

FACTUAL HISTORY

On March 30, 2012 appellant, then a 52-year-old welder, filed a traumatic injury claim alleging that on March 12, 2012 he hurt the right side of his lower back while grinding padeyes on fair water planes at work. Annette S. Gray, appellant's supervisor, stated that investigations were being conducted as it had not been determined whether appellant was in the performance of duty at the time of injury.

In an April 4, 2012 letter, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that factual and medical evidence be submitted within 30 days. OWCP also requested that the employing establishment submit any medical evidence regarding treatment appellant received at its medical facility.

Appellant related that on March 12, 2012 he was performing his job on the *Newport News* submarine. He was responsible for grinding and cleaning all padeyes and jacking pads on the top port side of the diving plane which required him to bend, twist, lay, reach and position his body in numerous awkward positions. Appellant noticed a tingling sensation in his right leg towards the end of his assignment. He thought his leg had fallen asleep. Appellant stated that no one witnessed this incident. After being unable to attend work for three days, he sought medical treatment for his symptoms from Dr. Bobbie J. Sperry, a Board-certified family practitioner, who referred him to Dr. Richard B. McAdam, a Board-certified neurosurgeon, who advised appellant that he injured lower lumbar discs at levels 4 and 5 that required emergency surgery. Appellant stated that he did not sustain any other injury on or off work between the date of injury and date he reported his injury to his supervisor and physician.

In a March 16, 2012 prescription note, Dr. McAdam advised that appellant was under his care and required lumbar spine surgery. He was advised to remain out of work until his surgery. Dr. McAdam stated that, following surgery, appellant would be out of work approximately four to six weeks. In a March 19, 2012 operative report, he advised that appellant underwent surgery to treat his lumbar herniated nucleus pulposus at L4-5 on the right side with radiculopathy. In a March 20, 2012 prescription, Dr. McAdam ordered medication to treat appellant's muscle spasm. Discharge instructions dated March 20, 2012 addressed appellant's medications and wound care.

A March 30, 2012 work restriction report from the employing establishment stated that appellant was temporarily totally disabled.

In a May 7, 2012 decision, OWCP denied appellant's claim. It found that he failed to establish that the March 12, 2012 incident occurred, as alleged. OWCP further found that the medical evidence was not sufficient to establish that appellant sustained a medical condition causally related to a work event.

On May 16, 2012 appellant requested a review of the written record by an OWCP hearing representative.

In a March 16, 2012 report, Dr. McAdam noted that he previously treated appellant's back pain and that appellant currently presented with right posterolateral leg pain and severe foot drop. He obtained a history of his family and social background. Dr. McAdam reported

essentially normal findings on physical and neurological examination except severe foot drop on the right with a secondary antalgic gait and L5 sensory loss of the right lower extremity. The foot drop was almost complete and strength was not antigravity. Dr. McAdam reviewed a lumbar magnetic imaging (MRI) scan which revealed a degenerated side at L4-5, but stated that the problem was an extruded disc on the right side at L4-5 caudal to the disc space that caused severe compression of the L5 nerve root.³ He diagnosed lumbar herniated nucleus pulposus on the right side at L4-5 and almost complete footdrop of the right lower extremity. Dr. McAdam recommended microdiscectomy on the right side at L4-5. In an April 4, 2012 report, he noted that appellant continued to have complete foot drop on the right which was no better or worse prior to surgery. Appellant's leg pain had greatly resolved.

On physical examination, Dr. McAdam reported that appellant's wound looked good and he had a foot drop gait. He advised that appellant was stable following microdiscectomy for an extruded disc with residual severe foot drop. Dr. McAdam addressed his treatment plan. In a prescription note dated April 4, 2012, he advised that appellant was currently out of work and that he was to remain out of work until his evaluation on May 3, 2012. Dr. McAdam also prescribed a right foot drop brace for appellant.

In a May 3, 2012 prescription note, he advised that appellant was to remain out of work until his evaluation on May 31, 2012. In an undated attending physician's report and a May 14, 2012 attending physician's report, Dr. McAdam stated that the date of injury was March 12, 2012 and reiterated his diagnosis of lumbar herniated nucleus pulposus at L4-5 on the right side with an extruded disc. In the May 14, 2012 report, he stated that the cause of appellant's condition was uncertain. Dr. McAdam only knew that appellant explained that his pain began at work.

