United States Department of Labor
Employees' Compensation Appeals Board

S.A., Appellant	)	
and	)	**Docket No. 13-164**
	)	**Issued: March 28, 2013**
DEPARTMENT OF THE AIR FORCE, SHAW AIR FORCE BASE, SC, 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
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 1, 2012 appellant filed a timely appeal of the September 7, 2012 decision of the Office of Workers' Compensation Programs (OWCP) which denied his claim for a traumatic injury. He also appealed an October 3, 2012 decision of OWCP which denied merit review. 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 the case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty; and (2) whether OWCP properly denied his request for reconsideration.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On July 26, 2012 appellant, then a 47-year-old high voltage electrician, filed a traumatic injury claim alleging that on July 25, 2012 he slipped and fell, when loosening straps on a cherry polar bucket cover injuring his tail bone. He stopped work on July 25, 2012 and returned to work full-time limited duty on August 1, 2012.

Appellant submitted July 25, 2012 discharge instructions for contusion of the coccyx from Tuomey Healthcare. Also submitted was a July 30, 2012 excuse slip from a physician's assistant who noted that appellant was treated and released to work on August 21, 2012.

On August 2, 2012 OWCP advised appellant of the type of evidence needed to establish his claim. It particularly requested that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific work factors.

On August 14, 2012 appellant was treated by Dr. Deborah L. Morris, a Board-certified internist, for low back pain occurring after work injury on July 25, 2012. He reported working on a bucket truck and falling landing on his coccyx and experiencing moderate low back pain. Dr. Morris diagnosed back and neck pain and lumbago. She recommended physical therapy and returned appellant to work with restrictions. In an August 28, 2012 report, Dr. Morris saw him in follow-up for low back pain after the July 25, 2012 work injury. She diagnosed lumbago and recommended continued physical therapy. Appellant submitted duty status reports from a physician's assistant dated August 14 and 28, 2012, who diagnosed low back pain and advised that appellant could return to work part time with restrictions. Also submitted were discharge instructions dated August 21, 2012 for back pain and neck pain from a nonspecific healthcare provider who diagnosed lumbago.

In a decision dated September 7, 2012, OWCP denied appellant's claim on the grounds that the evidence submitted was insufficient to establish that a medical condition was diagnosed in connection with the claimed event or work factors.

In a September 11, 2012 appeal request form, appellant requested reconsideration. In a separate statement, he indicated that he slipped and fell on July 25, 2012 and was undergoing medical treatment and physical therapy. Appellant submitted reports from Dr. Morris dated August 14 and 28, 2012 and duty status reports from a physician's assistant dated August 14 and 28, 2012, discharge instructions dated August 21, 2012 for back and neck pain, all previously of record. Also submitted was an x-ray of the lumbosacral spine dated August 15, 2012 which revealed disc disease. In a work status form dated August 15, 2012, prepared by a provider whose signature is illegible, appellant was diagnosed with lumbago and returned to work with restrictions. On August 23, 2012 he underwent physical therapy. On September 18, 2012 appellant was treated by Dr. Morris for low back pain from a July 25, 2012 work injury. Dr. Morris referenced physical therapy notes which suggested his symptoms were exaggerated which was hindering his improvement. She noted findings of numbness and radiation down the leg, negative straight leg raises bilaterally with limited range of motion. Dr. Morris diagnosed lumbago and referred appellant for pain management care. In a work status form dated September 18, 2012, she diagnosed lumbago and returned appellant to work modified duty. Appellant submitted a September 18, 2012 duty status form from a physician's assistant who

diagnosed lower lumbar pain and returned appellant to work modified duty. Similarly, a September 18, 2012 work status form from a physician's assistant diagnosed lumbago and returned appellant to modified duty.

In a decision dated October 3, 2012, OWCP denied appellant's reconsideration request on the grounds that he neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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 the applicable time limitation of FECA, 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[2]

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 which is alleged to have occurred.[3] The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[4]

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 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.[5] The weight of medical evidence is determined by its reliability, its probative

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

[4] *Id*.

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS -- ISSUE 1

In the instant case, it is not disputed that appellant worked as a high voltage electrician and that on July 25, 2012 he slipped and fell, when loosening straps on a cherry picker bucket cover. However, he has not submitted sufficient medical evidence to establish that any diagnosed medical conditions were causally related to the July 25, 2012 work incident. On August 2, 2012 OWCP advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from a physician sufficiently explaining how the July 25, 2012 incident caused or aggravated a diagnosed medical condition.

