United States Department of Labor
Employees' Compensation Appeals Board

S.E., Appellant	)	
and	)	**Docket No. 12-922**
	)	**Issued: October 19, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Brandon, FL, Employer	)	

Appearances:
Lenin V. Perez, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 19, 2012 appellant, through his representative, filed a timely appeal from a February 16, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 a recurrence of disability commencing March 8, 2011 causally related to his May 30, 2007 accepted work injury.

FACTUAL HISTORY

On May 30, 2007 appellant, then a 55-year-old letter carrier, was lifting a bucket of mail into a truck for delivery and injured his low back. OWCP accepted lumbar strain and lumbar radiculitis. Appellant was treated in an emergency room on May 30, 2007 for a low back injury.

[1] 5 U.S.C. §§ 8101-8193.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated May 30, 2007 revealed no abnormalities. Appellant stopped work on May 31, 2007 and was released to full-time regular-duty work on June 18, 2007.

Appellant was treated by Dr. James Billys, a Board-certified orthopedist, from August 2, 2010 to January 21, 2011, for low back and right leg pain. He reported injuring his back after picking up a bucket of melons. Dr. Billys noted that appellant was treated with intradiscal steroid injection and transforaminal epidurals injections. He diagnosed mild foraminal stenosis at L4-5 and an annual tear at L4-5. An MRI scan of the lumbar spine dated August 11, 2010 revealed mild L4-5 degenerative disc disease with mild canal stenosis.

In a January 21, 2011 report, Dr. Billys noted that appellant had an accident in December 2010 when he fell off a ladder and sustained a concussion. Appellant was off work for one month and was due to return to work with no restrictions. X-rays of the cervical and lumbar spine revealed degenerative changes. Dr. Billys diagnosed spinal stenosis and lumbar region, pain in the joint involving other sites. In an excuse from work slip dated March 8, 2011, he noted that appellant was off work until March 17, 2011. In a work capacity evaluation dated March 17, 2011, Dr. Billys stated that appellant had not reached maximum medical improvement and was not capable of performing his usual job. Appellant was totally disabled and would require lumbar surgery. In an excuse from work form of that same date, Dr. Billys noted that appellant was off work due to pain and needed lumbar surgery.

On March 8, 2011 appellant filed CA-7 forms, claims for compensation, for total disability for the period beginning March 8, 2011.

In a March 25, 2011 letter, OWCP advised appellant of the evidence needed to establish his claim for a recurrence of disability. It requested that he submit a physician's reasoned opinion addressing the relationship of his present condition to his work injury.

In a March 17, 2011 report, Dr. Billys noted that appellant was five days postlumbar steroid injections and his back and leg pain returned. The pain medication was not helping and appellant could not work due to pain. On examination, Dr. Billys noted an antalgic gait, limited bending, pain on range of motion and lumbar, buttock and trochanter area tenderness. Deep tendon reflexes were equal and symmetrical and sensory examination was normal. Dr. Billys diagnosed mild L4-5 degenerative disc disease with mild canal stenosis and recommended surgery. In a March 22, 2011 report, x-rays showed a grade 1 spondylolisthesis at L4-5 and a computerized tomography (CT) scan revealed spondylolysis at this level with central canal stenosis. Dr. Billys opined that conservative care failed and recommended surgery. A March 21, 2011 CT scan of the lumbar spine revealed L4-5 mild central spinal stenosis, bilateral spondylolysis at L4-5, diffuse annual bulging at multiple levels and osteophytic change at the facet joints.

On March 30, 2011 appellant was advised that OWCP could not authorize lumbar spine fusion as he had intervening injuries in December 2010 due to a fall from a ladder, a May 2010 lifting incident involving a bucket of melons, a January 19, 2010 work incident when he lifted two trays of mail above his head and a April 14, 2010 work injury while loading a large parcel

onto his mail truck. OWCP requested that he submit information showing how the surgery resulted from the May 30, 2007 work injury.

In an April 11, 2011 report, Dr. William Neese, an osteopath, obtained a history that appellant injured his back on May 30, 2007 when he fell out of a delivery truck at work. Appellant also sustained a back injury while in the military. Dr. Neese diagnosed cervical sprain and strain, lumbar sprain and strain, retrolisthesis at C4-5, herniated disc at C3-4 and C4-5, osteophyte complex causing C5 nerve root impingement, C6-7 foraminal stenosis at C7 nerve root and radiculopathy. In work capacity evaluations dated April 26 and May 24, 2011, a nurse practitioner noted that appellant was temporarily disabled and was scheduled to have back surgery. In reports dated May 24 and June 28, 2011, Dr. Billys treated appellant in follow up. He noted examination findings and diagnosed thoracic spondylosis at L4-5, displacement of the cervical intervertebral disc without myelopathy and degenerative changes.

In a July 12, 2011 decision, OWCP found that appellant did not sustain a recurrence of disability on March 8, 2011 causally related to his May 30, 2007 work injury.

