2 signal within the facet joint at T6-7 and T7-8. He opined that this "may have" to do with appellant's pain. Dr. Diamant diagnosed acute mid-back pain, right arm discomfort and right leg parethesias. In an April 21, 2010 report, he treated appellant for his back pain and noted that it "[maybe]" thoracic facet joint mediated based on the increased T2 signal within those facet joints. Finally, in a May 10, 2010 report, Dr. Diamant observed increased T2 signal within the facet joint at T6-7 and T7-8 and opined that he did not know if this was the cause of appellant's symptoms or not. He also reported that a cervical spine MRI scan was essentially normal and would not account for appellant's symptoms. Dr. Diamant stated that appellant's pain seemed out of proportion to what was on the diagnostic imaging tests. In a June 21, 2010 letter, he restated that appellant's pain seemed quite out of proportion to any findings on his diagnostic imaging results.

The only medical diagnosis Dr. Diamant provided was of back pain. The Board has found, however, that pain is not a compensable medical diagnosis.[11] Dr. Diamant also stated that appellant's back condition "may be" thoracic facet joint mediated. His opinion that appellant's condition "[maybe]" thoracic facet joint is speculative in nature. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.[12] Accordingly, Dr. Diamant did not provide a firm diagnosis of appellant's condition nor opine on the cause of appellant's back pain. Instead, he reported that appellant's symptoms and pain seemed "out of proportion" to what was on the diagnostic imaging tests. While Dr. Diamant observed increased T2 signal within the facet joint at T6-7 and T7-8, he did not know if this was the cause of appellant's symptoms and pointed out that his diagnostic imaging results were normal and unremarkable. As he was not able to provide a rationalized medical

[10] *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

[11] *Robert Broome*, 55 ECAB 339, 342 (2004).

[12] *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

opinion on causal relationship, his reports fails to establish that appellant sustained an injury on March 3, 2010.[13]

Appellant also submitted medical reports dated March 30 and April 2, 2010 from Dr. Saathoff, who provided an accurate history of injury that appellant experienced pain in his mid to low back when lifting heavy sheets of metal at work. Dr. Saathoff pointed out that x-ray results were negative and a March 31, 2010 MRI scan revealed a normal lumbar spine. He diagnosed mid to lower back pain. Pain, as previously noted, is a symptom, not a compensable medical diagnosis.[14] Accordingly, Dr. Saathoff's opinion is insufficient to establish appellant's claim.

In Dr. Gillespie's May 10, 2010 cervical spine MRI scan, he observed anatomic alignment, normal marrow signal and an unremarkable cervical cord. He noted some trace of marginal hypertrophic spurring at a few levels and diagnosed minimal degenerative changes, otherwise negative. Dr. Gillespie, however, does not provide any opinion on the cause of appellant's back pain nor explain how the March 3, 2010 employment incident caused or aggravated his alleged condition. Similarly, Dr. Brinkhoff also did not provide any opinion on the cause of appellant's back pain or on the causal connection between appellant's alleged back condition and the accepted employment incident in his March 11, 2010 work restriction notes. Because medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship, these reports are also insufficient to establish appellant's claim.[15]

The other medical evidence of record consists of physical therapy reports and progress notes from a nurse practitioner. While the nurse practitioner stated that appellant sustained a back strain due to increased pain in his back and leg numbness, this medical opinion is of no probative value as physical therapists and nurse practitioners are not physicians as defined under FECA.[16] Thus, their medical opinions regarding diagnosis and causal relationship do not establish appellant's claim.[17]

On appeal, appellant, through his representative, alleges that OWCP's January 21, 2011 denial decision was contrary to fact and law. The evidence submitted, however, does not contain a firm, medical diagnosis nor any rationalized medical opinion establishing that his alleged back condition was causally related to the March 3, 2010 incident. As previously stated, causal relationship is a medical issue that can only be established by the submission of rationalized

[13] *T.H.*, 59 ECAB 388 (2008); *J.C.*, Docket No. 10-1195 (issued March 23, 2011).

[14] *Robert Broome, supra* note 11.

[15] *K.W.*, 59 ECAB 271 (2007); *R.E.*, Docket No. 10-679 (issued November 16, 2010).

[16] Section 8102(2) provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

[17] *Roy L. Humphrey*, 57 ECAB 238 (2005); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

medical opinion evidence.[18] As appellant has not submitted such rationalized medical opinion evidence in this case, he did not meet his burden of proof to establish his claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP 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 appellant failed to meet his burden of proof to establish that he sustained a back condition causally related to the March 3, 2010 employment incident.

[18] *Mary J. Summers*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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