

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

D.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 11-1326
Issued: January 6, 2012**

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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 10, 2011 appellant, through his attorney, filed a timely appeal from an April 7, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) that denied his claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 an injury in the performance of duty on March 22, 2010.

On appeal his attorney asserts that the decision is contrary to fact and law.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On April 25, 2010 appellant, then a 67-year-old clerk working modified duty, filed a claim asserting that he strained his left leg while exiting his car in the employing establishment parking lot when reporting to work.² He noted an accepted back claim and radiation therapy for prostate cancer in 2009. In a June 9, 2010 report, Dr. Anil Pai, a Board-certified internist, advised that appellant had twisted and injured his left leg and had pain in the outer aspect of his left thigh and leg with difficulty walking and his legs would give way. Dr. Pai noted the possibility of a pinched nerve and requested further testing. He advised that appellant should stay off work from June 20 to July 1, 2010 due to periodic unsteadiness. A June 22, 2010 electromyographic (EMG) study of the lower extremities was interpreted as abnormal, compatible with L5 radiculopathy, mild, chronic, secondary to an intraspinal process affecting the dermatome. He also submitted physical therapy reports dated from April 1 to June 3, 2010.

By letter dated July 13, 2010, OWCP informed appellant of the evidence needed to support his claim that he strained his leg on March 22, 2010. It asked that he provide a detailed narrative report from his physician. In a July 1, 2010 treatment note, Dr. Timothy Nice, a Board-certified orthopedic surgeon, noted that appellant injured his back in March. He stated that appellant had worsening symptoms radiating over the L4-5 distribution of the left lower leg. Dr. Nice advised that motor and sensory reflex and muscle strength examinations were normal in both legs and that straight leg raise was negative. He noted that a 2008 magnetic resonance imaging (MRI) scan did not demonstrate a herniated disc but thought this might have changed and recommended a new study.

In a July 22, 2010 report, Dr. Pai noted appellant's report that in March 2010 he developed leg pain when getting out of his car and thought he might have put excess weight on it. He stated that appellant reported that the pain was initially in the thigh and hip area on the left but had gradually radiated to the left knee and leg, and that he underwent physical therapy but continued to have difficulty with his ankle and left leg and had difficulty crossing his knee while trying to put on socks, had difficulty walking at times, and felt as if he was losing his balance and that his left knee would give way. Dr. Pai opined that appellant did not have symptoms suggestive of radicular pain, and indicated that the pain was interfering with work, especially when he had to stand up from sitting and/or carry or lift moderately heavy objects. He provided physical examination findings, noting that appellant had an area of dermatitis on the dorsum of his left foot, that left knee range of motion was full with some crepitus and no signs of laxity or inflammation and no calf tenderness. Dr. Pai diagnosed left leg/thigh pain, L5 radiculopathy on nerve conduction study and obesity. He stated that he explained to appellant that the most likely explanation of his symptoms was muscle pain/ligamentous strain around the left thigh/leg, but that it could also be a stress fracture or a prostate cancer metastasis. July 22, 2010 x-rays of the left hip and left femur demonstrated osteoarthritis with no acute findings. X-rays of the left knee and left tibia fibula revealed no acute findings. An August 25, 2010 MRI scan study of the

² Appellant filed a recurrence form for a claim adjudicated by OWCP under file number xxxxxx314, accepted for an employment-related back condition. He dated the claim April 25, 2009, and stated that the injury occurred on March 22, 2010. His supervisor signed the claim form on April 27, 2010, and in a letter dated June 4, 2010, appellant identified the injury as occurring on March 22, 2010. OWCP determined that the March 22, 2010 claim constituted a new injury, and adjudicated it as a traumatic injury claim.

lumbar spine demonstrated facet hypertrophy at L3-4, L4-5 and L5-S1.³ Dr. Nice provided a duty status report dated August 26, 2010 in which he diagnosed weakness in the left leg and provided restrictions to appellant's physical activity.

By decision dated September 22, 2010, OWCP found that the March 22, 2010 incident occurred but that the medical evidence did not establish that appellant sustained an injury caused by this incident.

On September 30, 2010 appellant, through his attorney, requested a telephone hearing. In an August 26, 2010 treatment note, Dr. Nice reported that appellant was seen for his MRI scan study, and appellant was prescribed a high CAM walking brace, to be worn continuously.

