United States Department of Labor
Employees' Compensation Appeals Board

V.I., Appellant	)	
and	)	**Docket No. 13-468**
	)	**Issued: June 17, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Shelburne, VT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On December 28, 2012 appellant filed a timely appeal from the August 21, 2012Office of Workers' Compensation Programs'(OWCP) decision denying his 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On May 24, 2012 appellant, then a 21-year-oldrural carrier, filed an occupational disease claim alleging that hehad lower back pain and right leg pain in the performance of duty. He alleged that the injury occurred when he was twisting and turning in his vehicle while lifting

[1] 5 U.S.C. § 8101 *et seq.*

trays and sitting for long periods of time. Appellant alleged that he first became aware of the injury and its relation to his work on March 20, 2012.Hestopped work on March 23, 2012. The employing establishment noted that appellant was off work when he came in with his physician's paperwork.

In a May 24, 2012 statement, appellant indicated that he started having aching pain in the low back around the middle of March 2012. He indicated that, while driving his "LLV[long life vehicle]"for many hours, he lifted trays inside the vehicle and twisted his back. Appellantexplained that he had to turn his body to lift trays. He alleged lower back pain, right leg pain and aching stabbing pain.Appellant noted that he had no prior or similar pain.

In a May 23, 2012 report, Dr. Andrew Saal, a Board-certified internist, noted that appellant was under his medical care. He advised that appellant could not return to work until May 29, 2012.

In a letter dated May 25, 2012, Karolina Peperni, a health and human resource specialist, controverted the claim. She alleged that appellant filed the claim in retaliation for discipline for failing to work in a safe manner due to a motor vehicle accident in which he struck a mailbox.

By letter dated June 13, 2012, OWCP advised appellant that additional factual and medical evidence was needed.

In a letter dated June 8, 2012, Debra Blondin, the postmaster, informed OWCP that another carrier informed her that appellant was a weight lifter. She suggested that he may have injured himself working out at the gym. OWCP also received a June 11, 2012 letter in which the employing establishment informed appellant that he was being separated due to an at-fault motor vehicle accident on May 12, 2012.

A June 21, 2012 lumbar spine x-ray read by Dr. Steven Braff, a Board-certified diagnostic radiologist, was negative. OWCP received physical therapy reports dating from May 21 to August 4, 2012.

In an undated questionnaire received by OWCP on July 9, 2012, appellant indicated that his back injury occurred at work. He explained that he noticed pain in March 2012 and as time went by it worsened to a point that he could not work. Appellant advised that it went down his leg and he could hardly walk. He denied sports outside work.

Dr. Saal continued to treat appellant and provided several reports. They included a May 23, 2012 report in which he examined appellant for back pain and noted that it started about four months earlier. Dr. Saal indicated that the symptoms were aggravated by daily activities that included lifting, sneezing and twisting. He diagnosed lumbago. In a June 7, 2012 report, Dr. Saal repeated his diagnosis of lumbago and recommended continued physical therapy. In a June 20, 2012 report, he diagnosed sciatica.In a separate June 7, 2012 report, Dr. Saal advised that appellant could return to work on June 11, 2012 with restrictions to include no lifting over 10 pounds while working. In a June 20, 2012 report,he noted that appellant first saw him for back pain on May 24, 2012 due to back pain which had worsened over the previous two months. Dr. Saal explained that appellant did not recall a specific traumatic event and that he had a consistent pattern of increasing pain and dysfunction that was "directly related to his

performance of his standard duties as a postal carrier."He explained that,"[t]though sub-acute in onset, his symptoms had steadily worsened to the point of making him unable to perform his assigned duties. I am unaware of any preexisting conditions or other lifestyle factors that may have contributed to his symptoms." Dr. Saal opined that appellant's "spinal dysfunction, sciatica and lower back pain are most likely related to his work and aggravated by the physical duties related to his occupation as a postal carrier."[2] In a June 27, 2012 attending physicians report, he diagnosed musculoskeletal back pain and no radiculopathy at this time. Dr. Saal checked the box "yes" in response to whether the condition found was caused or aggravated by an employment activity. In a separate report also dated June 27, 2012, he diagnosed sciatica. Dr. Saal saw appellant on July 12, 2012 and diagnosed lumbago.

