United States Department of Labor
Employees' Compensation Appeals Board

M.G., Appellant	)	
and	)	**Docket No. 13-541**
	)	**Issued: June 14, 2013**
DEPARTMENT OF VETERANS AFFAIRS, POLICE SECTION, Long Beach, CA, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 7, 2013 appellant filed an appeal of a merit decision of the Office of Workers' Compensation Programs (OWCP) dated November 16, 2012 denying his claim for compensation. Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 established that he sustained an injury in the performance of duty on October 6, 1991 or September 9, 1998 causally related to his employment.

FACTUAL HISTORY

This case has previously been before the Board. In a June 4, 2010 decision, the Board affirmed a May 5, 2009 OWCP decision that appellant failed to establish that he sustained an

[1] 5 U.S.C. §§ 8101-8193.

injury in the performance of duty on September 9, 1998, as alleged.[2] The Board found that the medical evidence of record was insufficient to establish that the accepted employment incident caused a diagnosed medical condition.[3] The law and facts of the previous Board decision are incorporated herein by reference.

In letters dated November 16, 2009 and August 30, 2010, appellant requested reconsideration. In his November 16, 2009 letter, he outlined numerous injuries he alleged that were either sustained at work or preexisting conditions, which were aggravated by the twisting and straining of his back while performing his duties as a police officer. Appellant stated that he was involved in a work-related automobile accident on October 6, 1991 where he sustained upper/neck and low back injuries. On September 9, 1998 he injured his back while at work, which accelerated his preexisting back conditions and caused problems with his right arm. At that time appellant was treated by a registered nurse and underwent physical therapy. He stated that he was put on permanent stationary disability on December 23, 2002, he retired on disability on January 30, 2003 and was put on social security disability on September 14, 2003. Appellant argued that his medical condition is the accumulation of multiple injuries he sustained working as a police officer from 1991 through 2003. He referenced several x-rays and magnetic resonance imaging (MRI) scans pertaining to his spine and nerves, which he indicated showed continued acceleration of his work-related injuries.

In an August 30, 2010 report, Dr. Neeraj Gupta, a Board-certified internist, noted that appellant injured his back just below the left scapula on November 18, 1966 while in military service. Appellant also suffered a cervical neck sprain after a motor vehicle accident while working for the employing establishment. Cervical spine x-ray series performed on October 17, 1991 were consistent with C5-6 and C6-7 disc narrowing and spondylosis and physical therapy progress notes indicated persistent back pain and decreased range of motion of right upper extremity. During his military service in 1966, appellant was diagnosed with cervical spondylosis, cervical degenerative disc disease, lumbar spondylosis and lumbar degenerative disc disease. Dr. Gupta stated on September 9, 1998 that appellant had sat on a chair which gave way causing him to fall backward, striking his back and head. An MRI scan of the lumbar spine on September 16, 2003 was consistent with degenerative disc disease of L4-5 and L5-S1. Dr. Gupta opined that appellant's current low back condition was most likely caused by or a result of his military service. He explained that ever since appellant's original injury in 1966, while on active duty, he has experienced problems with his lower back, with reaggravation during his tenure as a police officer for the employing establishment from 1991 to 2003, when he was placed on disability retirement.

By decision dated December 6, 2010, OWPC denied modification of its prior decision.

[2] Docket No. 09-2023 (issued June 4, 2010).

[3] OWCP accepted that on September 9, 1998 appellant fell when a chair collapsed under him.

On July 23, 2011 appellant requested reconsideration.[4] He stated that he was submitting a February 1, 2011 Doctors Medical Statement of Facts along with his May 27, 2011 letter titled "My Current Medical Conditions Due to On the Job Injuries." In his May 27, 2011 letter, appellant advised that his degenerative disc disease was caused by repeated traumatic on-the-job injuries to his back; the degenerative disc disease caused his cervical spondylosis and he has various problems in his lower extremities and right upper extremity. He also advised that he has erectile dysfunction, pain and functional impairment brought about by his medical conditions. Copies of evidence previously of record, which included physical therapy reports, diagnostic studies and medical evidence, was submitted along with new evidence.

In a February 11, 2011 report, Dr. Arnold Kim, a Board-certified family practitioner, reported that appellant served in the Army from 1965 to 1971. Appellant reported initially injuring his back while lifting and being diagnosed with lumbar and sacral disc degeneration and arthritis since November 18, 1996. He indicated that he went to the emergency room for reinjuring his back and neck after a fall from a chair at the employing establishment on September 9, 1998 with residuals of back and neck pain. Dr. Kim noted examination findings and diagnosed lumbar and sacral spine disc degeneration and arthritis with intervertebral disc syndrome (IVDS) involving bilateral sciatic nerves and complications of erectile dysfunction. Based on his review of medical record and examination, he provided an opinion regarding appellant's functional impairment caused by the established diagnoses and opined that appellant's degree of disability could only be stated in terms of intermittent versus constant pain. Dr. Kim further stated that, without resorting to mere speculation, he could not provide an opinion regarding the IVDS. He also noted that appellant's preemployment physical examination should have disqualified him from employment if his back had been consistently disabling.

