

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

J.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Little Rock, AR, Employer**

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**Docket No. 11-1980
Issued: July 18, 2012**

Appearances:

*B. Norman Williamson, 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
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On September 8, 2011 appellant, through his attorney, filed a timely appeal from a June 18, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 a low back condition causally related to his July 23, 2008 employment injury.

FACTUAL HISTORY

Appellant, a 48-year-old auto technician, filed a claim for benefits on July 30, 2008, alleging that he sustained rectal bleeding while cleaning, lifting and crating automotive transmissions on July 23, 2008.

¹ 5 U.S.C. § 8101 *et seq.*

On August 1, 2008 the employing establishment controverted the claim. Appellant's supervisor, Robert T. Smith, asserted that he did not report the alleged work incident until Wednesday, July 30, 2008, one week after it allegedly occurred. Appellant told him that he felt something "kind of funny" on the day of the lifting but did not notice any bleeding until sometime over the weekend. He related that he had hoped his condition would improve; however, when it worsened on Tuesday, July 29, 2008 he decided to file a Form CA-1. Mr. Smith noted that appellant had experienced hemorrhoid problems in the past and had undergone surgery for this condition. He also noted that appellant had previously filed a claim in which he alleged that he sustained a neck strain and hemorrhoid problems while lifting transmissions. This claim was denied.

By letter dated August 20, 2008, OWCP advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether his claimed condition was causally related to his federal employment. OWCP requested that appellant submit the additional evidence within 30 days.

By decision dated September 22, 2008, OWCP denied the claim, finding that he failed to establish the time, place and manner in which the incident occurred. It also found that he failed to submit medical evidence relating the diagnosed condition to the alleged July 23, 2008 work incident.

On September 26, 2008 appellant requested reconsideration.

In a report dated January 5, 2009, Dr. Thomas R. Benton, Board-certified in family practice, stated that appellant had complaints of lower back pain which he experienced after lifting some transmissions. He related that appellant had a dull pain in his lower back which had begun to radiate into his right leg. Dr. Benton noted results of a magnetic resonance imaging (MRI) scan which appellant underwent on December 5, 2008. He advised that appellant had moderate right-sided neural foraminal narrowing at L4-5; secondary to mild generalized bulge with superimposed right foraminal disc protrusion; moderate bilateral facet/ligamentous hypertrophy; moderate bilateral neural foraminal narrowing at L5-S1 and mild left neural foraminal narrowing at L4-5, secondary to mild generalized disc bulges and moderate bilateral facet/ligamentous hypertrophy. Dr. Benton noted on examination that appellant showed radicular symptoms in his right lower extremity. He recommended a course of physical therapy to treat appellant's lower back symptoms.

By decision dated February 13, 2009, OWCP denied modification of the September 22, 2008 decision.

On March 3, 2009 appellant requested reconsideration.

By nonmerit decision dated March 24, 2009, OWCP denied reconsideration.

By letter dated September 11, 2009, appellant's attorney requested reconsideration. He stated that appellant was submitting medical evidence which indicated that the updated diagnosis for the condition caused by the July 23, 2008 incident was anal fissure, not hemorrhoids.

Counsel contended that a report from Dr. Ariel H. House, a specialist in family practice, showed that lifting the transmissions on July 23, 2008 resulted in both a back injury and rectal bleeding.

In an August 28, 2009 report, Dr. House related that he had been treating appellant for several years. He related that appellant had back pain with associated radiculitis and that this back pain was the direct result of appellant's lifting transmissions from the floor onto a table for cleaning and shipment. Dr. House indicated that appellant's rectal pain was related both to the radicular nature of his injury and to hemorrhoids. He noted the results of the December 2008 MRI scan and reiterated that lifting transmissions was the proximate cause of appellant's back injury and rectal bleeding. Dr. House advised that appellant would eventually require surgery to alleviate his back symptoms.

In reports received by OWCP on September 15, 2009, Dr. John M. Hayes, Board-certified in general surgery, related his findings and opinion regarding appellant's rectal condition.

On September 15, 2009 OWCP also received an MRI scan report, interpreted by Dr. Muhammad Yousaf, a Board-certified radiologist, dated December 5, 2008 which stated an impression of multilevel degenerative disc disease predominately at L5-S1 disc level, with no acute fracture or subluxation.

On February 16, 2010 OWCP accepted a condition of aggravation of hemorrhoids based on Dr. House's August 29, 2009 report.

By decision dated February 16, 2010, OWCP denied appellant's claim for a low back condition, finding he did not submit medical evidence sufficient to establish a causal relationship between the July 23, 2008 work incident and the claimed back condition.

