United States Department of Labor
Employees' Compensation Appeals Board

E.T., Appellant	)	
	)	
and	)	**Docket No. 13-185**
	)	**Issued: April 4, 2013**
DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION, Hueytown, AL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 5, 2012 appellant filed a timely appeal of the September 7, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his recurrence claim. 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 this case.[2]

ISSUE

The issue is whether appellant sustained a recurrence of a medical condition commencing December 1, 2011 causally related to his March 30, 2004 employment-related injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant requested an oral argument. The Clerk of the Board mailed a letter to appellant to confirm a continuing desire for an oral argument in Washington, DC. No written confirmation was received. The Board, in its discretion, will give no further consideration to the request and will decide the appeal on the record.

On appeal, appellant contends that he sustained a recurrence of a medical condition because his injury is in the same location as his March 30, 2004 employment injury. He further contends that he was being treated by the same physician who treated him in 2004 and stated in a 2012 statement that he had a preexisting fracture at C5 that was caused by the accepted injury. Lastly, appellant contends that his employment injury was sparked by crawling.

FACTUAL HISTORY

OWCP accepted that on March 30, 2004 appellant, then a 49-year-old coal mine inspector, sustained subluxation of the cervical spine at C7 while transporting respirable dust pumps at work.[3]

On January 19, 2012 appellant filed a claim for a recurrence of medical condition (Form CA-2a) on January 3, 2012. He noted that there was no time lost from work due to the recurrence. Appellant checked the box marked no when asked if he was in any way limited in performing his usual duties after returning to work following the original injury. He stated that since his return to work he had minor pain that recurred once a month during the last year with tingling in his arms and hand and muscle difficulty in his arm. A home remedy prescribed by Dr. Redus did not work. Appellant stated that his current medical condition was related to his 2004 original injury because he had the same symptoms in his neck, shoulders and arms that occurred more often. His pain had elevated since December 2011 with crawling and lifting heavy objects.

By letter dated February 8, 2012, OWCP requested that appellant submit additional factual and medical evidence including, a rationalized medical opinion from an attending physician explaining causal relationship between his current condition and the accepted employment injury. Appellant was afforded 30 days to submit the requested evidence. He did not respond.

In a March 14, 2012 decision, OWCP denied appellant's claim for a recurrence of a medical condition, finding that he did not submit medical evidence to establish the claimed recurrence was causally related to his accepted March 30, 2004 work injury.

On April 2, 2012 appellant requested a telephone hearing with an OWCP hearing representative. During the July 16, 2012 hearing, he stated that he received chiropractic treatment for cervical and thoracic injuries he sustained in 2004. Appellant was released from further medical care but his shoulder and arm numbness and tingling gradually recurred. On January 4, 2012 his symptoms were so bad he could not sleep and he sought treatment from Dr. Redus. Appellant's symptoms in the C6 and C7 areas were the same as his 2004 symptoms. He did not seek treatment between 2004 and 2011 because he used home remedies. Appellant

[3] In an April 21, 2004 medical report, Dr. John Cleve Redus, an attending chiropractor, advised that appellant had subluxation of C7 based on x-ray findings. Section 8101(2) of FECA provides that chiropractors are considered physicians only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. § 8101(2). As Dr. Redus diagnosed a subluxation as demonstrated by x-ray he is a physician as defined under FECA. *Id.*

stated that the location of his job changed but, he still performed the same regular duties of a coal miner inspector that he performed in 2004. He contended that his work duties probably reaggravated his condition, noting that he continued to have difficulty because this area of his body was weakened from his prior injury. Appellant requested payment of chiropractic treatment.

In reports dated January 4 through 27, 2012, Dr. Redus listed findings on examination and addressed treatment of appellant's cervical and thoracic conditions, which included cervical and thoracic sprain/strain, cervical and thoracic subluxation and cervicobrachial syndrome. In an August 3, 2012 report, he stated that appellant was initially treated on April 1, 2004 in the areas of C2, C5, C7, T3 and T4. Dr. Redus returned to work after therapy which corrected his conditions. In January 2012 appellant returned for treatment. After a comprehensive examination and x-rays were obtained, it was determined that chiropractic care was needed for C2, C6 and T3. X-rays showed a healed compression fracture of the C5 vertebrae. After review of documentation from the March 30, 2004 accident and appellant's January 4, 2012 visits, the areas in question were located in the same initial area as of April 1, 2004. The report contained the following conclusion, "[t]herefore January 2012 could or can be a result of the prior accident dated March 30, 2004." Dr. Redus signed this report. Unsigned treatment notes dated April 1 through 30, 2004 addressed the chiropractic treatment of appellant's cervical and thoracic subluxations.

In a September 7, 2012 decision, an OWCP hearing representative affirmed the March 14, 2012 decision, finding that Dr. Redus' August 3, 2012 report was speculative and lacked adequate rationale to establish that appellant sustained a recurrence of a medical condition commencing in December 2011 causally related to his March 30, 2004 employment injury.