By decision dated May 23, 2012, OWCP denied modification of its December 6, 2010 decision. It noted that none of the evidence appellant submitted could be considered contemporaneous medical evidence to support a medical diagnosis contemporaneous to the September 9, 1998 work injury.

On August 15, 2012 appellant requested reconsideration. He indicated in an August 15, 2012 letter that he had included information pertaining to his 1991 work-related motor vehicle accident along with new evidence. Appellant also requested, in an August 14, 2012 letter, that all evidence from his job injuries from 1991 through 2003 be reviewed, including his 1991 work-related motor vehicle accident and his 1998 work-related fall. He reiterated that he left his job and he was placed on social security disability due to being totally disabled as a result of his on-the-job injuries.

Appellant submitted 88 pages of documents along with an August 19, 2012 congressional inquiry to the Honorable Darrell Issa. This included: statements from appellant dated December 20, 2008, November 16, 2009, May 23 and 27, 2011 and July 27, 2012; a duplicative copy of the September 9, 1998 Form CA-1, a September 9, 1998 Form CA-2 signed by appellant; a September 9, 1998 report of accident; and several radiological and MRI scan reports,

[4] In a July 20, 2011 Order Dismissing Appeal, the Board granted appellant's request to withdraw the appeal docketed as appeal number 11-569. Docket No. 11-569 (issued July 20, 2011).

many duplicative, dated October 17, 1991, September 9, 1998, September 16, 2003, September 18 and October 8, 2008 and August 8, 2009. A September 29, 2008 document summarizes a history of appellant's injuries.

In a January 21, 2003 report, Dr. Donald Lee, a Board-certified internist, opined that appellant had degenerative disc disease at L5 through S1 and cervical spondylosis. He provided permanent medical restrictions regarding lifting over 5 pounds, pushing/pulling greater than 5 pounds or any prolonged bending, walking or standing.

An April 29, 2003 report of Dr. Steven E. Gerson, a Board-certified internist, noted that appellant presented with back pain since 1991 following a car accident. He further noted that appellant had x-rays and several MRI scans, which show a progression from mild to severe disease with disc problems and arthritis. Dr. Gerson provided examination findings and an impression of ongoing lumbar radiculopathy, mild osteoarthritis of left knee and gait with mild to moderate limp without ataxia or instability. He opined appellant could work six hours in an eight-hour workday with restrictions.

In an August 13, 2009 report, Dr. Gupta reported that appellant was diagnosed with lumbar spine degenerative disc disease since November 18, 1966 and the condition was due to injury while serving on active duty. He indicated that the condition was subsequently reaggravated several times while serving for the VA Police Department from 1991 to 2003. Dr. Gupta noted work injuries on October 6, 1991 and September 9, 1994 and that appellant was placed on permanent stationary disability on December 23, 2002 and social security on September 14, 2003. He diagnosed lumbar spine degenerative disc disease. Dr. Gupta opined that appellant's current low back condition is most likely the cause of his military service. He further opined that appellant's original injury in 1966 while on active duty was greatly exacerbated during his tenure as a VA Police Officer from 1991 to 2003, when he was placed on disability retirement.

Dr. Kaleem Uddin, a neurologist, noted, in a May 29, 2012 report, the following history: appellant injured his back in the military in 1966; and while on duty as a federal law enforcement officer, he had a car accident in 1991. The physician who evaluated appellant at that time was of the opinion that his back injury was exacerbated and accelerated by the car accident. In 1998, while on the job, appellant was sitting in a chair and fell, hitting the back of his head. As a result of those injuries, he was put on disability in 2003. Examination findings were presented and an assessment of spinal stenosis at L2 and L3 and bilateral sacroilitis and/or facet joint pain was provided.

Also submitted were copies of notes, many duplicative, signed by a registered nurse dated October 13 and 17, 1991 and September 9, 1998 and notes signed by a physical therapist dated October 17, 21 and 25, 1991.

By decision dated November 16, 2012, OWCP denied modification of its prior decisions. It found that appellant had not provided additional medical evidence, which diagnosed any medical condition which could be connected to the September 9, 1998 work injury. OWCP further found that there were no diagnosed conditions which could be associated with the work-related motor vehicle accident of October 6, 1991.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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 of FECA; that the claim was filed within applicable time limitation; that an injury was sustained while 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.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.[7]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[8] In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place and in the manner alleged.[9]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[10] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[11] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[12] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under FECA.[13]

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[5] 5 U.S.C §§ 8101-8193.

