

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

C.S., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Dallas, TX, Employer)

**Docket No. 12-875
Issued: September 26, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 13, 2012 appellant timely appealed the February 10, 2012 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 claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty.

FACTUAL HISTORY

Appellant, a 32-year-old medical support assistant, filed an occupational disease claim (Form CA-2) for a lower back injury that allegedly occurred on or about January 3, 2011. He stated that his coworkers had little experience and therefore he had to do most of the work to

¹ 5 U.S.C. §§ 8101-8193 (2006).

keep the clinic up-to-date. Also, appellant allegedly had taken on extra work from other workstations while continuing to work his own assignments. His CA-2 form dated November 9, 2011 under section 16 indicated that a separate statement would be sent later, however, the record reflects that no such supplemental statement was received by OWCP.

Appellant previously filed a claim for a January 23, 2009 traumatic injury involving both wrists and his lower back (File No. xxxxxx546). He had also filed a claim for recurrence, which OWCP denied on July 27, 2011.

On November 15, 2011 OWCP wrote to appellant advising him of the need for medical evidence in support of his claimed lower back injury. It also requested information concerning the job activities that he believed to have contributed to his condition, including details regarding the frequency and duration of the particular activities.

OWCP subsequently received various medical records, including medical evidence pertaining to appellant's January 23, 2009 employment-related injury.

The relevant medical evidence received by OWCP included treatment notes from a Dr. Vikram Mehta, who initially examined appellant on April 1, 2011 and diagnosed right lumbar sprain and right thoracic sprain/strain. Dr. Mehta noted a January 23, 2009 date of injury. Appellant reported that he had initially developed pain in the mid/low back and both wrists due to repetitive lifting of boxes and filing charts and over the past two weeks his back had been hurting more. Dr. Mehta recommended medication, physical therapy and a magnetic resonance imaging (MRI) scan. He also placed appellant on work restrictions through April 8, 2011.

During an April 8, 2011 follow-up examination, Dr. Mehta continued to diagnose right lumbar sprain and right thoracic sprain/strain. However, he released appellant to return to work without restrictions.

An April 8, 2011 lumbar MRI scan revealed loss of lordosis, edema within the interspinous ligament at L3-4 and L4-5, as well as minimal disc bulging at L4-5.

Appellant returned to Dr. Mehta on May 4, 2011, at which time he reviewed the recent MRI scan. He reportedly felt better and he denied any pain. Dr. Mehta noted that appellant was tolerating regular duty without any problems. He also noted that appellant was not taking any medications and his range of motion had returned to normal. Dr. Mehta indicated that appellant had reached maximum medical improvement and thus, he released appellant from his care.

OWCP also received appellant's April 2011 physical therapy treatment records.

In a report dated November 15, 2011, a Dr. Ed Wolski diagnosed low back pain and lumbar disc displacement. Appellant's chief complaint was severe low back pain. Dr. Wolski noted a January 3, 2011 date of injury. Appellant reported that he sat in a chair at work for prolonged periods (8½ hours) while keyboarding. He also advised Dr. Wolski that, due to increased patient volume and work overload, he had been unable to take work breaks or lunch breaks. Dr. Wolski stated that, in all medical probability, appellant injured his low back while at

work. He prescribed medication and recommended a physical performance examination to determine appellant's functional capacity.

On December 7, 2011 Dr. Wolski requested authorization from OWCP for a physical performance examination. The request/referral identified January 3, 2011 as the date of injury and included a diagnosis of lumbar strain (ICD-9 Code 847.2).

In a December 21, 2011 decision, OWCP denied appellant's occupational disease claim because he failed to establish fact of injury. It noted, *inter alia*, that appellant did not submit the requested factual information regarding specific work factors that allegedly contributed to his claimed back condition.²

On December 27, 2011 appellant requested reconsideration. He claimed to have submitted a factual statement along with the previously submitted medical evidence.

By decision dated February 10, 2012, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.³

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁴

² The December 21, 2011 decision also advised appellant that, if he disagreed with the July 23, 2011 recurrence decision under claim number xxxxxx546, he should exercise his appeal rights associated with that particular decision.

³ 20 C.F.R. § 10.115(e), (f) (2011); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

⁴ *Victor J. Woodhams, id.*

ANALYSIS

Appellant claimed to have sustained an injury to his lower back on or about January 3, 2011. His November 9, 2011 CA-2 form did not identify his job duties or explain how specific employment factors either caused or contributed to his claimed lower back condition. Appellant generally noted that he had to do most of the work to keep the clinic up-to-date and had taken on extra work from other stations. It is not readily apparent from the CA-2 form how his employment duties caused or contributed to his lower back condition. OWCP requested clarification on November 15, 2011; however, the record does not reveal that OWCP subsequently received a signed statement from appellant identifying specific job duties as the cause of injury.

Appellant is responsible for submitting, *inter alia*, a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition.⁵ While he may have advised Dr. Wolski that his back complaints were due to prolonged sitting, appellant did not represent as much to OWCP. Moreover, the January 3, 2011 history of injury appellant reported to Dr. Wolski in November 2011 was not entirely consistent with the history he provided Dr. Mehta in April 2011. At that time, he identified January 23, 2009 as the date of injury and he did not identify any specific cause for the recent onset of lower back pain. Also, according to Dr. Mehta, appellant's back complaints had resolved as of May 4, 2011. Given the absence of a proper factual basis for the claim, the Board finds that OWCP properly determined that he did not establish fact of injury.

CONCLUSION

Appellant failed to establish that he sustained an injury in the performance of duty.

⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board