

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

C.B., Appellant)

and)

DEPARTMENT OF THE AIR FORCE, AIR)
NATIONAL GUARD, Springfield, OH, Employer)

**Docket No. 12-304
Issued: June 15, 2012**

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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 28, 2011 appellant, through his attorney, filed a timely appeal from a July 5, 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 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 September 15, 2010.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 9, 2011 appellant, then a 30-year-old aircraft engine mechanic, filed a Form CA-1 for traumatic injury. He alleged that he was transporting a jet engine on September 15, 2010 when he slipped on an oil puddle and fell on his back and tailbone.²

In a February 7, 2011 report, Dr. Lance M. Tigyer, an osteopath specializing in orthopedic surgeon, noted that appellant experienced pain in his lower extremities and lower back beginning approximately two and four months earlier, respectively. He remarked, “[Appellant] states that he thinks this pain was related to a fall.” On examination, Dr. Tigyer observed limited lumbar range of motion (ROM) and tenderness to palpation. X-rays exhibited slight lumbar curvature to the left, considerable lordotic straightening and multilevel degenerative changes, particularly at L5-S1. Dr. Tigyer diagnosed lower back and bilateral lower extremity pain.

A February 8, 2011 magnetic resonance imaging (MRI) scan obtained by Dr. David O. Griffith, a Board-certified diagnostic radiologist, showed left L5-S1 paracentral and right L5-S1 paracentral and preforaminal disc extrusion as well as L5 and S1 nerve root compression. Dr. Griffith mentioned that appellant “fell [four] months ago.”

In a February 15, 2011 attending physician’s report, Dr. Tigyer restated appellant’s account that he fell, diagnosed bilateral L5-S1 disc extrusion and checked the “yes” box in response to a form question asking whether this condition was causally related to federal employment activity.

OWCP informed appellant in a February 24, 2011 letter that additional information was needed to establish his claim. It gave him 30 days to submit a factual statement detailing the alleged September 15, 2010 work event and a medical report from a physician explaining how this event caused or contributed to a diagnosed condition.

Appellant reiterated in a March 8, 2011 statement that he was transporting an engine on September 15, 2010 when he slipped on a puddle of oil and landed on his lower back and buttocks. He specified that his symptoms progressively worsened to such a degree that he underwent several epidural steroid injections.³ Appellant denied having a preexisting condition.

In a February 10, 2011 report, Dr. Tigyer examined appellant and observed limited lumbar ROM, tenderness to palpation, antalgic gait and positive left straight leg raise maneuver. He reviewed the results of the February 8, 2011 MRI scan and diagnosed L5-S1 herniated nucleus pulposus and bilateral lower extremity pain. In a follow-up report dated March 9, 2011, Dr. Tigyer noted that epidural injections only afforded appellant temporary pain relief. He added diagnoses of lumbar strain/sprain and bilateral lower extremity radiculopathy.⁴

² The case record indicates that appellant was no longer a federal employee as of January 14, 2011.

³ The case record shows that Dr. Tigyer administered bilateral L5-S1 and S1 transforaminal epidural steroid injections on February 14, 23 and March 3, 2011.

⁴ Dr. Tigyer presented objective findings similar to those contained in his earlier report.

By decision dated April 1, 2011, OWCP denied appellant's claim, finding the medical evidence insufficient to demonstrate that the accepted September 15, 2010 employment incident caused or contributed to a lower back or lower extremity condition.

Appellant requested reconsideration on April 25, 2011 and submitted new evidence. In a May 5, 2011 report, Dr. Tigyer related that appellant injured his lower back on September 2010 when he slipped on an oil puddle and subsequently developed lower back and bilaterally lower extremity symptoms. A lumbar MRI scan confirmed L5-S1 herniated nucleus pulposus and L5 and S1 nerve root compression. On examination, Dr. Tigyer observed decreased lumbar ROM, positive right straight leg raise maneuver, diminished right Achilles tendon reflex and antalgic gait. He concluded:

“It is my opinion [that] the history of injury, presentation of symptoms and objective findings by exam[ination] and testing are compatible with the diagnosis of herniated nucleus pulposus. Symptoms have been present since [appellant's] initial date of injury and have not resolved to date.... It is my opinion based on the above rationale that the diagnosis of L5-S1 herniated nucleus pulposus is causally related to his work injury of September 2010.”

Dr. Tigyer recommended L5-S1 microdiscectomy.

On July 5, 2011 OWCP denied modification of the April 1, 2011 decision.

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,⁵ including that he is an “employee” within the meaning of FECA and that he filed his claim within the applicable time limitation.⁶ 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.⁷

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. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time and place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁶ *R.C.*, 59 ECAB 427 (2008).

⁷ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *T.H.*, 59 ECAB 388 (2008).

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.⁹

ANALYSIS

While the case file supports that appellant slipped on an oil puddle and fell at work on September 15, 2010, the Board finds that he did not establish his traumatic injury claim because the medical evidence did not sufficiently demonstrate that this accepted employment incident caused or contributed to his diagnosed condition.

Dr. Tigyer initially stated in a February 7, 2011 report that appellant experienced lower back and bilateral lower extremity pain due to a fall that occurred approximately four months earlier. Following a lumbar MRI scan conducted on February 8, 2011 and various physical evaluations, he diagnosed L5-S1 herniated nucleus pulposus, lumbar strain/sprain and bilateral lower extremity radiculopathy in a February 10 and March 9, 2011 reports, respectively. In a February 15, 2011 attending physician's report, Dr. Tigyer checked the "yes" box indicating that appellant's condition was causally related to federal employment activity.¹⁰ He later clarified in a May 5, 2011 report that the condition resulted from a slip-and-fall incident on the job sometime in September 2010, maintaining that the history of injury, symptoms and objective findings were consistent with herniated nucleus pulposus and that appellant only exhibited symptoms after this incident. Dr. Tigyer's opinion, however, did not present medical rationale explaining how the September 15, 2010 work event pathophysiologically caused or contributed to a lower back and bilateral lower extremity condition.¹¹ The fact that appellant was asymptomatic before September 15, 2010 and symptomatic afterward, by itself, cannot establish causal relationship.¹²

In a February 8, 2011 MRI scan report, Dr. Griffith incidentally mentioned that appellant "fell [four] months ago." Nonetheless, he failed to provide fortifying medical rationale concerning that cause of appellant's bilateral L5-S1 disc extrusion.¹³ In the absence of

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ See *P.C.*, Docket No 11-509 (issued September 29, 2011) (a checkmark response, without further explanation or fortifying rationale, is of diminished probative value on the issue of causal relationship).

¹¹ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

¹² *T.M.*, Docket No. 08-975 (issued February 6, 2009).

¹³ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (a medical opinion not fortified by medical rationale is of little probative value). The Board notes that Dr. Griffith did not specify either the date of incident or whether this fall was work related. See *John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition). See also *M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

rationalized medical opinion evidence on the issue of causal relationship, appellant failed to meet his burden of proof.

Counsel contends on appeal that the July 5, 2011 was contrary to fact and law. As noted, the medical evidence did not sufficiently establish that the accepted September 15, 2010 fall caused or contributed to a lower back or lower extremity condition.

The Board notes that appellant submitted new evidence after issuance of the July 5, 2011 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.¹⁴ However, 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 September 15, 2010.

ORDER

IT IS HEREBY ORDERED THAT the July 5, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 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

¹⁴ 20 C.F.R. § 501.2(c).