In a February 16, 2010 report, received by OWCP on April 9, 2010, Dr. J. Justin Seale, Board-certified in orthopedic surgery, stated that appellant had sustained a work injury on July 23, 2008, after which he developed low back pain radiating into his bilateral buttocks and right leg. He advised that this back pain was extremely severe, stabbing, constant and kept him awake at night. Appellant was also experiencing numbness and tingling; his symptoms had not changed over the last several months, and standing, lifting and bending aggravated these symptoms. Dr. Seale diagnosed disc herniation, foraminal, right, at L4-5. He based this on appellant's history of leg pain developing after the July 23, 2008 injury, an acute injury sustained at work. Dr. Seale also diagnosed foraminal stenosis at L4-5 and L5-S1, with right leg pain and degenerative disc disease at L4-5, L5-S1, with low back pain. He noted that appellant's symptoms did not begin immediately after his injury but came on suddenly, afterwards. Dr. Seale informed appellant that the degenerative disc disease at L4-5 and L5-S1 were present well before his July 2008 employment injury. He advised that, since his lower back symptomatology began after his work injury, it made sense to conclude that his current symptomatology was directly related in his work injury. Dr. Seale asserted that appellant would probably require fusion surgery at L4-5 and L5-S1.

By letter dated April 5, 2010, appellant's attorney requested reconsideration.

By decision dated May 3, 2010, OWCP denied modification of the February 16, 2010 decision which denied a claim for a lower back injury causally related to the July 23, 2008 employment incident.

By letter dated July 9, 2010, appellant's attorney requested reconsideration. He submitted a June 28, 2010 report from Dr. Seale in which he essentially reiterated his previously stated findings and conclusions.

By decision dated August 3, 2010, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require review of its prior decision.

By letter dated October 25, 2010, appellant's attorney requested reconsideration.

In an October 8, 2010 report, received by OWCP on October 27, 2010, Dr. Seale stated that appellant's lower back symptoms had not changed since his previous visit. He indicated that appellant was still having severe, constant pain in his low back radiating to his right buttock and down his leg, with numbness in his right leg. Dr. Seale reiterated that there was no objective evidence showing that appellant's L5-S1 disc herniation was present prior to his July 2008 employment injury; therefore, this herniation was a sign of an acute injury. He explained that biomechanically, bending, lifting and twisting leads to pressure around the disc, leading to possible breakdowns and disc herniations; he noted that appellant had experienced a bending and twisting injury at work with onset of right leg pain at that time. Dr. Seale stated:

"In my opinion, the patient's degenerative disc disease is preexisting but his foraminal disc herniation at L5-S1 on the right is an acute injury. This herniation has led to significant leg pain radiating down to the foot. My recommendation still stands that [appellant] needs to have a decompression and fusion. That is, if he wants to have surgical intervention.... Again, I did describe to the patient today that his degenerative changes were preexisting but I cannot say without a shadow of a doubt that the disc herniation at L5-S1 is not acute. There is currently no medical objective information available to me that lead me to believe otherwise."

By decision dated December 21, 2010, OWCP denied modification.²

By letter dated April 30, 2011, appellant's attorney requested reconsideration.

By decision dated June 18, 2011, OWCP denied modification. It found that the medical evidence of record did not explain the delay in the contention that appellant's back condition was causally related to the accepted July 23, 2008 event.

² In its decision, OWCP noted that it had received an October 10, 2010 statement from the employing establishment which indicated that appellant had actually injured his lower back while replacing his wood fence at his residence in April 2009, not during the July 23, 2008 work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing that 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.⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷ The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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.⁸

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁹

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹⁰ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

⁸ *Id.*

⁹ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁰ *Id.*

ANALYSIS

OWCP has accepted that appellant lifted transmissions on July 23, 2008 and sustained aggravation of a hemorrhoid condition. Appellant also requested that his claim be expanded for acceptance of a low back condition. The Board finds that he has not met his burden of proof.

On appeal, appellant's attorney argues that OWCP denied his claim for back injury on the grounds that the record does not explain the delay between the July 2008 work incident and the first mention of back symptoms and that his physician did not provide an adequate explanation of how his back injury is tied to work factors. He argues that the record provides a reason for the delay and that appellant has submitted rationalized medical opinion evidence establishing a causal relationship between his injury and employment factors. Counsel contends that appellant displayed consistent symptoms which bridge his initial claim to the claimed back injury. He stated that, throughout the four-month period between appellant's initial claim and the reported back injury, he experienced pain in his lower back area and received treatment for the injury. Counsel asserts that appellant has provided a continuous chain of medical evidence that flows consistently from the work incident.

