United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 14-1693**
	)	**Issued: December 23, 2014**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Independence, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 31, 2014 appellant filed a timely appeal from a July 2, 2014 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 over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic injury in the performance of duty on March 12, 2013.

On appeal, appellant contended that if his claim was denied due to untimely filing, the Board should consider the role a hostile work environment played in the timing of filing his claim.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 9, 2014 appellant, then a 53-year-old contract and procurement worker, filed a traumatic injury claim (Form CA-1) alleging injury to his spinal cord, back, and neck resulting in cervical myelopathy as a result of moving a desk, table, and chairs after an office luncheon at 2:00 p.m. on March 12, 2013. He stated that he incurred permanent nerve damage in his left hand and lower extremities as a result of this injury and subsequent treatment. A supervisor explained that it was unknown whether appellant was injured in the performance of duty, but that she had visited appellant in the hospital on March 13, 2013. Appellant submitted witness statements in support of the factual elements of his claim for compensation.

By letter dated May 20, 2014, OWCP advised appellant that the evidence of record was insufficient to support his claim. It afforded him 30 days to submit additional medical evidence, noting that it had not received a diagnosis of a condition resulting from the traumatic incident.

On March 12, 2013 Dr. Joel M. Campbell, a Board-certified internist, stated that appellant had come in at 5:04 p.m. complaining of a 15-minute history of left arm pain and foot numbness. He noted that appellant stated that pain began while at work. Appellant denied any injury and had no shortness of breath or nausea. There was some tingling in his fingers. Appellant denied current neck pain, although he had some earlier. Dr. Campbell assessed appellant with left arm pain.

In a report dated March 13, 2013, Dr. Brian Reasoner, a Board-certified internist, diagnosed appellant with paresthesias, pain, and weakness of the left upper extremity and lower extremities; hypertension; hyperlipidemia; type 2 diabetes mellitus; peripheral vascular disease with a previous cerebrovascular accident; gastroesophageal reflux disease; and gout. In describing appellant's history of illness, he noted that appellant had "a history of hypertension, hyperlipidemia, type 2 diabetes mellitus, and previous cerebrovascular accident as well as cervical and lumbar radiculopathy. [Appellant] was in his usual state of health until about 4:30 [p.m.] in the afternoon of March 12, [2013] when he had a sudden sensation in his neck followed by pain down his left arm. He states [that] the pain continued for a few minutes and he finally, after about an hour and a half, decided to go to the emergency room." Dr. Reasoner noted past surgical history of cervical spine fusion of C4, 5, and 6 in 2009.

In a diagnostic report dated March 13, 2013, Dr. Mason G. Hicks, a radiologist, examined the results of a computerized tomography (CT) scan of appellant's chest, abdomen, and pelvis.[2] He noted no evidence of aortic dissection, rupture, or aneurysm, and no evidence of an acute process. Dr. Hicks also examined a magnetic resonance imaging (MRI) scan test of appellant's lumbar spine, finding no evidence of acute processes and mild multilevel degenerative changes. On the same date Dr. Gordon W. Calderwood, a Board-certified diagnostic radiologist, examined the results of an MRI scan test of appellant's thoracic spine. He found two small disc protrusions without associated spinal cord deformity. Dr. Calderwood also examined an MRI scan test of appellant's cervical spine, noting evidence of a prior anterior cervical fusion procedure. He stated that there was no evidence of significant central spinal canal compromise at any level, but

[2] Dr. Hicks' certification as a radiologist could not be confirmed by the American Board of Medical Specialties or the American Osteopathic Association.

that there were findings consistent with cervical myelomalacia. Dr. Srilatha Joglekar, a Board-certified diagnostic radiologist, examined a CT scan of appellant's cervical spine on the same date and noted that appellant had postoperative changes involving a metallic plate and corporal screws in his cervical spine. Dr. Joglekar noted no acute osseous findings.

On March 18, 2013 Dr. Lauren D. Evans, a radiologist, examined the results of an MRI scan of appellant's cervical spine.[3] She noted stable postoperative changes, cervical spondylosis, and cervical myelomalacia, with no abnormal cord enhancement.

In a discharge summary dated March 22, 2013, Dr. Chaitanya C. Reddy, a Board-certified internist, diagnosed appellant with cervical myelopathy; weakening of the lower extremities; paresthesias of the left hand, chest wall, and legs; a resolved acute kidney injury; diabetes mellitus; hypertension; hyperlipidemia; and a history of strokes and transient ischemic attack. Dr. Reddy noted that appellant was "admitted with worsening bilateral lower extremity weakness, paresthesias in the lower extremity as well as left upper extremity paresthesias and pain as well as a sensory band across his chest. [Appellant] did have a history of spinal fusion surgery in the past, naturally the concern was for cervical myelopathy type process."

In a report dated April 30, 2013, Dr. Gopal R. Guttikonda, a Board-certified neurologist, diagnosed appellant with spondylitic cervical myelopathy with radiculopathy. He noted that appellant's condition dated from as far back as 2008, and that he underwent surgery in 2009 with a partial symptomatic improvement. Dr. Guttikonda stated, "From time to time, from hyperflexion and extension or from stress and strain, the symptoms can fluctuate. One such thing happened in March. [Appellant] was given steroids, which may or may not have any beneficial effect to help him. In any case, he is ambulatory now without surgery. [Appellant's] major problem is neuropathic pain from a spinal cord injury and mild degree of weakness, sensory impairment in both legs, and left arm. They are primarily from spinal cord injury, which is old." In describing appellant's history of illness, Dr. Guttikonda noted that appellant was a "52-year[-]old contract worker at the VA Hospital [and] developed numbness of both legs below the waist on or about March 12, 2013. Subsequently, developed difficulty in walking, unable to get out of his car."

