United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
	)	
and	)	**Docket No. 11-1480**
	)	**Issued: February 6, 2012**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, Marion, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On June 8, 2011 appellant, through his attorney, filed a timely appeal from a March 31, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 traumatic injury in the performance of duty on October 30, 2009.

FACTUAL HISTORY

On October 30, 2009 appellant, then a 50-year-old plumbing worker supervisor, filed a traumatic injury claim alleging that he sustained lower back pain and bilateral foot numbness on that day while running toward a prison fight. He did not stop work.

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[1] 5 U.S.C. § 8101 *et seq.*

A November 11, 2009 sonogram obtained by Dr. M.T. Joseph, a Board-certified internist, revealed normal bilateral ankle-brachial indices of 1.16 while a November 20, 2009 electromyogram (EMG) conducted by Dr. Brent Newell, a Board-certified physiatrist, indicated mild mixed sensorimotor peripheral neuropathy or chronic lumbar stenosis. In a December 4, 2009 magnetic resonance imaging (MRI) scan report, Dr. Hisham T. Youssef, a Board-certified diagnostic radiologist, found degenerative L4-5 and L5-S1 changes, including annular disc bulges, protrusions and stenoses.

OWCP informed appellant in a February 24, 2010 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a narrative medical report from a physician explaining how the alleged October 30, 2009 employment incident caused or contributed to his condition.

Appellant submitted additional evidence. In a January 4, 2010 report, Dr. Angela L. Baxter, a chiropractor, related that he ran to a fight at work on October 30, 2009. Afterward, appellant experienced lower back pain and toe numbness. On examination, Dr. Baxter observed limited cervical and lumbar range of motion (ROM), cervical, thoracic and lumbosacral segment dysfunction with hypomobility and point tenderness, diminished patellar and Achilles reflexes, hypoesthetic L5 and S1 dermatomes and muscle hypertonicity, tenderness and strength loss. Multiple orthopedic and neurological maneuvers were positive and a lumbar x-ray exhibited L4-5 and L5-S1 disc space narrowing. Dr. Baxter diagnosed dysfunctional cervical, thoracic and lumbosacral segments, lumbalgia, unspecified myalgia and myositis and disturbance of skin sensation. She opined, "The injury at work and mechanism of injury exacerbated [appellant's] low back pain and created neck and upper back pain." Dr. Baxter stated that one of the goals of his care was to correct all subluxations.[2] In a February 4, 2010 report, she stated that palpation indicated a decrease in pelvic, sacral and sacroiliac subluxation.

By decision dated April 5, 2010, OWCP denied appellant's claim, finding that the evidence did not sufficiently demonstrate that a work event occurred on October 30, 2009.

Appellant requested reconsideration on December 30, 2010. In an undated statement, he detailed that he was working on October 30, 2009 when he was alerted by an alarm to a fight in progress. Appellant hastily sprinted to help five officers subdue more than 100 inmates. Thereafter, he became aware of his back pain and foot numbness.

An October 6, 2010 MRI scan report from Dr. Byron W. Johnson, a Board-certified diagnostic radiologist, revealed grade 1 L4-5 retrolisthesis with bilateral neural foraminal stenosis and L3-4 midline disc protrusion.

In an October 27, 2010 report, Dr. Joel W. Ray, a Board-certified neurological surgeon, reiterated that appellant ran to break up a fight at work on October 30, 2009 and subsequently sustained back, bilateral foot and left lower extremity symptoms. He observed diffuse lumbar and paralumbar tenderness on palpation, increased back pain on standing and ambulation and diminished deep tendon reflexes and bilateral foot sensation. After reviewing the previous MRI

[2] Additional reports from January 5 to March 8, 2010 showed that appellant received regular chiropractic treatment.

scans and EMG, Dr. Ray explained that appellant's discogenic back pain likely resulted from the L3-4 annular tear and central disc protrusion as well as the L4-5 disc space loss and bilateral foraminal stenosis. He articulated in a November 24, 2010 report that "[appellant's] current symptomatic complaints are related to the work-related injury which occurred on October 30, 2009."[3]

