

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

M.M., Appellant

and

**DEPARTMENT OF THE AIR FORCE, AIR
FORCE SERVICES AGENCY, San Antonio, TX,
Employer**

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**Docket No. 12-306
Issued: July 12, 2012**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 28, 2011 appellant, through his attorney, filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated October 14, 2011, which denied modification of a decision denying 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 the case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained a back injury in the performance of duty on May 20, 2009.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On July 30, 2010 appellant, then a 59-year-old supervisory informational technology specialist, filed a traumatic injury claim, alleging that on May 20, 2009 he sustained a herniated disc at L3-4 while retrieving a pen under his desk. He stopped work on May 20, 2009 and returned on August 31, 2009.

By letter dated August 17, 2010, OWCP advised appellant of the type of factual and medical evidence needed to establish his claim, particularly requesting that he submit a report from his treating physician which included a reasoned explanation as to how specific work factors or incidents contributed to his claimed injury.

On September 17, 2010 OWCP denied appellant's claim on the grounds that the medical evidence did not demonstrate that the claimed medical condition was related to the established work-related events.

Thereafter, appellant provided a September 15, 2010 statement noting that on May 20, 2009 he dropped his pen and it rolled under his desk and he reached under his desk to retrieve the pen and injured his back.² He also provided medical evidence. Dr. Robert Stewart, a Board-certified internist, treated appellant on May 23, 2009 and returned him to work with restrictions. On June 3, 2009 appellant was treated by Dr. Kalpana Ravikumar, a Board-certified physiatrist, for low back pain. He reported paralysis of the back and shooting pain radiating into the right leg. From June 10 to October 13, 2009 appellant sought treatment from Dr. Dennis E. Karasek, a Board-certified orthopedist, for left leg pain of his left lumbar region. He reported an original injury on January 19, 1995.

Appellant was treated by Dr. Jeris J. Denno, a Board-certified orthopedist, from June 4, 2009 to April 1, 2010, for a herniated disc. In Texas Workers' Compensation work status reports, from June 4 to August 19, 2009, he diagnosed herniated disc at L3-4 and advised that appellant could not work until September 19, 2009. In reports from June 4 to August 19, 2009, Dr. Denno noted that appellant continued to have back problems with worsening symptoms related to a workers' compensation claim on January 19, 1995. Examination revealed L3-4 radiculopathy and a magnetic resonance imaging (MRI) scan showed a herniated disc at L3-4 with disc fragment compressing the nerve roots. Dr. Denno diagnosed large herniated disc at L3-4 with sequestered disc fragment, left L3-4 radiculopathy, displacement of thoracic or lumbar intervertebral disc without myelopathy and lumbar neuritis and recommended an L3-4 discectomy. In July 7 and 18, 2009 reports, he diagnosed herniated disc at L3-4 with lumbar radiculopathy and advised that appellant could work with restrictions. Dr. Denno noted treating appellant for a work-related back injury in January 1995 with persistent symptoms. He advised that appellant presented on May 29, 2009 with low back pain and severe left groin/thigh pain. Dr. Denno noted that he had not reviewed any of the previous medical records and could not state with certainty that the current herniated disc was related to the January 19, 1995 initial back

² Appellant also submitted evidence regarding a 1995 back injury. On June 11, 2009 he claimed a May 20, 2009 recurrence of disability causally related to a January 19, 1995 accepted low back strain in OWCP claim number xxxxxx737. In an August 26, 2009 decision, OWCP denied the recurrence of disability claim. Claim number xxxxxx737 is not before the Board on the present appeal.

injury. On September 28, 2009 he performed a laminectomy at L3-4 bilaterally, partial facetectomy at L3-4 decompression at L3 and L4 nerve roots and diagnosed herniated nucleus pulposus at L3-4 with lumbar radiculopathy and disc fragment. In reports dated October 6, 2009 to April 1, 2010, Dr. Denno noted that appellant was status postsurgery and was progressing well and diagnosed thoracic/lumbar neuritis or radiculitis and displacement or thoracic and lumbar intervertebral disc.

Appellant was also treated by Dr. Stephen W. Dinger, an osteopath, for low back pain and paresthesias. In reports dated June 10, 2009 to October 20, 2010, Dr. Dinger noted that appellant was originally injured in 1995 while in the military and continued to have persistent pain and numbness thereafter. He diagnosed chronic low back pain, left lower extremity radiculopathy in the L3-4 distribution and lumbar degenerative disease and performed epidural steroid injections on July 8 and 24 and September 15, 2009. In reports dated July 30 to November 16, 2009, Dr. Dinger diagnosed chronic low back pain, left lower extremity radiculopathy at L3-4 and lumbar degenerative disease. On November 12, 2010 he noted that appellant presented on June 10, 2009 with chronic back pain and radicular symptoms, which stemmed from a work injury on January 19, 1995. Appellant reported that on May 20, 2009 he dropped his pen and attempted to retrieve it under his desk and subsequently developed increasing back pain. Dr. Dinger noted that appellant underwent a successful microdiscectomy at L3-4 on September 2, 2009. He diagnosed chronic low back pain, radiculopathy and lumbar degenerative disease. A March 24, 2010 MRI scan of the lumbar spine revealed L3-4 left foraminal disc protrusion causing severe narrowing of the neural foramen with pressure on the left nerve root and a small protrusion at L2-3.