The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.¹¹ Appellant has not submitted rationalized, probative medical evidence to establish that the July 23, 2008 employment incident would have been competent to cause the claimed lower back injury.

Appellant initially claimed that he sustained a rectal condition as a result of the July 23, 2008 employment incident. The medical evidence of record establishes that he initially sought medical treatment for this rectal condition. Some months later, appellant underwent an MRI scan of his low back on December 5, 2008, at the request of Dr. Benton, which was interpreted as showing multilevel degenerative disc disease, predominantly at L5-S1.

Appellant submitted reports from Drs. Benton, House and Seale which stated findings on examination and indicated that appellant had lower back symptomatology and diagnosed herniated discs, radiculopathy, foraminal narrowing and degenerative disc disease at L4-5 and L5-S1. These reports, however, did not sufficiently relate the diagnoses to the July 23, 2008 incident at work. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹²

Dr. Benton stated in his January 5, 2009 report that appellant demonstrated radicular symptoms in his right lower extremity on examination. He advised that appellant had undergone an MRI scan on December 5, 2008 which showed foraminal narrowing and disc bulging/protrusion at L4-5 and L5-S1. Dr. Benton asserted that appellant's lower back

¹¹ *Carlone, supra* note 7.

¹² *See Anna C. Leanza*, 48 ECAB 115 (1996).

symptoms had commenced following the July 23, 2008 work incident in which he had been lifting some transmissions.

In his August 28, 2009 report, Dr. House indicated that appellant had experienced back pain which was the direct result of his lifting transmissions from the floor onto a table for cleaning and shipment. He advised that appellant would eventually require surgery to alleviate his back symptoms.

The opinions of Dr. Benton and Dr. House are of limited probative value in that they are generalized in nature and equivocal in that they only noted summarily that appellant's condition was causally related to the July 23, 2008 work incident. These physicians presented diagnoses of appellant's condition and stated generally that he experienced back pain on July 23, 2008. They did not adequately address whether appellant had a preexisting back condition, given the degenerative disc disease found on MRI scan examination, did not address why appellant sought medical treatment for his low back condition months following the July 23, 2008 event, and did not address how the diagnosed condition was in fact physiologically and causally related to the July 23, 2008 work incident. As such they do not provide the rationalized medical opinion necessary to establish appellant's claim.

Dr. Seale indicated in his February 16, 2010 report that appellant had developed severe, constant lower back pain following an acute work injury on July 23, 2008 and diagnosed disc herniation, foraminal, right, at L4-5. He stated that these symptoms had remained changed over the last several months and were aggravated by standing, lifting and bending. Dr. Seale stated that these symptoms did not begin immediately after appellant's injury but came on suddenly, afterwards. He offered no medical explanation as to why symptoms of back injury would not begin immediately after the event, but would present suddenly at some point afterwards. The Board also notes that Dr. Seale did not specifically identify when appellant's back symptoms began. It is especially important to determine when appellant's symptoms began as Dr. Seale did diagnose foraminal stenosis at L4-5 and L5-S1, with right leg pain, and degenerative disc disease at L4-5, L5-S1, as well as disc herniation with low back pain. This evidence indicates that appellant had a preexisting back condition, as well as an acute injury. Dr. Seale only noted in general terms, without specificity, that, because appellant's lower back symptomatology began after his work injury, it was logical that his current symptomatology was directly related in the July 23, 2008 work injury. In his October 8, 2010 report, he advised that appellant was still having severe, constant pain in his low back radiating to his right buttock and down his leg, with numbness in his right leg. Dr. Seale stated that appellant's L5-S1 disc herniation was an acute injury because there was no objective evidence showing that the disc herniation was present prior to his July 2008 work injury. He advised that bending, lifting and twisting led to pressure around the disc, leading to possible breakdowns and disc herniations and noted that appellant had experienced a bending and twisting injury at work with an onset of right leg pain. Dr. Seale did not explain why appellant did not require medical treatment for his back condition for months, if in fact this was an acute injury. While Dr. Seale did explain in general terms the physiology as to how a herniated disc would occur, he did not explain why appellant would not have reported a back injury or sought medical treatment if in fact this injury occurred on July 23, 2008.

OWCP advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Appellant did not provide a medical opinion which describes or

explains the medical process through which the July 23, 2008 work accident would have caused the claimed injury. OWCP properly denied his claim for compensation.

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 has failed to establish that he sustained a low back condition in the performance of duty on July 23, 2008.

ORDER

IT IS HEREBY ORDERED THAT the June 18, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 18, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board