On March 31, 2011 OWCP modified the April 5, 2010 decision to find that the October 30, 2009 employment incident occurred as alleged. It denied appellant's claim on the grounds that the medical evidence did not sufficiently establish that this accepted event was causally related to his condition.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,[4] including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.[5] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. The employee must also submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes 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. The opinion of the physician must be based on a complete factual and medical background, 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.[8]

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[3] Dr. Ray's November 24, 2010 report essentially restated the content found in his earlier October 27, 2010 report.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[5] *R.C.*, 59 ECAB 427 (2008).

[6] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *T.H.*, 59 ECAB 388 (2008).

[8] *I.J.*, 59 ECAB 408 (2008).

ANALYSIS

The case record supports that appellant ran to help subdue inmates during a prison fight on October 30, 2009. The Board finds that he did not establish his traumatic injury claim because the medical evidence did not sufficiently prove that this accepted employment incident caused or contributed to his back, bilateral foot or left lower extremity condition.

Appellant submitted several reports from Dr. Baxter, including a January 4, 2010 report where she noted an account of the October 30, 2009 work event, performed an examination, diagnosed cervical, thoracic and lumbosacral segment dysfunction. Dr. Baxter concluded that these injuries were attributable to the work incident. She stated that a goal of appellant's treatment was to correct all subluxations. Dr. Baxter also noted that a lumbar x-ray confirmed narrowing of the L4-5 and L5-S1 disc space. In her February 4, 2010 report, she noted that palpation revealed decreased pelvic, sacral and sacroiliac subluxation. As defined under FECA, a "physician" includes a chiropractor only to the extent that her reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[9] Subluxation means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.[10] Although Dr. Baxter made some reference to subluxations in her January 4 and February 4, 2010 reports, she did not clearly state that appellant had a spinal subluxation based on a review of x-rays. Thus, she is not a "physician" with respect to these particular spinal injuries and her opinion regarding their cause lacked evidentiary weight.[11] Furthermore, even if Dr. Baxter's reports could be construed as diagnosing a spinal subluxation based on x-rays, she failed to explain how the October 30, 2009 employment incident pathophysiologically caused or contributed to a diagnosed spinal subluxation.[12]

Dr. Ray opined that in an October 27, 2010 report appellant's discogenic back pain was due to the L3-4 annular tear and central disc protrusion and the L4-5 disc space loss and bilateral foraminal stenosis. He later added in a November 24, 2010 report that the condition was related to the October 30, 2009 work event. Nonetheless, Dr. Ray's opinion offered limited probative value on the issue of causal relationship because he did not provide adequate medical rationale explaining the reasons for his opinion.[13] Finally, the diagnostic records from Drs. Johnson, Joseph, Newell and Youssef were of diminished probative weight because none provided an

[9] 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[10] 20 C.F.R. § 10.5(bb).

[11] *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician). The Board notes that Dr. Baxter identified pelvic, sacral and sacroiliac subluxation in a February 4, 2010 report. However, the case record does not indicate that she corroborated this finding by x-ray.

[12] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994). *See also Theresa M. Fitzgerald*, 47 ECAB 689 (1996) (rationalized medical opinion evidence must relate diagnosed subluxation to employment incident).

[13] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954).

opinion on causal relationship.[14] In the absence of rationalized medical opinion evidence, appellant failed to meet his burden.

Appellant's counsel contends on appeal that the March 31, 2011 decision was contrary to fact and law. As noted, the medical evidence remained insufficient to demonstrate that the accepted October 30, 2009 employment incident was causally related to a back, bilateral foot or left lower extremity condition.

Appellant may submit new evidence or argument as part of a formal 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 did not establish that he sustained a traumatic injury in the performance of duty on October 30, 2009.

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2012
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

[14] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).