United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
and	)	**Docket No. 14-1719**
	)	**Issued: December 5, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Greensboro, NC, 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 August 4, 2014 appellant filed a timely appeal from a February 26, 2014 merit decision and a May 15, 2014 nonmerit 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its May 15, 2014 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish a low back injury in the performance of duty on November 22, 2013; and (2) whether OWCP properly denied his request for further merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 2, 2013 appellant, then a 57-year-old labor custodian, filed a traumatic injury claim (Form CA-1) alleging that on November 22, 2013 he bent down to plastic wrap empty letter trays and felt a sharp pain in his right lower back.

In a November 27, 2013 emergency room report, Dr. Willoughby Hundley, Board-certified in emergency medicine, reported that appellant complained of right lower back pain radiating to the right thigh which began six days prior as a result of bending over and pulling. He diagnosed sacroiliac sprain.

In a November 27, 2013 diagnostic report, Dr. Nripendra Devanath, a Board-certified radiologist, reported that a magnetic resonance imaging (MRI) scan of the lumbar spine revealed no evidence of fracture, dislocation or vertebral body compression.

In a December 2, 2013 Attending Physician's Report (Form CA-20), Dr. Paul A. Bailey, Board-certified in family medicine, reported that on November 22, 2013 appellant sustained a right lower back injury when he was wrapping empty equipment and twisted his upper body. He diagnosed right sciatica with preexisting consequential and acquired degenerative joint disease, degenerative disc disease, and dextroscoliosis. Dr. Bailey checked the box marked "yes" when asked if he believed the condition was caused or aggravated by appellant's employment activity. He further stated that the mechanism of injury caused acute right lower back pain and right sciatica. In duty status reports (Form CA-17) dated December 2 and 9, 2013, Dr. Bailey provided appellant with work restrictions. Treatment notes dated December 2, 2013 were also provided.

By letter dated December 18, 2013, OWCP informed appellant that the evidence of record was insufficient to support his claim and requested additional factual and medical evidence.

In a January 21, 2014 narrative statement, appellant described his employment duties, noting that in mid-November he began to experience back spasms and pain in his legs. On November 22, 2013 he was bent over while wrapping tubs and felt a sharp pain in his lower back. The pain became excruciating on November 27, 2013 which led appellant to seek emergency medical treatment. Appellant noted no preexisting injuries other than a thyroid problem.

In support of his claim, appellant submitted medical reports and Form CA-17's dated December 19, 2013 to January 17, 2014 from Dr. Peyman Nazmi, a Board-certified anesthesiologist, who reported that on November 22, 2013 appellant was wrapping mail and felt a pop in his back, causing pain in both legs. He denied a prior history of similar pain complaints.

Upon physical examination and review of diagnostic testing, Dr. Nazmi diagnosed lumbar radiculopathy, myofascial pain, and lumbar degenerative disc disease. He opined that appellant's pain complaints were the result of the November 2013 work injury.

Physical therapy reports dated December 18, 2013 to January 30, 2014 from Mark Waligora, a physical therapist, were also received.

By decision dated February 26, 2014, OWCP denied appellant's claim finding that the medical evidence of record failed to establish that his diagnosed conditions were causally related to the accepted November 22, 2013 employment incident.

On April 15, 2013 appellant requested reconsideration of OWCP's decision. He stated that he was submitting an updated January 17, 2014 medical report from Dr. Nazmi which provided International Statistical Classification of Diseases and Related Health Problems (ICD-9) codes in the assessment category rather than the diagnosis category.

In an updated January 17, 2014 medical report, Dr. Nazmi provided a history of the November 22, 2013 employment incident and findings on physical examination. He diagnosed lumbar radiculopathy, myofascial pain, lumbar degenerative disc disease, and chronic pain syndrome with corresponding ICD-9 codes. Dr. Nazmi opined that appellant's pain complaints were the result of the November 22, 2013 employment incident.

Appellant also resubmitted Dr. Nazmi's January 2, 2014 Form CA-17, Dr. Bailey's December 2, 2013 treatment notes, and physical therapy notes dated January 13 and 15, 2014 from Mr. Waligora.

By decision dated May 15, 2014, OWCP denied appellant's request for reconsideration finding that he neither raised substantive legal questions nor included new and relevant evidence.