LEGAL PRECEDENT

Section 8103(a) of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.[4] OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in FECA.[5] The only limitation on OWCP's authority is that of reasonableness.[6]

A recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not

[4] 5 U.S.C. § 8103(a).

[5] *See Marjorie S. Geer*, 39 ECAB 1099 (1988) (OWCP has broad discretionary authority in the administration of FECA and must exercise that discretion to achieve the objectives of section 8103).

[6] *Daniel J. Perea*, 42 ECAB 214 (1990).

considered a need for further medical treatment after release from treatment, nor is an examination without treatment.[7]

To establish a recurrence of medical condition, a claimant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the claimed condition is causally related to the employment injury, and who supports that conclusion with sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.[8]

OWCP procedures state that, after 90 days of release from medical care (as stated by the physician or computed from the date of the last examination or the physician's instruction to return as needed), a claimant is responsible for submitting an attending physician's report that contains a description of the objective findings and supports a causal relationship between the claimant's current condition and the accepted condition. The medical evidence on causal relationship should be as conclusive as the evidence required to establish the original claim.[9]

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of a medical condition commencing December 1, 2011. OWCP accepted that on March 30, 2004 he sustained a subluxation of the cervical spine at C7. Following this injury, appellant returned to his regular work duties. On January 19, 2012 he filed a recurrence claim, contending that his current cervical and thoracic conditions were causally related to the accepted condition. Appellant requested payment of chiropractic treatment. The Board finds, however, that he did not submit sufficient rationalized medical opinion evidence to establish that his medical treatment was for residuals of his accepted cervical condition.

In an August 3, 2012 report, Dr. Redus provided a history that on April 1, 2004 appellant was initially treated in the areas of C2, C5, C7, T3 and T4,[10] and stated that his conditions were corrected with therapy. He noted that after appellant's return to work, he sought treatment in January 2012. Dr. Redus determined that chiropractic care was needed for C2, C6 and T3 based on a comprehensive examination and x-rays. He noted that x-rays showed a healed compression fracture of the C5 vertebrae. Dr. Redus advised that the areas in question were located in the same area as on April 1, 2004 based on his review of documentation from the March 30, 2004 employment injury and appellant's January 4, 2012 visits. He concluded, "[t]herefore January 2012 could or can be a result of the prior accident dated March 30, 2004." The Board notes that Dr. Redus was not specific as to the diagnosis for which treatment was rendered. Moreover, his opinion on causal relation is speculative regarding how appellant's current cervical and thoracic conditions relate to the 2004 cervical subluxation. In order to be of

[7] 20 C.F.R. § 10.5(y).

[8] *T.Y.*, Docket No. 12-393 (issued August 3, 2012).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5.b (May 2003).

[10] Although this report was prepared by appellant, it was signed by Dr. Redus and as such is considered medical evidence from a physician under FECA. *See L.B.*, Docket No. 09-1989 (issued April 9, 2010).

probative value, medical opinions should be expressed in terms of a reasonable degree of medical certainty.[11] The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.[12] Dr. Redus did not provide adequate medical rationale explaining the nature of the relationship between appellant's current cervical and thoracic conditions and the accepted employment injury.[13] While his other reports addressed appellant's cervical and thoracic conditions, they failed to address how these conditions and appellant's recurrence of a medical condition were caused by the accepted injury.[14] For the stated reasons, the Board finds that Dr. Redus' reports are insufficient to establish appellant's burden of proof.

The unsigned treatment notes dated April 1 through 30, 2004 have no probative value in establishing that appellant sustained a recurrence of medical condition commencing December 1, 2011 due to the accepted employment injury. It is well established that medical evidence lacking proper identification is of no probative medical value.[15]

On appeal, appellant contended that he sustained a recurrence of medical condition because his symptoms were in the same location as his March 30, 2004 employment injury. He further contended that he was being treated by the same physician who treated him in 2004 and contended that he had a preexisting fracture at C5 that was caused by the accepted injury. Appellant's claim for recurrence of medical condition commencing December 1, 2011 was denied due to the lack of rationalized medical evidence addressing causal relationship to the accepted employment injury. As this issue is medical in nature, it can only be resolved through the submission of medical evidence. The medical evidence appellant submitted is not sufficiently rationalized to establish his need for further medical treatment of a continuing employment-related 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.

[11] *See Roy L. Humphrey*, 57 ECAB 238 (2005) (to be probative, the medical opinion must be of reasonable medical certainty and supported by medical rationale).

[12] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (the Board has generally held that opinions such as the condition is probably related, most likely related or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662 (2005) (medical opinions which are speculative or equivocal are of diminished probative value).

[13] *Robert Broome*, 55 ECAB 339 (2004).

[14] *A.D.*, 58 ECAB 159 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Willie M. Miller*, 53 ECAB 697 (2002); *Michael E. Smith*, 50 ECAB 313 (1999).

[15] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of medical condition commencing December 1, 2011 causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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