

FACTUAL HISTORY

On May 16, 2012 appellant, then a 45-year-old distribution clerk, filed a traumatic injury claim alleging that on June 24, 2011 he sustained a lower back injury and bulging discs due to pulling mail off the racks and placing trays into the machine.

Accompanying his claim, appellant submitted a May 14, 2012 prescription note listing work restrictions for 30 days.²

In a March 9, 2012 statement, Amy M. Zobro, a coworker, stated that on June 24, 2011 she started work as a clerk and then at 6:00 a.m. switched over to cover as a supervisor. She stated that she was working with appellant when he disappeared. Ms. Zobro was told that appellant had called someone to pick him up because his back was hurting. At the time appellant never mentioned to her that he had injured himself at work which is why she did not file an accident report.

Appellant submitted statements from three coworkers who noted that he appeared to be in pain and that he was picked up by his brother on the day in question.

By letter dated June 8, 2012, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised as to the medical and factual evidence required to establish his claim and given 30 days to provide this information.

In response to OWCP's request for additional evidence appellant submitted the following evidence.

In a June 24, 2011 West Virginia University Hospital report, appellant was diagnosed with lumbosacral strain and provided aftercare instructions for this condition.

On June 26, 2011 at Winchester Medical Center -- Emergency Department, appellant was diagnosed with possible lumbar disc disease. An undated discharge note from Dr. Michael McAuliff, an examining physician, related that appellant had been discharged from Winchester Medical Center -- Emergency Department on June 26, 2011 and released to work on June 30, 2011 with no work restrictions.

The record also contains Family and Medical Leave Act (FMLA) certifications by Dr. Michael Poss, a treating physician, dated May 21 and June 20, 2012, which noted that his medical condition occurred in approximately June 2011. Diagnoses included chronic low back syndrome, fibromyositis and spondylosis.

A February 14, 2012 work restriction note indicated that appellant was capable of working four hours per day with restrictions due to a back condition.

² The signature on the note was illegible.

By decision dated July 12, 2012, OWCP denied appellant's claim on the grounds that he failed to establish that the diagnosed condition was causally related to the June 24, 2011 employment incident.

In an August 8, 2012 Workers' Compensation Commission (WCC) Employees' and Physicians' Report of Injury, appellant noted that he injured his back on June 24, 2011 at work while pulling trays off a rack. At the bottom of the form a certified physician's assistant³ diagnosed low back strain and recurrent right groin pain. A checkmark denoted the condition was due to an occupational injury and that appellant was first seen on June 24, 2011 for this condition.

On January 8, 2013 OWCP received appellant's request for reconsideration.

By decision dated January 15, 2013, OWCP denied reconsideration.

In a letter dated April 16, 2013, appellant requested reconsideration and submitted medical and factual evidence in support of his request.

In March 1, 2012 e-mail correspondence, Kathryn Davis, president of the union, noted that appellant's back condition began last June when appellant was on the clock and in the performance of duty. She noted that no incident or accident report had been filed at the time.

In a June 24, 2011 emergency room report, Dr. Brandt H. Williams, an examining Board-certified emergency room physician, and Kevin R. Garneau, a physician's assistant, reported that appellant was seen that day in the emergency room for back and abdominal pain. Appellant reported back pain mainly in the left lower back over the past several days, which worsened with range of motion. He stated that his work requires a lot of pulling, pushing and lifting. Appellant also complained of right lower quadrant abdominal discomfort radiating into the right groin for the past two to three months. A physical examination revealed left lower back diffuse tenderness on palpation. Dr. Williamson diagnosed acute low back strain/pain and recurrent right groin pain and released appellant to work on June 27, 2011.

In July 19, 2012 progress notes, Dr. Andrew E. Schwentker, a treating Board-certified internist, noted that appellant was stressed as there was an issue as to whether appellant's back pain was due to an employment injury or preexisting condition. He diagnosed back pain and generalized anxiety disorder/stress reaction. Dr. Schwentker noted that appellant was first seen for back pain in July 2011. Lastly, he noted that he had not treated appellant for a preexisting back condition.