In a September 23, 2010 report, Dr. Pai reported that appellant continued to have discomfort, soreness, and constant sharp pain in his left leg, usually aggravated by internal rotation of his left ankle, flexion of the left knee and internal rotation of the left hip, with symptoms crossing his leg to put on socks, walking on hard surfaces such as concrete, and trying to stand up from a low chair or stool. He stated that appellant mostly encountered these activities at work, and reported that while appellant initially had pain in the left thigh and difficulty balancing while walking, this had improved with physical therapy, and the symptoms had shifted to his left leg. Physical examination demonstrated crepitus in the left knee, no ligament laxity, no evidence of free fluid, and no calf swelling or tenderness. The right knee was unremarkable, and range of motion of the ankles was full. Dr. Pai opined that the most likely reason for appellant's symptoms was left knee arthritis, worsened by the March 2010 employment incident. He stated that appellant should continue physical therapy, should lose weight, and avoid or modify the activities that aggravated his symptoms, such as repetitive standing and sitting, and that he should minimize walking on concrete.

At the January 10, 2011 hearing, appellant described the March 22, 2010 incident and stated that he still had pain, mainly in the left tibia area. He took off work for about three weeks but did not remember the dates and he stopped work again in September 2010 because no work was available. Appellant's attorney advised that appellant was currently receiving wage-loss compensation under another claim and argued that the claimed March 2010 injury was either a recurrence of the other back claim or that it caused aggravation of left leg arthritis. Appellant thereafter submitted a February 24, 2011 report in which Dr. Michael Forman, a podiatrist, advised that he was treating appellant for dermatitis on the dorsal surface of both feet.

By decision dated April 7, 2011, an OWCP hearing representative affirmed the September 22, 2010 decision on the grounds that the medical evidence did not establish that appellant sustained an employment-related injury on March 22, 2010.

³ Appellant also submitted a January 4, 2008 MRI scan of the lumbar spine that demonstrated evidence of mild degenerative disc disease with no evidence of significant canal stenosis, neural foraminal compromise, or focal disc protrusion.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, 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 are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁴

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.⁵ To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁶

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical 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.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *Gary J. Watling*, *supra* note 4.

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS

The evidence supports that the March 22, 2010 employment incident occurred as alleged. The Board finds that the medical evidence of record is insufficient to establish that appellant sustained an injury or medical condition caused by this incident.

The June 22, 2010 EMG, July 22, 2010 x-rays and August 25, 2010 MRI scan study did not include an opinion on the cause of any diagnosed condition, and 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.¹⁰ Dr. Forman did not discuss left leg pain or provide any discussion relative to the March 22, 2010 employment incident. Moreover, the physical therapy notes do not constitute competent medical evidence as a physical therapist is not a physician as defined under FECA.¹¹

In a July 1, 2010 report, Dr. Nice reported that appellant injured his back in March, not his leg, and he attributed appellant's symptoms to L4-5 radiculopathy. In an August 26, 2010 duty status report, the physician merely diagnosed left leg weakness without providing a definitive diagnosis or explanation as to the cause of this condition. His reports are therefore insufficient to meet appellant's burden to establish that he sustained a diagnosed condition or injury caused by the March 22, 2010 employment incident.

On June 19, 2010 Dr. Pai first attributed appellant's left leg symptoms to a pinched nerve. On July 22, 2010 he diagnosed left leg/thigh pain, L5 radiculopathy on nerve conduction study, and obesity. Dr. Pai stated that he advised appellant that the most likely explanation of his symptoms was muscle pain/ligamentous strain around the left thigh/leg, but that it could also be a stress fracture or a prostate cancer metastasis. On September 23, 2010 he opined that the most likely reason for appellant's symptoms was left knee arthritis, worsened by the March 2010 employment incident.

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹² Dr. Pai provided a number of speculative diagnoses for appellant's left lower extremity complaints without providing any explanation as to why he changed his mind. He did not sufficiently explain why the EMG and MRI scan findings that supported lumbar degenerative disc disease did not cause appellant's problems or provide

¹⁰ *Willie M. Miller*, 53 ECAB 697 (2002).

¹¹ *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Section 8102(2) of FECA 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. 5 U.S.C. § 8102(2).

¹² *Patricia J. Glenn*, 53 ECAB 159 (2001).

any rationale as to why the March 22, 2010 incident caused continuing, worsening symptoms. Dr. Pai opinion is therefore insufficient to meet appellant's burden of proof.

As appellant did not submit sufficient medical evidence to establish that he sustained a diagnosed condition caused by the March 22, 2010 employment incident, he did not meet his burden of proof.¹³

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 did not establish that he sustained an injury causally related to the March 22, 2010 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 6, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹³ Gary J. Watling, *supra* note 4.