Appellant submitted an August 14, 2012 report from Dr. Morris, who treated him after a work injury on July 25, 2012. He reported working on a bucket truck and falling landing on his coccyx and experiencing moderate low back pain. Dr. Morris diagnosed back and neck pain and lumbago and returned appellant to work with restrictions. Similarly, in an August 28, 2012 report, she saw him in follow-up for low back pain and diagnosed lumbago. However, Dr. Morris' reports are insufficient to establish the claim as she appears merely to be repeating the history of injury as reported by appellant without providing her own opinion regarding whether his condition was work related. To the extent that she is providing her own opinion, Dr. Morris failed to provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.[7]

Appellant submitted a July 30, 2012 excuse slip and duty status reports dated August 14 and 28, 2012 from a physician's assistant. However, this evidence is of no probative medical value as the Board has held that physician's assistants are not competent to render a medical opinion under FECA.[8] Appellant also submitted discharge instructions dated August 21, 2012 for back and neck pain prepared by a nonspecific health care provider who diagnosed lumbago. However, there is no evidence that the document from the nonspecific healthcare provider is from a physician. Likewise, medical documents not signed by a physician are not probative medical evidence and do not establish appellant's claim.[9] Therefore, these reports are insufficient to meet his burden of proof.

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[6] *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[7] *Jimmie H. Duckett, supra* note 6.

[8] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

[9] *See id. See also Charley 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).

The record contains no other medical evidence. Because appellant has not submitted reasoned medical evidence explaining how and why neck and low back pain and lumbago is employment related, he has not met his burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.[10] Appellant failed to submit such evidence and OWCP, therefore, properly denied his claim for compensation.

On appeal, appellant asserted that he submitted sufficient evidence to establish that he sustained a work-related back injury. The Board notes that he failed to submit sufficient evidence to establish that his neck and back pain and lumbago were causally related to the accepted work-related incident.

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.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of FECA,[11] OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(1) Shows that OWCP erroneously applied or interpreted a specific point of law; or
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> "(2) Advances a relevant legal argument not previously considered by the (Office); or
>
> "(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP."[12]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.[13]

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[10] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[11] 5 U.S.C. § 8128(a).

[12] 20 C.F.R. § 10.606(b)(2).

[13] *Id*. at § 10.608(b).

ANALYSIS -- ISSUE 2

OWCP's most recent merit decision dated September 7, 2012 denied appellant's claim for compensation on the grounds that he failed to provide sufficient medical evidence to establish that the diagnosed condition was causally related to established work duties. It denied appellant's reconsideration request, without a merit review and appellant appealed this decision to the Board.

The issue presented is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument.

Appellant asserted in his September 11, 2012 reconsideration request that he slipped and fell on July 25, 2012 and was undergoing medical treatment and physical therapy. These assertions do not show a legal error by OWCP or a new and relevant legal argument. It is not disputed that appellant slipped and fell on July 25, 2012. The underlying issue in this case is whether his diagnosed condition is causally related to the July 25, 2012 incident. That is a medical issue which must be addressed by relevant medical evidence.[14] A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any new and relevant medical evidence in support of his claim.

Appellant submitted reports from Dr. Morris, dated August 14 and 28, 2012, duty status reports from a physician's assistant, dated August 14 and 28, 2012, and discharge instructions dated August 21, 2012 for back and neck pain. However, these reports are duplicative of evidence previously submitted and were considered by OWCP in its decision dated September 7, 2012 and found insufficient. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[15] Therefore, these reports are insufficient to require OWCP to reopen the claim for a merit review.

Appellant submitted a new September 18, 2012 report from Dr. Morris, who treated him for low back pain after a July 25, 2012 work injury. Dr. Morris diagnosed lumbago and referred him for pain management. In a work status form dated September 18, 2012, she diagnosed lumbago and returned appellant to work modified duty. The Board notes that these reports are similar to Dr. Morris' prior August 14 and 28, 2012 reports which were previously considered by OWCP in its September 7, 2012 decision. Therefore, this report is insufficient to require OWCP to reopen the claim for a merit review.[16]

Appellant also provided an x-ray of the lumbosacral spine dated August 15, 2012 which revealed disc disease. The Board notes that this report is not relevant because it does not address

[14] *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

[15] *See Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[16] *See id.*

the particular issue involved, whether appellant's diagnosed condition is causally related to his work duties. Therefore, this new evidence is not relevant and is insufficient to warrant reopening the case for a merit review.

Appellant submitted a September 18, 2012 duty status report and a work status form from a physician's assistant. Also submitted were physical therapy notes from August 23, 2012. Additionally, an August 15, 2012 work status form from a provider whose signature is illegible was provided. However, this evidence is of no probative medical value as the Board has held that physician's assistants and physical therapist are not competent to render a medical opinion under FECA.[17] The Board has also held that reports lacking proper identification do not constitute probative medical evidence.[18] Thus, this evidence is not relevant since the underlying issue is medical in nature.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his claimed conditions were causally related to his employment. The Board further finds that OWCP properly denied his request for reconsideration.[19]

[17] *See supra* notes 8 and 9.

[18] *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

[19] With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the October 3 and September 7, 2012 Office of Workers' Compensation Programs' decisions are affirmed.

Issued: March 28, 2013
Washington, DC

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

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

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