On July 21, 2011 appellant requested a telephonic hearing, which was held on November 14, 2011. In an April 26, 2011 report, Dr. Billys treated appellant for low back pain and weakness with radiation into the right knee. He noted that appellant was not working due to increased pain. Dr. Billys noted tenderness to palpation of the lower lumbar and buttocks area with a normal motor and sensory examination. He diagnosed spondylolisthesis at L4-5 and opined that appellant was unable to return to work. In reports dated May 24 to July 26, 2011, Dr. Billys diagnosed spinal stenosis of the lumbar region and displacement of the cervical intervertebral disc without myelopathy. He noted lumbar surgery had been denied. On October 25, 2011 Dr. Billys noted appellant's history of ongoing back pain radiating into his right leg since 2007 when he sustained a work injury. He noted that appellant failed conservative treatment and was scheduled for lumbar fusion. On October 31, 2011 Dr. Billys performed an L4-5 anterolateral interbody fusion, placement of anterior interbody device at L4-5, L5-S1 posterolateral fusion, L5-S1 posterolateral fusion, posterior segmental instrumentation at L4-S1 and diagnosed spondylolisthesis at L4-5, discogenic back pain and lateral recess stenosis. On November 7, 2011 he opined that, based on appellant's history, his symptoms began with the injury of 2007 and worsened over time while performing trauma-type activity which resulted in his surgery. Dr. Billys opined that the condition was related to appellant's employment as a mail carrier.

Appellant submitted reports from Dr. Samy F. Bishai, a Board-certified orthopedic surgeon, dated July 12 to August 23, 2011. Dr. Bishai noted a history of injury on May 30, 2007 and indicated that appellant had not worked as a mail carrier since March 8, 2011 because of severe back and right leg pain. He diagnosed chronic lumbosacral strain, lumbar disc syndrome, spinal stenosis at L4-5 and diffuse annular bulging discs at multiple levels. Dr. Bishai opined that appellant injured his back at work on May 30, 2007 and conservative modalities failed. He recommended surgery to provide stability of the lumbar spine and treat the spondylolysis. An August 2, 2011 MRI scan of the sacrum and coccyx revealed no abnormalities. Appellant submitted work capacity evaluations prepared by a nurse practitioner from August 23 to December 19, 2011, who noted that he was totally disabled. On November 29, 2011 he was treated by Dr. James R. Shelburne, an osteopath, who noted that appellant injured his back on

May 30, 2007 while loading a tub of mail and underwent lumbar surgery on October 31, 2011. Dr. Shelburne noted minimal postoperative tenderness and diagnosed postoperative surgery regarding spondylolisthesis of L4 and L5, discogenic back pain and lateral recess stenosis.

In a February 16, 2012 decision, an OWCP hearing representative affirmed the July 12, 2011 decision.

LEGAL PRECEDENT

A "recurrence of disability" means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or a new exposure to the work environment.[2]

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury.[3] This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[4] An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on an appellant's unsupported belief of causal relation.[5]

ANALYSIS

OWCP accepted that appellant sustained a lumbar strain and lumbar radiculopathy on May 30, 2007. He stopped work on May 31, 2007 and returned to regular duty. Appellant filed claims for compensation for total disability for the period beginning March 8, 2011.

On appeal, appellant asserts that he has submitted sufficient medical evidence to establish his claim. The Board finds that the medical record lacks a well-reasoned narrative opinion from appellant's physicians relating his disability in 2011 to his accepted May 30, 2007 employment injury.

On November 7, 2011 Dr. Billys opined that appellant's symptoms began with his 2007 work injury and worsened until he required surgery. He noted that appellant reported bending, lifting and twisting in his job. Dr. Billys did not specifically address how appellant's disability beginning March 8, 2011 was caused or aggravated by the May 30, 2007 work injury that was accepted for a lumbar strain and radiculitis. Moreover, the record documents that appellant had a nonwork back injury in 2010 when he picked up a bucket of melons and also sustained a

[2] 20 C.F.R. § 10.5(x).

[3] *Alfredo Rodriguez*, 47 ECAB 437 (1996); *see Dominic M. DeScala*, 37 ECAB 369 (1986).

[4] *See Nicolea Bruso*, 33 ECAB 1138 (1982).

[5] *Ausberto Guzman*, 25 ECAB 362 (1974).

nonwork injury in December 2010 when he fell off of a ladder. Dr. Billys did not note these incidents or address how appellant's condition related to the more recent nonwork injuries instead of the 2007 work injury. The Board has found that unrationalized medical opinions on causal relationship have little probative value.[6] Dr. Billys noted findings and listed diagnoses but do not address how any disability or condition beginning March 8, 2011 was caused or aggravated by the May 30, 2007 work injury. The reports from Dr. Billys are insufficient to establish appellant's claim.

Appellant submitted reports from Dr. Neese, who noted appellant's 2007 work injury and set forth diagnoses. Reports from Dr. Bishai also listed diagnoses and provided a history of the injury on May 30, 2007. He advised that appellant worked as a mail carrier and had not worked since March 8, 2011 because of severe pain in his back and right leg. On November 29, 2011 appellant was treated by Dr. Shelburne, who noted that appellant injured his back on May 30, 2007 while loading a tub of mail and underwent lumbar surgery on October 31, 2011. Dr. Shelburne diagnosed postoperative surgery regarding spondylolisthesis of L4 and L5, discogenic back pain and lateral recess stenosis. The histories listed by the physicians are not complete or adequately address how appellant's disability beginning March 8, 2011 was causally related to the May 30, 2007 work injury. The physicians did not explain how there was a spontaneous change in appellant's back condition on or about March 8, 2011, due to his accepted lumbar strain or radiculopathy. The subsequent incidents after the 2007 injury were not addressed. The reports are insufficient to establish the claim. The reports prepared by the nurse practitioner are also insufficient. The Board has held that treatment notes signed by a nurse are not probative as medical evidence as a nurse is not a physician as defined under FECA.[7]

Appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of disability beginning March 8, 2011 causally related to his May 30, 2007 work injury. Therefore, he did not meet his burden of proof.

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 met his burden of proof in establishing that he sustained a recurrence of disability causally related to his accepted employment-related injury in May 30, 2007.

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

[7] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

ORDER

IT IS HEREBY ORDERED THAT the February 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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