The record contains a resubmitted August 8, 2012 WCC Employees' and Physician's Report of Injury with Dr. Williamson's signature added.

By decision dated June 10, 2013, OWCP denied modification.

³ The signature of the certified physician's assistant is illegible.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing the essential elements of 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; 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.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.⁹ 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.¹⁰

ANALYSIS

The record reflects that appellant is a distribution clerk who alleged that on June 24, 2011 he sustained a lower back injury and bulging discs due to pulling mail off the racks and placing trays into the machine. OWCP found that the claimed incident occurred. The Board finds, however, that appellant did not meet his burden of proof to establish that the June 24, 2011 traumatic incident on June 24, 2011 occurred as alleged.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁶ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

⁸ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

⁹ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Appellant stated that on June 24, 2011 he injured his lower back after pulling mail off the racks and placing trays into the machine. However, he did not file his claim until May 16, 2012, almost 11 months after the date of the incident, without any explanation for his delay in filing. Appellant failed to describe how the actions or incidents on June 24, 2011 contributed to his claimed condition as he provided only a general description of his activities on that date. He provided no confirmation of the alleged incident by statements of witnesses, coworkers or supervisors. The statements in the record all note that appellant left work in pain and was picked up by his brother. Appellant stopped work that day and was released to work with no restrictions on June 30, 2011. As noted, circumstances such as late notification of injury and lack of confirmation of injury may cast doubt on appellant's claim.

The medical evidence at the time of the alleged incident provides a different account of how the injury occurred. In the June 24, 2011 emergency room report, Dr. Williams reported that appellant was seen that day in the emergency room for back and abdominal pain. Appellant reported back pain mainly in the left lower back over the past several days, which worsened with range of motion. He also complained of right lower quadrant abdominal discomfort radiating into the right groin for the past two to three months. Appellant related that his work requires a lot of pulling, pushing and lifting. From the description provided in this report his appears to be alleging an occupational rather than a traumatic injury as he noted back pain occurring over several days and noted employment duties.

The Board finds that the evidence does not provide a consistent history of when the claimed incident occurred. The medical evidence obtained on the day of the June 24, 2011 alleged incident appears to support a claim for an occupational condition rather than a traumatic one. The statements provided in the record note that appellant was picked up by his brother because he was in pain, but no accident or incident report was filed. An FMLA certification notes the condition occurred in approximately June 2011. An August 8, 2012 form report noted that the injury occurred on June 24, 2011 while pulling racks off a tray. In view of this and appellant's delay in filing his claim, the Board finds that there are such inconsistencies that cast serious doubt on the validity of the claim.¹¹ Therefore, appellant has not met his burden of proof in establishing that the June 24, 2011 incident occurred as alleged.¹²

On appeal appellant contends that the claims examiner who prepared OWCP's June 10, 2013 decision should not have been allowed to handle the reconsideration for the reason that this claims examiner had been involved in the original denial of his claim on July 12, 2012. By decision dated January 15, 2013, OWCP denied his request for modification of the July 12, 2012 decision. On June 10, 2013 it denied appellant's request for reconsideration of the January 15, 2013 merit decision. OWCP's procedure manual states that each request for reconsideration must be handled by a senior claims examiner who was not involved in the making of the

¹¹ *S.P.*, 59 ECAB 184 (2007) (an employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim).

¹² As appellant did not establish that the employment incident occurred at the time, place and in the manner alleged, the Board need not further consider the medical evidence.

contested decision.¹³ The record on appeal establishes that the contested decision of January 15, 2013 was authored by a different senior claims examiner. Therefore, the Board finds that OWCP appropriately followed its procedures.

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.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a traumatic injury on June 24, 2011 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 10, 2013 is affirmed as modified.

Issued: April 16, 2014
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

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.2(b) (October 2011).