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; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[3] 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.[4]

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

[3] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

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

actually experienced the employment incident which is alleged to have occurred.[5] The second component 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.[6] 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[7]

ANALYSIS -- ISSUE 1

OWCP accepted that the November 22, 2013 employment incident occurred as alleged. The issue is whether appellant established that the incident caused him a low back injury. The Board finds that he did not submit sufficient medical evidence to support that his diagnosed back conditions are causally related to the November 22, 2013 employment incident.[8]

Dr. Bailey's December 2, 2013 report noted appellant's treatment and described the November 22, 2013 employment incident as related by appellant. On the Form CA-20, he provided a diagnosis of right sciatica with preexisting consequential and acquired degenerative joint disease, degenerative disc disease, and dextroscoliosis. Though Dr. Bailey checked the box marked "yes" when asked if he believed appellant's condition was caused or aggravated by the employment incident, the Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the work conditions caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.[9] He failed to explain the mechanism of injury by detailing how bending over while wrapping tubs could cause appellant injury.

In medical reports dated December 19, 2013 to January 17, 2014, Dr. Nazmi described the November 22, 2013 employment incident and provided findings on physical examination. He diagnosed lumbar radiculopathy, myofascial pain, and lumbar degenerative disc disease and opined that appellant's pain complaints were the result of the November 2013 work injury.

[5] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[7] *James Mack*, 43 ECAB 321 (1991).

[8] *See Robert Broome*, 55 ECAB 339 (2004).

[9] *See Calvin E. King, Jr*., 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr*., 41 ECAB 843 (1990).

The Board finds that the opinion of Dr. Nazmi is not well rationalized. Dr. Nazmi failed to provide a detailed medical history or address appellant's preexisting conditions as noted by Dr. Bailey. His statement on causation fails to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how bending over while wrapping tubs would cause or aggravate appellant's sciatica or other preexisting conditions.[10] Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.[11]

Dr. Devanath's November 27, 2013 report interpreted diagnostic imaging studies and provided no opinion on the cause of appellant's injury. While Dr. Hundley's November 27, 2013 report provided a diagnosis of sacroiliac sprain, the Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[12] The physical therapy notes dated December 18, 2013 to January 30, 2014 are also insufficient to establish appellant's claim as they were not signed by a physician. Registered nurses, physical therapists, and physicians assistants, are not physicians as defined under FECA, their opinions are of no probative value.[13] Any medical opinion evidence appellant may submit to support his claim should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident, in particular physiologically, caused or aggravated his back injury.

Appellant's honest belief that the November 22, 2013 employment incident caused his medical problem is not in question, but that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship. In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the November 22, 2013 employment incident and appellant's injury. Thus, appellant has failed to meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.[14] Section 10.608(b) of OWCP regulations

[10] *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

[11] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *see Lee R. Haywood*, 48 ECAB 145 (1996); *see L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

[12] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[13] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) 'physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005).

[14] *D.K.*, 59 ECAB 141 (2007).

provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[15]

ANALYSIS -- ISSUE 2

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The issue presented on appeal 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 April 15, 2014 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a new and relevant legal argument. Appellant's argument was that his injury was employment related. The underlying issue in this case was whether his injury was causally related to the accepted November 22, 2013 employment incident. That is a medical issue which must be addressed by relevant medical evidence.[16]

While appellant submitted an "updated" January 17, 2014 medical report from Dr. Nazmi, this report is not relevant to establishing causal relationship between appellant's diagnosed conditions and the November 22, 2013 employment incident. Dr. Nazmi's "updated" January 17, 2014 report is essentially identical and repetitive of his prior January 17, 2014 report which was previously considered by OWCP. The report only contained corresponding ICD-9 codes and an additional diagnosis of chronic pain syndrome with no new opinion on causal relationship.[17] Material which is duplicative of that already contained in the case record does not constitute a basis for reopening a case. 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 a traumatic injury on November 22, 2013 in the performance of duty, as alleged. OWCP properly denied his request for reconsideration without a merit review.

[15] *K.H.*, 59 ECAB 495 (2008).

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

[17] Evidence that repeats of duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case. *Eugene F. Butler*, 36 ECAB 393 (1984). *See Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated May 15 and February 26, 2014 are affirmed.

Issued: December 5, 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