In a decision dated December 17, 2010, OWCP denied modification of the prior decision.

On September 2, 2011 appellant requested reconsideration. He submitted reports from Dr. Dinger, dated June 7 to September 13, 2011 who treated him in follow-up after an acute exacerbation of his back condition when he twisted awkwardly. Dr. Dinger noted that appellant was status post microdiscectomy. He noted decreased sensation in the left thigh with weakness and diagnosed chronic low back pain with acute exacerbation of radicular symptoms, left lower extremity radiculopathy and lumbar degenerative disease.

In a decision dated October 14, 2011, OWCP denied modification of the prior decision.

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 filed within the applicable time limitation 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. 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.³

³ Gary J. Watling, 52 ECAB 357 (2001).

To determine whether an employee actually sustained an injury in the performance of duty, OWCP 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 of fact of injury 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.⁶ 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.⁷

ANALYSIS

It is not disputed that on May 20, 2009 appellant dropped his pen and was reaching under his desk to retrieve it. It is also not disputed that he has been diagnosed with a herniated disc at L3-4 with lumbar radiculopathy and lumbar degenerative disease. However, appellant has not submitted sufficient medical evidence to establish that his herniated disc at L3-4 with lumbar radiculopathy and lumbar degenerative disease was causally related to the May 20, 2009 incident.

Appellant has not submitted a rationalized medical report from a physician addressing how the May 20, 2009 incident caused or aggravated his claimed back conditions. In a November 12, 2010 report, Dr. Dinger noted that appellant presented on June 10, 2009 with chronic back pain and radicular symptoms that stemmed from a January 19, 1995 work injury. Appellant reported that on May 20, 2009 he dropped his pen and attempted to retrieve it under his desk and subsequently developed increasing back pain. Dr. Dinger diagnosed chronic low back pain, radiculopathy and lumbar degenerative disease. Reports from him, from June 10, 2009 to November 12, 2010, noted that appellant was originally injured in 1995 and continued to be symptomatic. Other reports from Dr. Dinger noted appellant's treatment for his back

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Id.*

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

condition and his diagnoses. However, these reports are insufficient to establish the claim as Dr. Dinger did not specifically address how the May 20, 2009 incident caused or aggravated appellant's diagnosed conditions.⁸ Instead, Dr. Dinger appears to attribute his condition to a 1995 injury instead of the May 20, 2009 incident.⁹ While he noted the May 20, 2009 incident in his November 12, 2010 report, he did not specifically address how this incident caused or aggravated any of appellant's diagnosed conditions. Therefore, Dr. Dinger's reports are insufficient to meet appellant's burden of proof.

Dr. Denno provided Texas Workers' Compensation work status reports dated June 4 to August 19, 2009, diagnosing a herniated disc at L3-4. In reports from June 4 to August 19, 2009, Dr. Denno noted appellant's diagnoses, stated that he had a workers' compensation claim from January 19, 1995 and continued to have worsening back problems. In a July 18, 2009 report, he also noted treating appellant for a January 1995 work-related back injury and stated that appellant presented on May 29, 2009 with low back pain and severe left groin/thigh pain and that he could not state with certainty if the herniated disc was due to the 1995 injury. These and other reports from Dr. Denno fail to provide a history of the May 20, 2009 incident¹⁰ and otherwise do not clearly explain how appellant's reaching under his desk on May 20, 2009 caused or aggravated a diagnosed condition. Rather, they attribute appellant's lumbar condition to a January 19, 1995 work injury, a matter that is not presently before the Board. Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted records from Drs. Stewart, Ravikumar and Karasek. However, these reports are insufficient to establish the claim as these physicians did not specifically address whether his employment activities on May 20, 2009 caused or aggravated a diagnosed condition.¹¹ Likewise, other medical reports submitted by appellant, such as diagnostic test reports, are insufficient as they did not provide an opinion on the causal relationship between his job and his diagnosed lumbar condition.

Consequently, appellant did not submit sufficient reasoned medical evidence to meet his burden of proof to establish that the May 20, 2009 work incident caused or aggravated a diagnosed medical condition.

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.

⁸ A.D., 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁹ Matters regarding the 1995 injury are not before the Board on the present appeal. *See supra* note 2.

¹⁰ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

¹¹ A.D., 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his claimed conditions were causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the October 14, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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