Appellant submitted reports for an endoscopy procedure and a gastrointestinal procedure. He also submitted notes from physical therapists. These documents did not contain a history of injury relating to an incident on March 12, 2013.

By decision dated July 2, 2014, OWCP denied appellant's claim for compensation. It found that he had not submitted any medical evidence containing a diagnosis in connection with the alleged traumatic event. OWCP explained that the medical evidence must not only contain a diagnosis, but establish that a diagnosed medical condition was causally related to the work incident. It accepted that appellant was a federal civilian employee who filed a timely claim and that the incident of March 12, 2013 occurred as described.

[3] Dr. Evans' certification as a radiologist could not be confirmed by the American Board of Medical Specialties or the American Osteopathic Association.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 timely filed within the applicable time limitation period of FECA, that an injury[5] was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[7]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship. 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 specified employment factors or incident. 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.[8]

ANALYSIS

Appellant alleged that, on March 12, 2013, he sustained injuries to his spinal cord, back, and neck as a result of moving a desk, table, and chairs after an office luncheon. The Board finds that he did not submit to OWCP sufficient medical evidence from a physician establishing that a medical condition had been diagnosed in connection with this incident.

---

[4] *Supra* at note 1.

[5] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[6] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *Id*. *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[8] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

In a report dated March 12, 2013, Dr. Campbell noted that appellant "state[d] pain began while here at work at the VA. State[d] he has an office job. Denie[d] any injury. No shortness of breath or nausea. Some tingling in fingers. Denies current neck pain, although [appellant] had some earlier." He assessed appellant with left arm pain. This report is insufficient to establish appellant's claim in several respects. Dr. Campbell assessed appellant only with left arm pain. "Pain" is a description of a symptom rather than a firm diagnosis of a compensable medical condition.[9] Furthermore, after noting that appellant stated that his pain started while at work at the employing establishment, Dr. Campbell noted that appellant denied any injury associated with his symptoms. This indicates that, at the time of Dr. Campbell's examination, appellant did not believe that his symptoms were work related. As such, Dr. Campbell's report is insufficient to establish a diagnosis related to an employment incident.

In a report dated March 13, 2013, Dr. Reasoner stated that "[appellant] was in his usual state of health until about 4:30 [p.m.] in the afternoon of March 12, [2013] when he had a sudden sensation in his neck followed by pain down his left arm." He diagnosed appellant with paresthesias, pain, and weakness of the left upper extremity and lower extremities; hypertension; hyperlipidemia; type 2 diabetes mellitus; peripheral vascular disease with a previous cerebrovascular accident; gastroesophageal reflux disease; and gout. On April 30, 2013 Dr. Guttikonda, a Board-certified neurologist, diagnosed appellant with spondylitic cervical myelopathy with radiculopathy. He noted that appellant's condition dated from as far back as 2008 and that he underwent surgery in 2009 with a partial symptomatic improvement. Dr. Guttikonda stated, "From time to time, from hyperflexion and extension or from stress and strain, the symptoms can fluctuate. One such thing happened in March. [Appellant] was given steroids, which may or may not have any beneficial effect to help him. In any case, he is ambulatory now without surgery. [Appellant's] major problem is neuropathic pain from a spinal cord injury and mild degree of weakness, sensory impairment in both legs and left arm. They are primarily from spinal cord injury, which is old." Dr. Guttikonda noted that appellant was a "52-year[-]old contract worker at the VA Hospital [and] developed numbness of both legs below the waist on or about March 12, 2013. Subsequently, developed difficulty in walking, unable to get out of his car." While Drs. Reasoner and Guttikonda diagnosed appellant with medical conditions, they did not relate these conditions in any manner to a traumatic work-related event on March 12, 2013. Instead, they merely stated that appellant's worsening symptoms began on that date. As such, the reports of Drs. Reasoner and Guttikonda, while containing diagnoses, do not suffice to establish that their diagnoses were rendered in connection with a work-related incident.

Similarly, appellant submitted numerous diagnostic reports containing the results of MRI scan tests and CT scans of various bodily members, as well as a discharge report. These reports, like those of Drs. Reasoner and Guttikonda, do not contain any reference to a work-related incident related to appellant's diagnoses, and are not sufficient to meet appellant's burden of proof on the medical element of "fact of injury."

Because the medical evidence fails to establish that appellant had been diagnosed with any specific medical condition related to the March 12, 2013 employment incident, the Board

[9] *See C.F.*, Docket No. 08-1102 (issued October 10, 2008).

finds that he has not met his burden of proof to establish that he sustained an injury in the performance of duty. The Board will therefore affirm OWCP's July 2, 2014 decision.

On appeal, appellant contended that, if his claim was denied due to untimely filing, the Board should consider the role a hostile work environment played in the timing of filing his claim. The Board notes that his claim was not denied due to an untimely filing, but due to a lack of a medical diagnosis rendered in connection with the incident of March 12, 2013.

Appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.[10] 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 of proof to establish that he sustained an injury in the performance of duty on March 12, 2013.

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

[10] 20 C.F.R. § 501.2(c).