

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

M.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Islandia, NY, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 12-216
Issued: June 6, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 9, 2011 appellant filed a timely appeal from a September 6, 2011 Office of Workers' Compensation Programs' (OWCP) decision denying his claim for an employment-related injury. 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.²

ISSUE

The issue is whether appellant has met his burden of proof to establish that his lower back, left hip and left leg conditions are causally related to a July 18, 2011 employment incident, as alleged.

On appeal appellant contends that OWCP's decision was contrary to the medical evidence submitted.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the September 6, 2011 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On July 25, 2011 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a lower back, left hip and left leg injury as a result of reaching back to retrieve a package while sitting in a truck in the performance of duty on July 18, 2011.

By letter dated July 30, 2011, the employing establishment controverted appellant's claim.

In a July 19, 2011 report, Dr. Aretha Persaud-Mancusi, a family medicine physician, diagnosed possible herniated disc. She indicated that appellant was reaching backward in a car when he felt a sharp pain in the lower back and hip radiating down to his leg on July 18, 2011.

By letter dated August 2, 2011, OWCP requested additional factual and medical evidence. It allotted appellant 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted a June 29, 2011 report by Dr. Persaud-Mancusi indicating that appellant was seen in her office that day and was out of work from June 24 to July 4, 2011. Dr. Persaud-Mancusi advised that appellant was able to return to work without restrictions. In a follow-up report dated August 2, 2011, she diagnosed back pain and paresthesia, ruling out herniated disc. Dr. Persaud-Mancusi indicated that appellant had problems with full weight bearing on the left leg, difficulty lifting the left leg and numbness in the knee.

An August 4, 2011 magnetic resonance imaging (MRI) scan of the lumbar spine showed large, extruded disc herniation on the left at L2-3 which demonstrated marked inferior migration to the level of the left L3-4 neural foramen. There was marked central stenosis and left lateral recess stenosis with compression of the left L3 nerve root, marked central stenosis at L3-4 due to facet arthropathy and bulging and degenerative changes at the remaining levels.

On August 8, 2011 Dr. Laurence E. Mermelstein, a Board-certified orthopedic surgeon, diagnosed lumbar disc displacement without myelopathy, thoracic/lumbar radiculopathy and lumbar stenosis. He indicated that appellant was a letter carrier who sustained a reaching injury and complained of lumbar, buttock and left hip pain, as well as left leg weakness and numbness. Dr. Mermelstein opined that appellant's status was total temporary impairment. He provided a work/impairment status note indicating that appellant could not return to work due to the aforementioned injury and diagnosis that same day.

Appellant also submitted physical therapy notes dated August 11, 2011.

On August 12, 2011 the employing establishment controverted appellant's claim for a second time.

In an August 22, 2011 report, Dr. Persaud-Mancusi stated that appellant suffered an injury to his back on July 18, 2011. She indicated that an MRI scan was ordered which showed a new disc herniation in the upper lumbar spine L1-3 causing neuropathy and paresthesia to the left leg. Dr. Persaud-Mancusi explained that appellant had a history of old herniation of the lower lumbosacral spine L4-S1 which aggravated his pain.

By decision dated September 6, 2011, OWCP denied appellant's claim on the basis that the evidence submitted was insufficient to establish causal relationship between the diagnosed conditions and the July 18, 2011 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 injury⁴ was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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 compensable employment factors. The opinion of the physician must be based on a complete 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.⁷

ANALYSIS

OWCP has accepted that the employment incident of July 18, 2011 occurred at the time, place and in the manner alleged. The issue is whether appellant's lower back, left hip and left leg conditions resulted from the July 18, 2011 employment incident. The Board finds that

³ 5 U.S.C. §§ 8101-8193.

⁴ OWCP's regulations 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. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁵ *T.H.*, 59 ECAB 388 (2008). See *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

appellant did not meet his burden of proof to establish a causal relationship between the conditions for which compensation is claimed and the July 18, 2011 employment incident.

In her reports, Dr. Persaud-Mancusi diagnosed back pain and paresthesia, ruling out herniated disc. She indicated that appellant was reaching backward in a car when he felt a sharp pain in the lower back and hip radiating down to his leg on July 18, 2011. On June 29, 2011 Dr. Persaud-Mancusi advised that appellant was able to return to work without restrictions. On August 22, 2011 she reiterated that appellant suffered an injury to his back on July 18, 2011. Dr. Persaud-Mancusi indicated that an MRI scan was ordered which showed a new disc herniation in the upper lumbar spine L1-3 causing neuropathy and paresthesia to the left leg. She explained that appellant had a history of old herniation of the lower lumbosacral spine L4-S1 which aggravated his pain. The Board finds that Dr. Persaud-Mancusi failed to directly address the issue of causal relationship as she did not explain how the mechanism of the July 18, 2011 employment incident caused or aggravated appellant's conditions. She did not provide medical rationale explaining how appellant's lower back, left hip and left leg conditions were caused or aggravated by reaching back to retrieve a package while sitting in a truck on July 18, 2011. Lacking thorough medical rationale on the issue of causal relationship, the reports are of limited probative value and not sufficient to establish that appellant sustained an employment-related injury in the performance of duty on July 18, 2011.

In his August 8, 2011 report, Dr. Mermelstein diagnosed lumbar disc displacement without myelopathy, thoracic/lumbar radiculopathy and lumbar stenosis. He indicated that appellant was a letter carrier who sustained a reaching injury and complained of lumbar, buttock and left hip pain, as well as left leg weakness and numbness. Dr. Mermelstein opined that appellant's status was total temporary impairment and advised that appellant could not return to work. The Board has held that 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.⁸ Dr. Mermelstein did not provide medical rationale explaining how appellant's lower back, left hip and left leg conditions were caused or aggravated by reaching back to retrieve a package while sitting in a truck on July 18, 2011. Thus, the Board finds that appellant did not meet his burden of proof with the submission of Dr. Mermelstein's report.

The August 4, 2011 MRI scan report is diagnostic in nature and therefore does not address causal relationship. As such, the Board finds that it is insufficient to establish appellant's claim.

The physical therapy notes dated August 11, 2011 do not constitute medical evidence as they were not prepared by a physician.⁹ As such, the Board finds that appellant did not meet his burden of proof with these submissions.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to a July 18, 2011 employment incident, he has failed to meet his burden of proof.

⁸ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

⁹ Physical therapists are not physicians under FECA. See 5 U.S.C. § 8101(2).

On appeal appellant contends that OWCP's decision was contrary to the medical evidence submitted. For the reasons stated above, the Board finds that his arguments are not substantiated.

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 not submitted sufficient rationalized medical opinion evidence to establish that his lower back, left hip and left leg conditions were sustained on July 18, 2011 in the performance of duty, as alleged. Therefore, appellant has failed to meet his burden of proof to establish a claim for compensation.

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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