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

[7] *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton, id.*

[8] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[9] *Linda S. Jackson*, 49 ECAB 486 (1998).

[10] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

[11] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[12] *Charles E. Evans*, 48 ECAB 692 (1997).

[13] 20 C.F.R. § 10.303(a).

ANALYSIS

The record supports and OWCP accepted that the October 6, 1991 and September 9, 1998 employment incidents occurred as alleged. The Board finds, however, that the medical evidence of record is insufficient to establish that the accepted employment incidents caused a diagnosed medical condition.

The medical records contemporaneous to the October 6, 1991 and September 9, 1998 employment incidents indicate that appellant was seen by a registered nurse and underwent physical therapy. However, it is well established that medical opinion evidence must be from a physician. A registered nurse[14] and a physical therapist[15] are not physicians under FECA; therefore, their opinion is of no probative value. Likewise, the diagnostic testing contemporaneous to and after the employment incidents are of little probative value as they do not contain any physician's opinion attributing a diagnosed condition to either the accepted October 6, 1991 or the September 9, 1998 employment incidents.

There is also no other medical evidence of record to establish that appellant sustained an injury caused or aggravated by either the October 6, 1991 or September 9, 1998 incidents.

Dr. Lee diagnosed several conditions and opined that appellant had permanent medical restrictions. He failed to provide a history of the October 6, 1991 work incident or indicate whether appellant's diagnosed conditions were caused or aggravated by an employment activity. The Board finds that Dr. Lee's report is insufficient to establish appellant's claim.

Dr. Gerson noted the 1991 car accident, provided an impression of ongoing radiculopathy, mild osteoarthritis of left knee and gait with mild to moderate limp. He opined that appellant could work 6 hours in an 8-hour workday with restrictions. However, Dr. Gerson did not offer an opinion addressing the causal relationship between the diagnosed conditions and the accepted October 6, 1991 employment incident.[16] The Board finds that the opinion of Dr. Gerson is insufficient to establish appellant's claim.

Dr. Gupta noted the history of injuries appellant sustained and opined that appellant's current low back condition was most likely caused by or a result of his military service. He further opined that appellant's low back conditions were reaggravated during his tenure as a police officer for the employing establishment from 1991 to 2003, when he was placed on disability retirement. However, Dr. Gupta did not address in either report how the accepted

[14] *See also Joseph N. Fassi*, 42 ECAB 231 (1991) (medical evidence signed only by a registered nurse or nurse practitioner is generally not probative evidence).

[15] 5 U.S.C. § 8101(2) which defines physician as including surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *Vickey C. Randall*, 51 ECAB 357, 360 (2000); *Arnold A. Alley*, 44 ECAB 912, 921 (1993); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[16] Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

employment incidents caused or aggravated the diagnosed medical conditions or how any events that occurred may have been connected to the diagnosed conditions as the cause.[17] As he failed to address the causal relationship between appellant's condition and the accepted incidents, the Board finds that this evidence is of diminished probative value in establishing the claim.

Dr. Kim noted the September 9, 1998 work incident as part of appellant's history and diagnosed lumbar and sacral spine disc degeneration and arthritis with IVDS involving bilateral sciatic nerves and complications of erectile dysfunction. While he provided an opinion regarding appellant's functional impairment, he did not offer an opinion addressing the causal relationship between the diagnosed conditions and the accepted September 9, 1998 employment incident.[18] The Board finds that the opinion of Dr. Kim is insufficient to establish appellant's claim.

Dr. Uddin reported the history of both employment incidents and provided an assessment of spinal stenosis at L2 and L3 and bilateral sacroilitis and/or facet joint pain. However, he did not offer an opinion addressing the causal relationship between the diagnosed conditions and the accepted employment incidents.[19] The Board finds that the opinion of Dr. Uddin is insufficient to establish appellant's claim.

The other medical evidence provided by appellant fails to provide a diagnosis of any condition which could be connected to the accepted employment incidents. There is no recent medical evidence supporting that either the 1991 or the 1998 work injury caused a degenerative condition.

Appellant expressed his belief that his current conditions resulted from his work duties as a police officer and his various accidents. However, 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.[20] 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.[21] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Appellant failed to submit sufficient medical evidence to rectify the deficiencies in his claim.

Therefore, the Board finds that appellant failed to provide sufficient medical evidence to establish that he sustained an injury resulting from either the October 6, 1991 or the September 9, 1998 employment incident. Thus, appellant failed to meet his burden of proof.

[17] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

[18] *Supra* note 16.

[19] *Id*.

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

[21] *Id.*

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty.

ORDER

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

Issued: June 14, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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