United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 14-922**
	)	**Issued: August 15, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 11, 2014 appellant, through his attorney, filed a timely appeal from the February 13, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on November 7, 2012.

FACTUAL HISTORY

On December 9, 2012 appellant, a 53-year-old automation clerk, filed a claim alleging that he sustained a traumatic injury in the performance of duty on November 7, 2012 when he moved a cage full of mail. He stated, "I felt something (sharp pain) in my upper back (left

[1] 5 U.S.C. § 8101 *et seq.*

side)." Appellant stopped for a few minutes and then continued to run the mail for the rest of his shift. He was not aware how serious his condition was until several days later, when the pain got worse, he went to the emergency room.

Appellant was seen at the emergency room on November 12, 2012. X-rays were taken of his lumbar spine. Appellant was diagnosed with degenerative joint disease or arthritis of the low back.

On December 20, 2012 appellant saw Dr. Billy L. Brown, an internist, who noted that appellant was pulling 800 pounds when he injured his left lower back. Dr. Brown diagnosed lumbosacral sprain. Appellant completed a state workers' compensation form on that same date indicating that he felt a sharp pain in the upper left side of his back while pulling a cage of mail on November 7, 2012.

Dr. Brown examined appellant again on January 3, 2013. Appellant had mild pain to palpation in the lumbosacral spine midline and muscle spasms left. Dr. Brown found that appellant's symptoms were consistent with a herniated disc.

On January 7, 2013 Dr. Brown completed an attending physician's form report. He did not provide a history of injury. Dr. Brown diagnosed acute back pain and indicated with an affirmative mark that appellant's condition was caused or aggravated by an employment injury on November 7, 2012.

In a decision dated January 30, 2013, OWCP denied appellant's injury claim. It found that the November 7, 2012 incident occurred as alleged but that the medical evidence failed to establish that his back condition was causally related to the accepted work incident.

Appellant requested reconsideration and submitted an October 28, 2013 report from Dr. Iain H. Kalfas, a Board-certified neurosurgeon, who had treated appellant for a diagnosis of thoracic spinal metastatic tumor since February 2013. Dr. Kalfas made the diagnosis of a metastatic tumor to the T10 vertebral body, which was directly related to appellant's prior prostate carcinoma. He added that the tumor had eroded the T10 vertebral body and was causing significant back pain. Dr. Kalfas noted that appellant underwent a lumbar decompression with reconstruction of the lower thoracic region on February 11, 2013, after which he continued to report satisfactory improvement of his low back pain.

Dr. Kalfas addressed the issue of causal relationship. Appellant stated that his pain began immediately while moving a heavy cage of mail at work in October 2012. He felt a sudden "snap" in his back. Appellant was evaluated at that time and found to have a spinal fracture in the lower thoracic region. "This subsequently turned out to be the tumor for which he underwent surgery in February 2013." Dr. Kalfas continued:

> "It is my medical opinion that while the injury at work did not cause the tumor it led to the fracture of the vertebrae that had been involved with tumor. For this reason, I feel there is a direct relationship between the work injury and the spinal fracture for which he underwent spinal surgery."

In a decision dated February 13, 2014, OWCP reviewed the merits of appellant's case and denied modification of its prior decision. It found that Dr. Kalfas did not provide an accurate history of injury, as he stated that it occurred in October 2012, which was prior to the November 7, 2012 work incident. OWCP also found that Dr. Kalfas needed to explain how the fracture was caused by the November 7, 2012 incident rather than the erosion of the T10 vertebra. It noted that the element of causal relationship required further rationale supported by objective findings.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[2] An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.[3]

Causal relationship is a medical issue,[4] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,[5] must be one of reasonable medical certainty,[6] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[7]

ANALYSIS

There is a discrepancy as to the location of the claimed injury. When appellant visited the emergency room on November 12, 2012, x-rays were taken of his lumbar spine. He was told he had degenerative joint disease or arthritis of the low back. But when appellant filed his injury claim on December 9, 2012, he alleged that he felt a sharp pain in the left side of his upper back while moving a cage full of mail on November 7, 2012. The location of the claimed injury therefore appears to be different from the lumbar pain for which he went to the emergency room.

When Dr. Brown, the internist, saw appellant on December 20, 2012, he reported that appellant injured his left lower back while pulling 800 pounds. He diagnosed a lumbosacral

[2] 5 U.S.C. § 8102(a).

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

sprain. But when appellant completed a state workers' compensation form on that same date, he indicated once more that he felt a sharp pain in the left side of his upper back while pulling a cage of mail on November 7, 2012.

The medical evidence submitted was not consistent with appellant's claim for workers' compensation benefits. Dr. Brown examined appellant again on January 3, 2013 and reported mild pain to palpation in the lumbosacral spine midline and muscle spasms left. He noted that appellant's symptoms were consistent with a herniated disc.

The medical record reflects several diagnoses: degenerative joint disease or arthritis of the low back, lumbosacral sprain, and possible herniated disc, all associated with the low back. Dr. Brown did not firmly diagnose appellant's condition, did not reconcile appellant's account of a left upper back injury on November 7, 2012, or explain how he was able to determine that the November 7, 2012 work incident caused or aggravated appellant's diagnosis. The Board finds his opinion to be of diminished probative value on the issue of causal relationship.

Dr. Kalfas, the neurosurgeon, provided a different history to appellant's case. He noted that appellant had a metastatic tumor to the T10 vertebral body, which was directly related to a prior prostate carcinoma. This tumor had eroded the T10 vertebral body, causing significant back pain. Appellant provided a history that he felt a sudden "snap" in his back while moving a heavy cage of mail in October 2012 and was found to have a spinal fracture in the lower thoracic region. It was Dr. Kalfas' opinion that the incident led to the fracture of the T10 vertebra, for which appellant underwent spinal surgery in February 2013.

OWCP noted the date Dr. Kalfas reported for the work incident, but represented that appellant was evaluated at the time of the work incident and found to have a spinal fracture in the lower thoracic region. There is no evidence of this in the record. The emergency room reports of November 12, 2012 note films taken of the lumbar spine. There was no evidence of a fracture at the T10 level. Similarly, there is no operative report of appellant's February 2013 spinal surgery. Dr. Kalfas' October 28, 2013 narrative is the first evidence in the record to mention this surgery or appellant's metastatic tumor to the T10 vertebral body.

The location of the implicated vertebra is in the central region of appellant's back. It is not in the upper left back, where appellant felt a sharp pain on November 7, 2012, and it is not in the lumbar spine, where he reported pain when he went to the emergency room on November 12, 2012. Appellant was found to have an eroded and fractured T10 vertebra. Dr. Kalfas did not explain whether the condition of the thoracic fracture was consistent with an injury two to three months earlier. He did not reconcile such an injury with appellant's report of a sharp pain in the upper left back and his complaints of pain in his left lumbosacral spine.

Due to the discrepancy as to the location and nature of appellant's claimed injury, the evidence is not sufficient to discharge his burden of proof to establish that he sustained a back injury in the performance of duty on November 7, 2012. The Board will affirm OWCP's February 13, 2013 decision.

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 has not met his burden to establish that he sustained an injury in the performance of duty on November 7, 2012.

ORDER

IT IS HEREBY ORDERED THAT the February 13, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board