In a March 15, 2012 report, Dr. Sperry noted that appellant presented with a complaint of right hip and leg pain. She diagnosed pain that was likely radiculopathy and weakness with foot drop of the right lower extremity. Dr. Sperry addressed appellant's treatment plan. In an April 26, 2012 report, she noted that he presented for a follow-up evaluation for back pain and right lower extremity radiculopathy after undergoing a microdiscectomy performed by Dr. McAdam. Dr. Sperry further noted that appellant was advised by Dr. McAdam that the discovery of lesions on an MRI scan that caused his symptoms were new and not related to his prior herniation and, therefore, were deemed work related. Appellant related that his residual pain for which he took medication was worse in the morning. Dr. Sperry advised that appellant had diminished sensation on the medial aspect of his lower extremity that required a brace to ambulate but he had an improving gait. She diagnosed back pain secondary to a herniated nucleus pulposus at L4-5 with improving nerve impingement and right lower extremity radiculopathy with foot drop. Dr. Sperry addressed appellant's treatment plan.

In a March 20, 2012 supervisory mishap report form, J.W. Darby, a supervisor, provided a history of injury that on March 12, 2012 appellant pulled something in his back while cleaning welds for inspection.

³ The lumbar MRI scan was performed on March 15, 2012.

In an October 15, 2012 decision, an OWCP hearing representative modified the May 7, 2012 decision to reflect that the March 12, 2012 incident occurred as alleged. The hearing representative denied appellant's claim on the grounds that he failed to submit rationalized medical evidence to establish a back injury causally related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence⁵ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁶

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.⁷ There are two components involved in establishing the fact of injury. 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.⁸ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁹

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.¹⁰ 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.¹¹ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹²

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁹ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹² *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

OWCP accepted that on March 12, 2012 appellant was grinding and cleaning padeyes on fair water planes while in the performance of duty. It found that the medical evidence failed to establish that he sustained a medical condition as a result of the accepted incident. The Board finds that appellant failed to provide sufficient medical evidence demonstrating that he sustained any back condition causally related to the March 12, 2012 employment incident.

Appellant submitted medical reports from Dr. McAdam who provided findings on physical and neurological examination and reviewed MRI scan results. Dr. McAdam found that appellant had a herniated nucleus pulposus at L4-5 on the right side with radiculopathy for which he underwent surgery on March 19, 2012 and complete foot drop of the right lower extremity. In a May 14, 2012 report, he advised that his lumbar condition was of uncertain etiology. Dr. McAdam noted appellant's explanation that his pain began at work, but he did not provide an opinion that the accepted March 12, 2012 employment incident caused or contributed to appellant's diagnosed back condition.¹³ In the other reports discussed above and prescription notes which found that appellant had complete foot drop on the right and was disabled for work following his March 19, 2012 lumbar spine surgery, Dr. McAdam did not provide an opinion addressing the causal relationship between the right lower extremity and lumbar conditions, resultant surgery and disability and the accepted employment incident. 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.¹⁴ Dr. McAdam failed to provide sufficient medical rationale explaining how appellant's back and right lower extremity conditions and disability were causally related to the accepted employment incident. For the stated reasons, the Board finds that his reports and prescription notes are insufficient to establish appellant's claim.

Dr. Sperry's reports found that appellant had back pain secondary to herniated nucleus pulposus at L4-5 with improving nerve impingement and right lower extremity radiculopathy with foot drop. She noted Dr. McAdam's finding that new lesions discovered on an MRI scan caused appellant's symptoms and were not related to his prior herniation, and thus, were work related. However, Dr. Sperry did not provide her own opinion explaining why the established March 12, 2012 employment incident caused or contributed to appellant's back and right lower extremity conditions.¹⁵ The Board finds that her reports are insufficient to establish appellant's claim.

The Board finds that there is insufficient rationalized probative medical evidence of record to establish that appellant sustained a back injury causally related to the accepted March 12, 2012 employment incident. Appellant did not meet his burden of proof.

¹³ Appellant's belief that the employment caused or aggravated his condition is insufficient to establish causal relationship. See *Joseph T. Gulla*, 36 ECAB 516 (1985).

¹⁴ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁵ *Id.*

Appellant may submit additional 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 to establish that he sustained a back injury on March 12, 2012 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board