By decision dated August 21, 2012, OWCP denied appellant's claim. It found that the medical evidence did not demonstrate that the claimed medical condition was related to work-related events.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning ofFECA, that the claim was timely filed within the applicable time limitation period ofFECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 of the claimant, must be one of reasonable

[2] Dr. Saal also provided a June 20, 2012 clarification of history indicating that appellant stated that the onset of his back symptoms, while subacute in onset, began at work as a letter carrier and that "he had no previous symptoms until he began lifting/flexing and work duties."

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.[6]

ANALYSIS

The evidence establishes that appellant has a lumbosacral condition and was involved in activities such as sitting,twisting and turning in his work vehicle while lifting trays.However, he submitted insufficient medical evidence to establish that his lumbosacral conditionwas caused or aggravated by these activitiesor any other specific factors of his federal employment.

Appellant submitted several reports from Dr. Saal.IntheJune 20, 2012 report, Dr. Saalexplained that appellant did not recall a specific traumatic event and that he had a consistent pattern of increasing pain and dysfunction that was "directly related to his performance of his standard duties as a postal carrier."Heindicated that he was "unaware of any preexisting conditions or other lifestyle factors that may have contributed to his symptoms." Dr. Saal opined that appellant's "spinal dysfunction, sciatica and lower back pain are most likely related to his work and aggravated by the physical duties related to his occupation as a postal carrier." However, the physician's report is insufficient to establish causal relationship as Dr. Saal does not show an awareness of appellant's specific duties and does not explain the process by which particular work duties would cause or aggravate a diagnosed condition. The Board has held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value[7] and that medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.[8] Inthe June 27, 2012 attending physician's report, Dr. Saal diagnosed musculoskeletal back pain andchecked a box "yes"that the condition was caused or aggravated by work activity.He did not otherwise address how particular work activities caused or aggravated appellant's condition. The Board has held that checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[9] Dr. Saal provided a May 23, 2012 report in which he noted that appellant had back pain which started about four months earlier but he did not specifically address whether particular work activities caused or aggravated a diagnosed medical condition. Other reports from Dr. Saalalso did not offer any opinion on causal relationship. 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.[10] Thus, the reports of Dr. Saal are insufficient to establish appellant's claim.

[6] *Id.*

[7] *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

[8] *Albert C. Brown*, 52 ECAB 152 (2000).

[9] *Calvin E. King*, 51 ECAB 394 (2000).

[10] *K.W.*, 59 ECAB 271 (2007).

Other medical evidence, such as Dr. Braff'sJune 21, 2012 x-ray report,is also insufficient to establish the claim as this evidence did not offer an opinion regarding the cause of appellant's condition. Appellant also submitted copies of physical therapy notes. Section 8101(2) of FECA[11] provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Only medical evidence from a physician as defined by FECA will be accorded probative value. Health care providers such as physical therapists are not physicians under FECA. Thus, physical therapy records are not probative medical evidence.[12]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[13] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[14] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated a medical condition involving his spine, he has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of his employment.

On appeal, appellant argued that he did not engage in outside activities such as weight lifting and sports. He further indicated that the motor vehicle accident he was involved in did not do any damage, noting that his car mirror merely tipped a mailbox. Appellant indicated that, before working for the employing establishment, he was healthy and had no issues. The Board notes that the first component, that hewas involved in activities such twisting and turning in his vehicle while lifting trays and sitting for long periods of time at work has been established. The claim is denied because the medical evidence is insufficiently rationalized to explain how these activities at work caused or aggravated his diagnosed 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* 5 U.S.C. § 8101(2). *See alsoCharley V.B. Harley,* 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

[12] *SeeJane A. White,* 34 ECAB 515, 518 (1983).

[13] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[14] *Id.*

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 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